

Park

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*Newsletter Piece*

*Honors Program*

Why Graduate Programs Are a Good Idea, Part II: Law School

Lawyer jokes are funny. What do you call 10,000 lawyers at the bottom of the sea? (A good start.) How many lawyers does it take to change a light bulb? (Eight—one to change the bulb, two to sue for malpractice, three to argue that someone else should be held liable, and two to get a continuance.) Why will sharks and hyenas devour almost all lawyers? (Because they don't mind eating their own kind.) The devil tells a lawyer, "I can give you everything you want, more money than you can imagine, power over your enemies, victory in every case, and all you have to do is give me your soul and the souls of your children," to which the lawyer replies, "So, what's the catch?" Some of the best lawyer jokes can not be retold here, as they involve acts of sexuality, death, coprophagia, or some nasty combination of these themes. Lawyers tell the best lawyer jokes, and the training generally starts in law school.

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Formal legal training in the United States was originally modeled after legal training in Great Britain, where early "law schools" began mostly as apprenticeships, one generation of "solicitors" and "barristers" training the next, through institutions that became known as the Inns of Court. Aspiring solicitors would clerk for older ones and figure how to draft a binding contract or execute a will. This was less fancy work, and so was taken by persons from the middling classes. Aspiring barristers were of a higher class: as gentlemen, they would attend court, they would get to know how to talk in

formal pleadings, and handle specific cases before judges who often held hereditary title to their office. Barristers still wear funny powdered wigs. Through both kinds of training, a lawyer would learn the great and complicated mass of precedents known as the English common law. English courts had a “bar,” a railing inside a courtroom where people on one side could speak and be heard formally while people on the other could only watch and listen. When they were ready, young barristers would be allowed to “pass the bar” or be “admitted to the bar.”

The first formal law school in North America was founded at the College of William and Mary in Virginia in 1779, where Thomas Jefferson encouraged the study of English legal precedents even as the colonies were still engaged in their revolution against George III. The early curriculum would be familiar to any first year law student even now: torts, property, contracts, and “procedure,” which would eventually be split into civil and criminal procedure. Lectures and courses of study were fine, but legal professionals were expected to train in the law offices of seasoned, older attorneys, many of whom had apprenticed in London.

Other universities opened law schools: Harvard in 1817 and Yale in 1843 (when it formalized ties to what was the New Haven Law School), and the major land-grant universities followed as well, Michigan in 1859 and California in 1878. Until the early 20<sup>th</sup> century, however, legal education was primarily vocational, and persons getting law degrees often didn’t need bachelor’s degrees or other formal education to matriculate and complete a law degree. States had developed comprehensive exams to license attorneys, but many people who took these bar exams had never stepped inside a law school. It wasn’t until about the 1950s that a majority of people taking the state bar exams had both a bachelor’s degree and a graduate law degree, due in part to the efforts of the American Bar Association, which had long sought both to professionalize the practice of law and to limit the number of people who could practice legitimately. “Malpractice,” literally meaning “bad practice,” was a common problem that caused lots of people lots of problems, and so the Bar Associations attempted to regulate and discipline all lawyers. Practicing without a license itself became malpractice.

In the early 20<sup>th</sup> century, as the American economy grew much more complex, major law schools in the United States developed quickly and changed fundamentally.

Professional lawyers and scholars of law argued about how law and legal education should be structured: the scholars said that the law should be treated as a kind of “science,” deserving of more structured learning and scholarship. Fundamental legal principles could be “discovered,” they said, primarily through the study of complex appellate cases that students and professors could analyze in a classroom. The training should begin *after* a Bachelor of Arts degree, when the law student had had some experience with Greek, Latin, the sciences, and the arts. But many professionals thought three years of law school as somewhat excessive, preferring at most two years followed by a year or more of apprenticeship under an experienced lawyer. Students should learn by doing, through apprenticeship. Some practitioners were appalled that leading law schools had hired professors more for their talents as researchers rather than as lawyers: by the 1940s, law schools were appointing law professors who hadn’t ever practiced law.

For better or worse, the Harvard professors and their students proved very influential, and because the Harvard Law School was relatively large, there were many more of them in the world by that time. Students at Harvard were trained through a Socratic method, almost always by analyzing appellate cases: professors called on random students, peppered them with questions like Socrates did to his poor students, about why Mr. Plato prevailed over Mr. Aristotle, the major legal issues in their case about the defective goat, why Plato won in the lower court case and lost on the appeal, why Aristotle should have really won all along, why none of the dopey judges were nearly as smart as the professor, and so on. Until about fifteen or twenty years ago, every first year student suffered this unique form of academic hazing. Some still do.

By 1950, formal and semi-formal apprenticeships were still around, but not really regarded as necessary (except in two states, Delaware and Vermont): the law schools required a bachelor’s degree, they provided a three year course of study through the Socratic method, and then the candidates took a state bar exam. It was an odd system: the bar exam was written by professional lawyers who wanted the candidates to have some grounding in plausible, real-life legal problems, but the law school curriculum was designed mostly by academics and professional researchers. Law schools at the major research universities also offered joint appointments and full-time appointments to historians, sociologists, anthropologists, economists, and other social scientists, whose

work greatly influenced both legislation and judging by the mid 20<sup>th</sup> century. The practitioners were not entirely excluded either: many law schools offered “clinical programs” to third-year law students, and through these clinics, they learned how seasoned attorneys managed the real-life legal problems of people in the world.

To this day, the path toward a legal career is most definitely not a vocation or apprenticeship as it once was, but it’s also one of the more mysterious paths toward a professional life. It isn’t obvious how an undergraduate degree is related to a law degree, nor is it obvious how either prepares one to take the bar exam. After three expensive years of law school, people preparing for the bar exam typically pay for yet another expensive “bar prep” class just for the exam. I never took this exam because I decided to become an academic, but one of my good friends spent \$10,000 for a bar prep class, spent twelve weeks studying for the bar exam, and failed, like one-fourth of the people who took it that year. In November 1996, after three tough years of law school, he had sixteen weeks of laundry and \$160,000 in debt, which was kind of funny, but not really.

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Still, despite the very real possibility that law school can still leave people poor and heartbroken, it’s still a good idea, and for reasons that have to do with the extremely complex and exciting nature of our American legal system. Law is fascinating: it is informed by our basic morality and ethics, it shapes and is shaped by brute political processes, it is about exercising power and resisting power, and it touches everything. There is not a problem in American society, however trivial, that isn’t regulated, legislated, or litigated. Many people participate in the legal processes that shape our lives, but licensed lawyers have a privileged position in this system—over many generations, they have wrestled for themselves the right to file formal petitions on behalf of their clients, to talk formally in a court, and to decide cases that can have huge political, social, and economic consequences, not just for their immediate client, but for all of society. Phrased more ominously, any corporation or person that has inadequate access to legal representation within this complex system is at an obvious and significant disadvantage, and this is why prominent corporations and rich people pay a lot of money

to get really talented lawyers who know the system very, very well. (This is why lawyers can become so rich, and why many people want sharks and hyenas to eat them.)

Law is unavoidable, its manifestations never end, and at bottom, so much of it is theory. Theory is about asking, what is that thing under our consideration? What is “property” or “liberty”? What does it mean to say that one has a right to “due process” or “equal protection” under the law? What is a “fundamental” right, as opposed to some other kind of right? If a city pays “fair value” for your house to build a shopping mall against your will, has it unlawfully deprived you of your liberty and property? If you download songs from a friend’s computer, burn them onto CDs, and sell them on e-Bay, have you deprived the song’s producer and artist of *their* rightful property? If a complex set of government regulations sets standards for the production of all “medical devices,” and if your company makes band-aids, should these rules apply to *your* company’s manufacturing processes? If a jury duly convicted you of a crime, yet if the prosecutor in your case deliberately struck all prospective jurors of the same race as you even before the trial began, were you deprived of your right to a fair trial? If you cannot lawfully marry someone of the same sex as you, has the state, representing a majority of the people, deprived you and your prospective spouse of a fundamental right? If the Clean Air Act regulates all forms of “pollution,” and if carbon emissions are actually making for a warmer planet, should the Clean Air Act apply to carbon emissions? What *can* the majority do to a minority, using lawful means—can a majority deprive them of their organs, for example, tax them against their will, or enslave them and all of their descendants?

If a surgeon leaves a surgical sponge in your body during an operation, how much should he pay for that mistake? Should the inevitable destruction of human embryos for research purposes be prohibited because it amounts to a willful destruction of human life? Is water-boarding torture?

Law school is an interesting place precisely because these kinds of questions are at the forefront of classroom discussions. And yet most practicing attorneys will admit that law school is often more fun than actually practicing law: for every hour in a courtroom, there are innumerable hours in the law library or in front of a computer, grinding away at one minute issue or another. Not all clients are nice people, even

though they might pay well. And while the money can be pretty good, being a lawyer means dealing constantly with other people's problems. One attorney friend of mine said, "I mostly rent my brain for seventy hours a week to deal with the legal problems of a corporation," which made me kind of sad, even though we were in his mansion. Some cases never seem to end, like the eternal *Jarndyce v. Jarndyce* in *Bleak House*. Hour-long TV shows tend to show only the glamorous aspects of law because the other aspects are so obviously boring and painful to watch. They can be hard to endure. There is no case that lasts just an hour.

Yet my favorite classmates from law school are wonderful people, people who are able to summon their great analytical and research talents to do terrific things as lawyers. Whether they work in consumer protection, public interest organizations, environmental groups, government agencies, or even corporate law firms, they work tirelessly to shape a more positive world one case at a time. American law presupposes a political environment of constant contestation—no political or legal issue is really "settled," and what is most admirable is that quality of persistence among successful attorneys, especially the ones struggling against long odds. These men and women survive the long hours and the tedium of the law because they are absolutely driven by a broader vision of justice and fairness. "Winning" is not always the point—their unique combination of skill and conscience make them formidable advocates and admirable people irrespective of any formal outcome. My favorite lawyers also do other things, in business, politics, education, and the arts, and they do them differently because it's impossible not to be shaped (warped?) by law school. It's like growing up Roman Catholic.

Tyrannical regimes have always imposed order and gotten rid of meddling lawyers, and this is what Dick the Butcher probably had in mind in *Henry VI* when he says, "The first thing we do, let's kill all the lawyers." First, we should remember that he is a Dick, and this is something that a Dick would say. As Shakespeare's audience would know, the joke is more about the Dicks who would eliminate legal professionals capable of challenging and checking the power of the state rather than a joke about lawyers. Dick wants a world ungoverned by the rule of law, but a world where people are denied legal counsel and lawful protection when facing mistreatment by the state or by each other wouldn't really be funny at all. That world would be a bad joke.