

COMMENTARY

ENTROPY AND SKEWNESS IN THE ALLOCATION OF STUDENTS TO LAW SCHOOLS

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I. INTRODUCTION

The history of academic legal education has been one of persistent tensions emanating from differing expectations about the role of law schools for the legal profession. Recently, the focus has been on renewed efforts to heal the mind-body division that is exacted by the prevailing Langdellian mode of law training. The essays in this symposium issue of the *Law Quarterly* give depth and breadth to that concern. Specifically, Anderson and Catz, and Shreve provide experience-tested blueprints on how to make legal education a "hands-on" education. Redmount attempts to rescue the heart from the body that law schools' pedagogy has discarded, so that the intellect can be tempered by moral and humane socialization. McManis and Hardaway each tell how the hegemony of the Harvard model could have been blunted if law learning had been better integrated with its praxis.

I agree with Greenhaw's speculation, which is illustrated by the emphasis of other authors, that the major issue in the 1980s is likely to be lawyer competency.¹ The other authors, however, have not addressed another aspect of that issue that I believe will soon become a pressing concern for legal education and the legal profession. I wish to comment on the obligation assumed by law schools, as the primary port of entry into the legal profession, one, to recruit selectively the intellectually best qualified aspirants to law and two, to base admission decisions upon scholastic ability and performance (or compensatory affirmative

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1. Greenhaw, *Use of Social Science Materials in Teaching Within the Standard, Generalist Law Curriculum: A Criterion for their Refined Integration*, 59 WASH. U.L.Q. 809 (1981).

action) rather than on the basis of ascriptive status characteristics. As I will show, the former process is evincing strong signs of entropy; the latter, of continued skewness.

II. ENTROPY

During the past decade, the excessive demand for legal education inflated the value of the juris doctoris degree at a rate that paced the dollar. In 1960, an LSAT score of around 570 probably would have permitted its holder to be accepted by an elite law school.² By the mid-1970s, however, this score was barely competitive at the least selective schools. As in most markets, supply tended to move with demand. In the first part of the decade 149 accredited law schools granted first degrees.³ By 1981, the number had grown to 172. The increase in schools and the expansion of capacities at existing schools, when coupled with excessive demand, had the well-known effect of causing an explosive increase in the number of recruits to the legal profession. Appendix I displays the growth in total student population at accredited law schools from 1964 through 1980. Since 1968, the slope has been continuously up. Appendix II charts the ratio of previous year Law School Admission Test (LSAT) administrations to first year admissions for the same time span. The ratio shows how deeply law schools dipped into the aspirant pool.⁴

Comparison of the two figures indicates that in 1969 and 1970, when the enrollment boom first began, law schools absorbed the increased demand at a greater rate than in the previous years. From 1971 through 1975, however, increasing enrollments were matched by increasing selectivity in admissions. The peak came in 1975. Since that year, the ratio of aspirants to admissions has declined steadily. Because the total enrollment has continued to increase, there apparently has been a softening of admission standards.

Between 1979 and 1980, the most recent years for which data are available, the ratio of aspirants to admissions declined fifteen percent

2. S. WARKOV & J. ZELAN, *LAWYERS IN THE MAKING* 55 (1965).

3. This was only seven more law schools than the number operating in 1920. See A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW* 414 (1921).

4. The numerator, LSAT administrations, includes a double counting of multiple test takers. As this is a small proportion of the total, its effect on the ratio is not believed to be substantial. However, to the extent that it causes a skew in the ratio, it would be toward overstating the degree of law selectivity.

The data are from: *A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES—FALL, 1980*.

to increase the total population of law students by two percent. Law schools that year took their deepest dip into the aspirant pool since 1972. If those rates were to continue, in six years the number of law students would increase by about 16,000 to just over 141,000, and the ratio of aspirants to admissions would decline to 1:1. By 1986 all aspirants, regardless of LSAT scores, would be admitted to a law school somewhere if they otherwise met minimal educational requirements.

There are a number of contingencies that could make this projection incorrect. First, the size of the aspirant pool could increase at a faster rate than the supply of first year openings. That possibility seems quite remote, however, because the pool has been shrinking since 1974. Second, the increasing costs of higher education, combined with the declining financial support for students, and the demographic trend of fewer people attaining college age all militate against an increase in demand. An acceleration in the decrease may be more probable. Perhaps some or all law schools will reduce their capacities voluntarily. That, too, seems unlikely, because most are fee supported and many have recently made substantial investments in facilities and faculty to accommodate the increased demand during its initial phases. Last, the supply of first year seats could be restricted involuntarily through either an elimination of financially vulnerable institutions or the actions of accreditation agencies. Neither action seems probable unless the ratio of supply to demand falls substantially below 1:1. Whatever the impending scenario, it is clear that even though law school enrollments are still growing, the tide has turned.

These data portend that in a very few years cognitive criteria will no longer be a mechanism to filter out the "unqualified" at the point of first access to the legal profession—law school. No doubt measures of scholastic ability will continue to support the internal stratification of law schools. However, most schools seem destined to lose the option they have recently enjoyed of being very selective. In effect, legal education will return to the configuration of supply and demand that it had about twenty years ago, but the level of equilibrium will be much higher. Until the pipeline is crimped or law schools become willing to impose high rates of failure, the ratio of law recruits to practitioners will continue at an historic high. No longer, however, will the profession be assured that the novices represent only the academically superior.

III. SKEWNESS

Law schools fall into three groups, variously called "national," "regional or local," and "municipal";⁵ strata I, II, and III;⁶ or "large-firm" schools, "intermediate" schools, and "small-firm" schools.⁷ They form a status hierarchy that parallels that of the bar.⁸ For recruits to law, the type of law school attended is the crucial, although not sole, variable determining their allocation among the profession's strata of prestige and practice.⁹ Because the legal profession holds itself out to be open and meritocratic, the primary bases for allocation of students among different types of schools are expected to be talent, achievement, and potential rather than personal status or ascriptive characteristics.

Warkov and Zelan¹⁰ found from a 1961 national sample of 1,103 first year male law students that while previous academic achievement was a key variable in the allocation process, ascriptive attributes were also significant. In particular, within levels of high academic achievement, students from Protestant and Jewish families possessed an advantage over Catholics, and persons from higher social status had an advantage over those from lower status origins in access to the highest status law schools.

In the twenty years since that study three major changes have affected recruitment to law schools. One was the refinement and increasing reliance on the LSAT in the admission decision process. This test made widely available an objective and scholastically validated measure that, in combination with undergraduate performance, could be used by both applicants and law schools as a criterion to weigh academic prospects. Second, the tremendous increase in applications caused the acceptance process to become both routine and rational in terms of cognitive criteria. Last, the substantial increase of women in the aspirant pool created a status category not previously considered

5. See York & Hale, *Too Many Lawyers? The Legal Services Industry: Its Structure and Outlook*, 26 J. LEGAL ED. 1 (1973).

6. S. WARKOV & J. ZELAN, *supra* note 2, at 54-60.

7. Cavers, *Legal Education in Forward-Looking Perspective*, in *LAW IN A CHANGING AMERICA* 139 (G. Hazard ed. 1968).

8. A. REED, *supra* note 3.

9. See J. CARLIN, *LAWYER'S ETHICS* (1962); F. ZEMANS & V. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* (1981); Erlanger, *The Allocation of Status Within Occupations: The Case of the Legal Profession*, 58 SOC. FORCES 882 (1980); Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. LEGAL ED. 127 (1963).

10. S. WARKOV & J. ZELAN, *supra* note 2, at 53-64.

significant in allocations. Given the first two changes, it is reasonable to assume that the religious and social class characteristics of aspirants no longer have a direct effect on the allocation process.

A forthcoming American Bar Foundation study¹¹ of the law school allocation process conducted by the author sheds light on the role of ascriptive characteristics in current law school admissions. The data were collected during 1975-76 (the year of greatest selectivity in law school admissions; *see* Appendix II) from a random sample of 1,370 law students at seven schools. For this particular analysis, all non-white respondents and those for whom data on any social or academic background variables were unavailable were excluded. With these deletions, the study sample was 1,221 respondents. The schools were categorized in three levels. In stratum I were three national, elite law schools; in stratum II, two regional schools; and in stratum III, two other schools primarily distinguished from the second group by the presence of part-time programs in their curricula (although the sample was taken only from full-time day students at these two schools).

A scale with three levels of academic qualifications was developed from LSAT scores, college grade-point averages, and quality of undergraduate colleges attended. A scale of socio-economic backgrounds, based on fathers' occupation, fathers' and mothers' education, and family income provided a four-level class variable. Students' sex and religious backgrounds—Protestant, Catholic, or Jewish—were also considered.

As expected, the most important determinant in allocation to the three levels of law schools was the academic variable. For students in the highest category, the odds of attending a school in stratum I instead of stratum II were 8:1, and they were 28:1 in comparisons between stratum I and stratum III. The academic variable alone, however, was unable to account adequately for the observed distribution across schools. The three ascriptive status variables each had an independent and significant effect on the distribution.

Within the same levels of academic background, women were about forty percent less likely than men to attend a school in stratum I versus

11. R. Pipkin, *The Inside Tracks: Status Distinctions in Allocations to Law Schools* (Aug. 1981) (presented at the meeting of the American Sociological Association in Toronto, Ontario) (on file with the ABF), from *Law Student Activity Patterns*, one of the ABF studies in legal education under the general direction of Felice J. Levine and Spencer L. Kimball, and advised by the former ABA Special Committee for a Study of Legal Education.

stratum II or stratum III. Catholics were forty-eight percent less likely than Protestants and sixty-four percent less likely than Jews to attend a school in stratum I versus stratum II. In comparison with the other stratum, Catholics were sixty-three percent less likely than Protestants and seventy-eight percent less likely than Jews to attend a stratum I school instead of one in stratum III. Those of the highest socio-economic class were forty to sixty percent more likely than students from the other three social groups to attend a school in stratum I instead of a school in stratum II or stratum III. In other words, the "inside tracks" to stratum I schools were largely awarded to those with the highest academic qualifications from high-status colleges. However, once the field was thereby narrowed, the advantages went to males from the highest social class backgrounds who were Jewish or Protestant.

Distinctions in allocations between the two non-elite strata, II and III, were based primarily on the academic criteria. Socio-economic backgrounds and sex had no effect. Within levels of the academic variable, Catholics were slightly more likely to be found at the stratum III schools, and Jewish students were somewhat more likely to be in the stratum II schools, but in neither case were the differences large.

Thus, the effects of status distinctions on allocations to law schools, which were noted by Warkov and Zelan twenty years ago, did not disappear with the greater reliance on LSAT scores in admissions or the greatly increased size of the aspirant pool. The introduction of a significant number of women into the pool merely added another ascriptive characteristic distinguishing the allocations between elite law schools and the others.¹² Therefore, although meritorious and scholastic criteria essentially determine the major allocation among levels of law schools, sex, social class, and religious background continue to skew the distribution to the "best" law schools.

IV. CONCLUSION

The two trends noted here, one of regression and the other of stagnation, indicate strongly that legal education is heading into a trouble-filled decade. Harsh times are usually met by retrenchment and retreat; reforms that do not address the problems immediately at hand tend to be set aside. Although the context I have described seems to suggest it,

12. See also Spangler, Gordon & Pipkin, *Token Women: An Empirical Test of Kanter's Hypothesis*, 84 AM. J. Soc. 260 (1978).

I do not think the ideas that the authors in this symposium have advanced need necessarily have that fate. They are very timely.

For the last century, the emphasis in legal education has been on standardization in curricula,¹³ teaching materials,¹⁴ teachers,¹⁵ educational climates,¹⁶ and products.¹⁷ The quick response to any newly articulated problem—for example, legal ethics or trial competency—has consistently been to standardize law training further.¹⁸ The justification for compelling uniformity is that, given the diverse nature of the practice of law, only the production of lawyers can be controlled. Yet the strong push to standardize all aspects of legal education, which perhaps existed with good reason in an earlier era,¹⁹ provides only the narrowest vision of the profession and its future.

As demand for law school begins to slacken seriously, competition between schools for well-qualified recruits will intensify. The essays in this symposium suggest that pedagogical innovations, creative connections to practice, and diversity of curricula will become the medium of appeal. If those who police the perimeters of legal education—the accreditation agencies, the bar examiners, the law firms, and the law school admission committees, deans, and faculties—can be made to see diversity as the best way to cope with adversity, then legal education may finally leave behind its fetters from the nineteenth century to move into a new age.

13. See E. GEE & D. JACKSON, *FOLLOWING THE LEADER?: THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA* (1955); D. JACKSON & E. GEE, *BREAD AND BUTTER? ELECTIVES IN AMERICAN LEGAL EDUCATION* (1975).

14. See Mazor, *The Materials of Law Study: 1971*, reprinted in AALS CURRICULUM STUDY PROJECT COMMITTEE, *TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW: 1971*, [commonly known as the *Carrington Report*], 1971 AALS PROCEEDINGS Pt. I, Sec. II, 240 app., reprinted in H. PACKER & T. EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 319 (1972).

15. See Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 A.B. FOUNDATION RESEARCH J. 501.

16. See T. SHAFFER & R. REDMOUNT, *LAWYERS, LAW STUDENTS AND PEOPLE* 193 (1977).

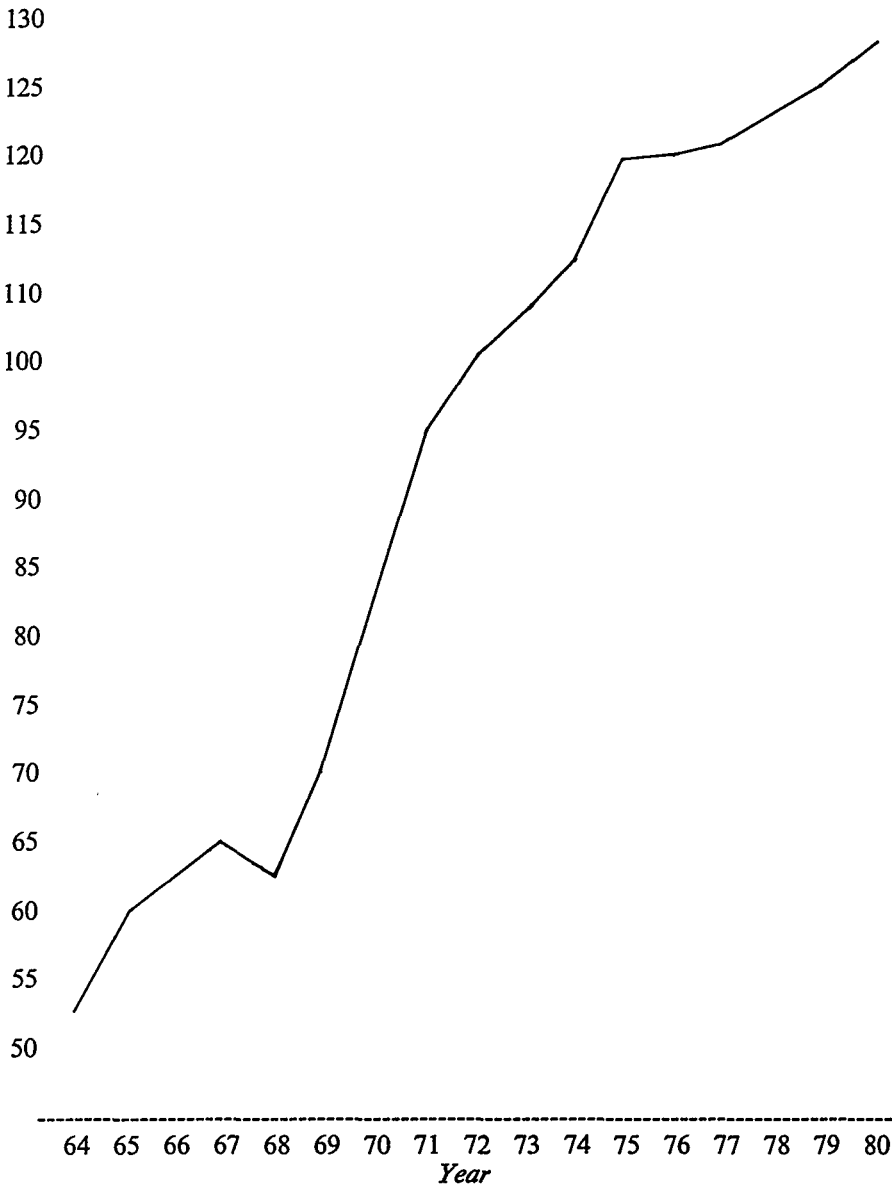
17. See M. LARSON, *THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS* 40-52 (1977).

18. See ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS* (1979); Pipkin, *Law School Instruction in Professional Responsibility: A Curricular Paradox*, 1979 A.B. FOUNDATION RESEARCH J. 247.

19. W. JOHNSON, *SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES* 58 (1978).

APPENDIX I

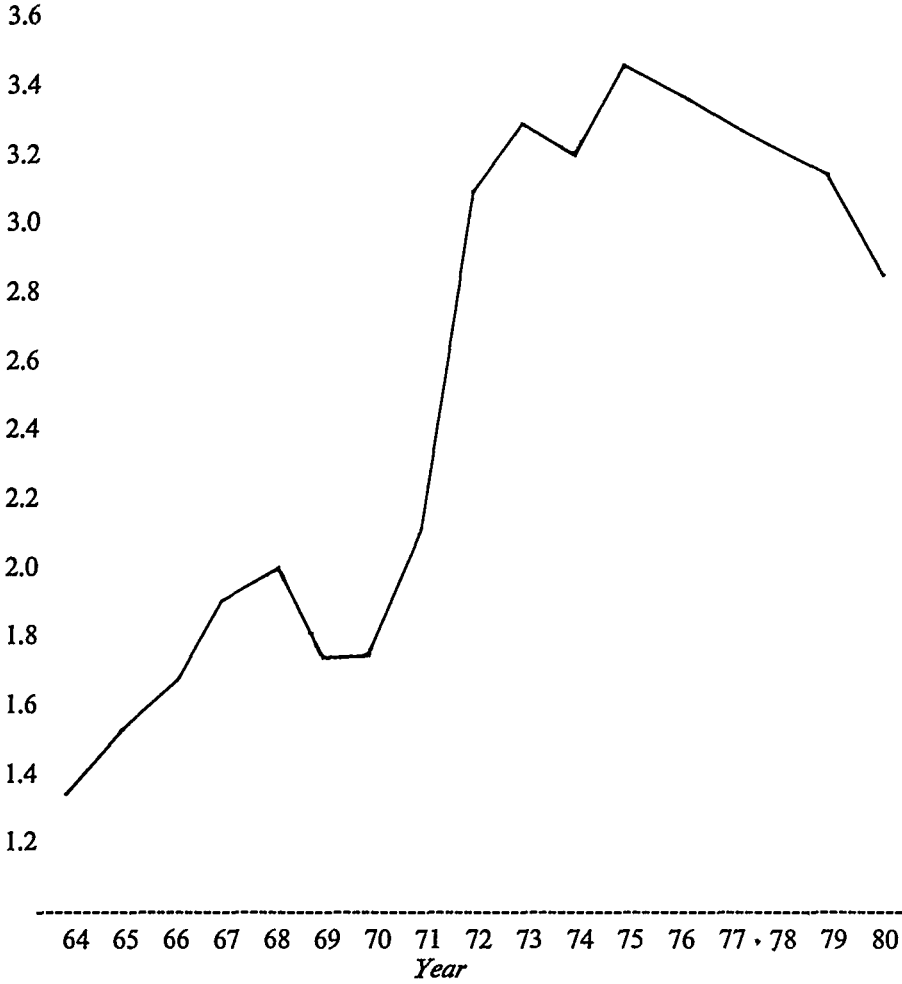
(in thousands)



Total Number of Students Enrolled in Accredited Law Schools

APPENDIX II

(ratios to 1)



Ratios of Previous Year LSAT Administrations to Fall
First Year Admissions

APPENDIX III

DATA POINTS FOR APPENDICES I & II

<u>Year</u>	<u>App. I</u>	<u>App. II</u>
1964	54.3	1.34
1965	59.7	1.56
1966	62.6	1.64
1967	64.4	1.85
1968	62.8	1.99
1969	68.4	1.70
1970	82.5	1.70
1971	94.5	2.05
1972	101.7	3.06
1973	106.1	3.23
1974	110.7	3.18
1975	117.0	3.47
1976	117.5	3.34
1977	118.6	3.23
1978	121.6	3.17
1979	122.9	3.09
1980	125.4	2.63

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