

THE CURSE OF THE GOLDEN HANDCUFFS: THE CASE FOR REFORM IN TUITION AND LICENSING REQUIREMENTS FOR LAWYERS IN THE U.S.

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Introduction

This article discusses the shortfalls of pursuing a law degree (and, subsequently, a license to practice law) in the United States. While “golden handcuffs” generally refer to the policy of providing high pay and incentives to employees in order to deter them from leaving a company¹, this article submits that law school graduates face another kind of golden handcuff – investing time and money to complete the seemingly prestigious Juris Doctor degree only to be placed in the unfortunate position of not having many options to recoup the investment in the current economic crisis, or, for those fortunate enough to land a high-paying position, being shackled to the job for 80 plus hours a week for years at a time. Those attorneys who want to pursue non-corporate positions and dive into the realm of public service do so with the knowledge that they will be in mounds of debt for years to come. In sum, the crippling financial reality attached to obtaining a degree and practicing law in the U.S. requires that a massive overhaul of TARP-like proportions take place in order to empower lawyers in the U.S. to reach their maximum utility.

I. The Cold, Hard Facts

I can recall having an argument with my grandmother when I was 6 years old, and she said to me, “Since you have all the answers, why don't you become a lawyer?”. Her facetious response triggered a curiosity that ultimately guided me towards pursuing the legal profession. As someone who had been identified as a problem-solver, even at a young age, becoming a lawyer seemed like the natural progression. The financial commitment necessary to become a licensed attorney in the U.S. and the limits to practicing law never entered my mind until years later.

As I began researching which law school I would attend, I had some criteria in mind which, in hindsight, did not accurately assess how attending the “wrong” law school can have a lasting effect on professional opportunities. While I wanted to attend the most prestigious school I could, financial and logistical considerations ultimately governed my decision to attend Pace University. According to the American Bar Association rules, students who

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¹ http://en.wikipedia.org/wiki/Golden_handcuffs, Accessed: June 6, 2010.

attend law school for more than 12 credit hours (full-time) are not allowed to work more than 20 hours per week.² Additionally, most of the top tier law schools, such as Harvard and Yale, do not provide part-time law school programs. Being able to attend school part-time, work full-time and keep costs down by living with my family seemed to be rather prudent reasons to forgo more academically reputable institutions that would require me to attend full-time and relocate out of state. It was not until years later that I would come to understand that not all law degrees have the same value.

In 2002, the year I began applying for law school, the average first year associate for a major New York law firm could expect to earn more than \$130,000 U.S., excluding bonuses and other benefits. The economy was booming, lawyers were in full demand, and while I knew my educational debt would total over \$100,000, it seemed almost automatic that upon graduation, there would be a lofty associate position in a prestigious law firm awaiting me. By 2007, the year I graduated, the economic and labor climate had begun a dramatic transformation, and not for the better. While I had already come to terms with the idea that life in a major law firm would not be in my future, my colleagues who still shared that aspiration were left with the stark reality that firms simply were not hiring. What's more is that the university I attended was amongst the lower-ranked law schools in the country, thus diminishing the possibility of major law firms recruiting from there, even for those students who were graduating *magna cum laude*.

It is particularly alarming that the U.S. law school experience is so financially cumbersome, especially considering that the education does very little in the way of preparing for the actual practice of law. According to an article written by Maimon Schwarzschild, the tuition for U.S. law schools has steadily risen at a rate that is twice the rate of inflation over the last 25 years.³ As of 2008, the average tuition for public law schools was \$16,836, while private schools averaged \$34,298.⁴ Most U.S. legal residents are entitled to what is called a Stafford Loan with a maximum annual disbursement of \$20,500 (\$8,500 subsidized/\$12,000 unsubsidized) per year, with interest rates fixed at 6.8% for graduate studies.⁵ This means that if, for example, you attend a private law school full-time at the average tuition, take out the

2 American Bar Association, Course of Study and Academic Calendar, Standard 304(f)

3 Maimon Schwarzschild, *The Ethics and Economics of American Legal Education Today*, 17 J. CONTEMP. LEGAL

ISSUES 3, 5 (2008); *see also* THE ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE 16 (Chicago 2003)

4 ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LAW SCHOOL TUITION 1985–2008 (2008), *available at*

<http://www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf>. Accessed: June 6, 2010.

5 <http://www.staffordloan.com/stafford-loan-info/graduate-stafford-loan.php>. Accessed: June 6, 2010

maximum Stafford Loans (which will still leave you with a deficit of almost \$15,000 annually), you will have a total Stafford Loan indebtedness of approximately \$65,582. Again, since Stafford Loans will generally not cover the full tuition, students might be forced to apply for private loans with significantly higher and compounded interest rates. Given the fact that the jobs with starting salaries over \$100,000 are elusive in our current economic situation, the chances of practicing law and repaying loans in a timely manner (10 years or less) have become less and less likely.

As if these numbers weren't depressing enough, the fact is that having a Juris Doctor, the law degree in the U.S., is of limited utility in the labor market. In order to become an attorney in the U.S. (except for limited circumstances in states like Wisconsin), you have to pass a bar exam that is administered on a state-by-state basis. It would seem axiomatic that if one were to incur debt in the tens and, possibly, hundreds, of thousands of dollars, the curriculum would include all of the necessary preparation in order to pass a bar exam and become a licensed attorney. Sadly, this is not the case. Immediately upon graduation, most students begin a three-month bar preparation course, generally provided by BarBri or Pieper, if students are preparing for the New York Bar. As of this year, if a student wants to take BarBri's preparation course for the New York Bar, the tuition begins at \$3,100 and does not include service and ancillary charges.⁶ Pieper charges \$2,995 for the same services, with the primary difference being that Pieper has live instruction, in contrast to BarBri which administers its courses using instructors who have previously filmed the lectures.⁷ There are other options to pursue bar study in a more cost effective manner, and I opted to do so due to my personal financial reality. If one is very self-disciplined, The Bar Study Group offers home study cds and materials, and that program is currently being offered at \$1,995.⁸ Think that this is the extent of the financial commitment in order to become a practicing attorney? Think again. The actual bar exam is an additional expense. In the case of New York, the bar exam costs \$250, and that is representative of approximately what it costs in most U.S. states.⁹ Additionally, most states require that prospective lawyers pass a professional responsibility exam, which is currently \$63, and there is generally a fee involved with disbursing the score to the state in which you would to practice law.¹⁰ While the professional responsibility exam is a one-time experience and can be transferred to numerous jurisdictions, in most cases,

⁶http://www.barbri.com/wps/portal/barbri/courseInfo/barReviewCourse/pricing?linktype=barbriLink&sitearea=breeze_barbri_library/barbri.com/anonymous%20visitor/NY&pubarea=breeze_barbri_library/barbri.com/anonymous%20visitor/NY&csrightbararea=null Accessed: June 6, 2010.

⁷ <http://www.pieperbar.com/courses/bar/> Accessed: June 6, 2010.

⁸ <http://www.thestudygroup.com/newyorkbarreview.htm> Accessed: June 6, 2010.

⁹ <http://www.nybarexam.org/faq/faq.htm#fees> Accessed: June 6, 2010.

¹⁰ <http://www.ncbex.org/multistate-tests/mpre/examination-fees/mpre-fees> Accessed: June 6, 2010

attorneys must take individual bar exams for every state they desire to practice.

Many states have reciprocal agreements with states that are in close proximity, but much of the time, attorneys must practice for a minimum of 5 years before they can transfer their license. In California, the state with the most attorneys, there is no possibility of practicing law (outside of *pro hac vice* work) without passing the California bar exam. Bar exams are generally administered around the same time and have to be undertaken on location in areas designated by each state. As a result, it is nearly impossible for one to take the New York and California bar exams in the same cycle. Even in circumstances where you can take multiple bar exams in a three day period (New York and New Jersey/Connecticut, for example), it should be noted that there is the requirement of paying separate exam fees, and, upon passing the bar exam and being deemed fit for the practice of law, taking separate continuing legal education courses (CLEs) in order to maintain licensing requirements, which can amount to spending hundreds or thousands of dollars each year. Many big law firms reimburse or sponsor CLEs, but for unemployed attorneys, attorneys in the public sector or attorneys in small firms, the bulk of this expense falls on their shoulders.

Due to the geographic limitations of the bar licensing scheme, a lawyer is only as powerful as their state license permits. The effect of this limitation can be felt in current times, where the need for lawyers has dissipated in the states with the highest density of lawyers (New York, California, Florida). In many other areas of the country, the need for lawyers has increased, particularly with the rise in bankruptcy and real estate litigation. Lawyers who may be willing to relocate in order to position themselves in a more desirable labor market may be estopped from doing so because of the financially and temporally arduous task of taking another bar exam. Even in jurisdictions like the District of Columbia, which accepts reciprocity from all states (provided the attorney meets certain requirements), the application process is another several hundred dollars and can take close to a year before admission to the DC Bar.¹¹

In spite of all of the grim statistics for prospective lawyers, the law school admissions system is not recognizing the fact that there are simply more Juris Doctors and licensed attorneys than the current economy can employ. Unlike medical school in the U.S., law schools are not bound to strict quotas that reflect the actual demand for the profession. According to the Law School Admission Council, there were 58,400 students admitted to American Bar Association-accredited law schools in 2009, up 5.1% from the previous two years.¹² In 2009, most major law firms were in the middle of massive layoffs, delaying start dates for first year associates and trying to find ways to

11 <http://www.dcappeals.gov/dccourts/appeals/coa/faq.jsp#15> Accessed: June 6, 2010

12 <http://www.lsac.org/Applying/lsac-volume-summary.asp> Accessed: June 6, 2010.

maintain their profit margin. Clearly there is an incongruity between supply and demand in the U.S. legal market. The current system is analogous to the tale of sheep on the edge of a cliff; although the other sheep see those before them diving to their deaths, they cannot help but follow suit.

II. Public Sector Employment: Who Can Afford To Do It?

Many people make the decision to enter law school and practice law with no desire to end up in the corner office of a major law firm. For those individuals who would like to work as prosecutors, public defenders or attorneys for non-profit organizations, the cost of obtaining a Juris Doctor remains almost impossible to recoup. The average assistant district attorney for Kings County, New York, one of the courts with the highest dockets in the nation, is between \$54-58,000 U.S. a year.¹³ This is actually on the higher level of salaries for prosecutors, as the national average falls far below. Even with a salary of nearly \$60,000, if most prosecutors have the average amount of debt from law school and undergraduate studies, it becomes an almost insurmountable quantity to repay.

The Federal government has identified this dilemma and does provide some form of financial relief for those attorneys who enter the public sector. The John R. Justice Prosecutors and Defenders Incentive Act of 2008 (*The JRJ Act*) provides loan relief at a maximum of \$10,000 a year for those attorneys who work as prosecutors, public defenders and select other public sector lawyers, and attorneys are generally required to maintain their position for a minimum of 3 years.¹⁴ Some state and local jurisdictions also employ a similar program, but the real question is whether or not these programs, helpful though they might be, go far enough to compensate public sector attorneys.

One law school, City University of New York, offers a unique model for those law students who have already identified a desire to work exclusively in the public sector by specializing in courses that prepare students to become prosecutors, defenders and non-profit sector attorneys. Additionally, the tuition reflects the financial reality that those attorneys face upon graduation. The current tuition and fees for New York residents is \$5,975.85 and \$9,365.85 for out-of-state residents.¹⁵ There is clearly a large difference between this school and even the best in-state tuition for most law schools. Ironically, although this is arguably the most affordable law school, it is also one that provides specific training to help graduates enter the work force and, therefore, leave with marketable skills than those of us who paid a \$100,000+ premium, only to leave with knowledge of obscure common law

13 http://www.glassdoor.com/Salaries/assistant-district-attorney-salary-SRCH_KO0,27.htm Accessed: June 6, 2010.

14 John R. Justice Prosecutors and Defenders Incentive Act of 2008, 42 USC 3711, Section 3001.

15 <http://www.law.cuny.edu/admissions/tuition.html> Accessed: June 6, 2010.

and Supreme Court cases that rarely play a role in the life of the average U.S. attorney.

III. The EU Model

While in law school, I studied abroad in The Netherlands, and it was at that time that I realized the gravity of my mistake. The Netherlands, like most of continental Europe, has an affordable educational system for its nationals. While I was mounting debt by the tens of thousands for the “privilege” of receiving an education, my European counterparts were achieving their goals for less than 10% of the price. The 2010/2011 tuition for a master's of law at Vrije Universiteit in Amsterdam, for example, is €1,672 for full-time students who are EU/EEA citizens.¹⁶ The Dutch government provides no to low interest loans to cover the costs and well as a housing allowance for its nationals, making a university education generally available for students whose scholastic aptitudes enable them to be admitted. Spending time in The Netherlands allowed me to see the U.S. educational system outside of itself. Graduate school tuition in the U.S. is based on the expectation that recipients of the degrees will pursue high salaried jobs, thus fueling the economy and keeping U.S. nationals confined to capitalism in its highest incarnation. This is unlike the Dutch tuition system, which is based more on the pure cost of education and is highly subsidized by the government. Dutch students who complete master's programs are essentially free to pursue whatever endeavor they choose, with the knowledge they are not as burdened by loan repayment and can make employment decisions based on factors that are not exclusively financial. Additionally, due to the free movement of people and services, it is theoretically easier for a Dutch attorney, for example, to relocate to Germany to work, provided they have the requisite language and technical skills. While that individual will, undoubtedly, have to pass certain criteria to practice law in a new country, it will likely not rise to the financial and temporal burden that the average American attorney faces when relocating from one state to another. Under the current economic climate, this proves to be a decisive advantage, as EU students are better-positioned to take on work in more countries and with a smaller income requirement in order to repay educational debt. Other European countries, such as Norway and Sweden, use their high tax rate as a means to almost completely subsidize higher education (Norwegian students have to pay a nominal copy fee), putting them in an even greater position than their Dutch counterparts to approach post-graduate life with relatively low debt.

The additional benefit to attending graduate school in the EU (or anywhere outside of the U.S.) is that foreign graduates still have the opportunity to obtain a license to practice law in the U.S. while not incurring the debt that their American counterparts have. In New York, for example, students who

16 <http://www.vu.nl/en/programmes/international-masters/financial-matters/tuition-fees/eu-eea-citizens/index.asp> Accessed June 6, 2010.

graduate from an LL.M. program are allowed to sit for the bar exam. It should be noted that the first time pass-rate for these students tends to be significantly lower than the state average, but if the students are willing to work at learning the U.S. legal system, it is a way to achieve in a year's tuition what many of us had to do for three (or four) times the price. Foreign students have, undoubtedly, attended a comparable master's-level law program and paid tuition in their respective countries, so it isn't an unfair outcome. It is simply the case that most non U.S.-educated students have likely paid significantly less for their first and second degrees prior to arriving at the U.S. law school.

IV. Proposals For the U.S. Legal Educational System

Now that some of the ills of the U.S. legal educational system have been discussed, it is appropriate to relay some thoughts as to how they can potentially be remedied. It is clear that the U.S. will not emulate the European system, but small modifications may make the difference.

- Expand the loan forgiveness scheme to include low paid private sector attorneys, attorneys who become teachers and other non-profit organization attorneys who are currently not covered within *The JRJ Act*.
- Limit the number of law school applicants so as to better reflect potential employment realities upon graduation. While many students may not be admitted to attend law school as a result, it will ultimately ensure that those who do have a greater level of job security than currently, and those who apply will likely be the individuals most enthusiastic about attending law school, thus minimizing the applicants who apply with minimal commitment to the practice of law
- Establish government or American Bar Association mandates on law schools to provide more transparent information on realistic salary and professional expectations, including the percentage of graduates with jobs, the sizes and practice areas of firms, etc. Most law schools provide this information in some form, but there should be a uniform standard in which every law school must adhere.
- Expand the part-time programs, and eliminate the 20-hour limit for employment by full-time students. While the 20-hour limit is intended to protect students by creating a cap on how much time they will spend away from studying, it is simply out of alignment with the financial reality of millions of students. If students have arrived at the graduate level of study, the onus is on them to manage their time appropriately. If the 20 hour maximum cannot be reduced, then the number of credit hours should be increased from 12 to 15 credit hours, thus enabling a wider range of full time student to work over 20 hours while still, theoretically, not

being overwhelmed by work.

- Create a nationwide bar exam, with ancillary, affordable mini exams for those areas of the law that are extremely nuanced and/or state-specific. Currently, there is a patent bar exam that has national application, so there is precedent for this. States can modify the continuing legal education (*CLE*) system so as to ensure that attorneys who practice in certain areas receive the proper training, and this can be a way to generate income for bar associations, etc.
- Mandate an overhaul of the current curriculum in most law schools so as to create more opportunities for practical experience, including bar preparation as part of the core curriculum. Pace University is one of the few schools that currently provides a bar preparation course as part of the regular curriculum (with limited enrollment), and the high bar passage rates by those students who have attended the course relative to the overall school average are indicative of the efficacy of such a course. The quasi-oligopoly held by BarBri and Pieper should be dismantled. Attempts have been made by former law school students to bring a cause of action against BarBri, with allegations of monopolistic behavior, which amounted in a settlement of 49 million U.S. split between all of the class action participants.¹⁷
- Expand bankruptcy laws to enable a discharge of non-Stafford private loans. A debtor may obtain a discharge of government-sponsored student loan debts only if failure to discharge that debt would impose an “undue hardship” on the debtor and his dependents.¹⁸ In a recent case, *United Student Fund., Inc. v. Espinosa*, an individual was allowed to discharge the interest on his student loan as part of his bankruptcy settlement.¹⁹ While the rationale for this discharge was largely a procedural one, it opens up the discussion for the possibility of expanding the current U.S. bankruptcy law to include this proposed action. Many naysayers to this approach envision widespread abuse of the bankruptcy law if this is enacted, but it should be noted what a devastating event a bankruptcy is for U.S. residents. The U.S. is a credit-based society, with everything from housing to insurance to employment possibilities potentially hinging on what credit rating is attached to an individual's social security number. As a result, bankruptcy can amount to a glorified death sentence for one's immediate financial future, and most bankruptcy cases remain with the debtor's credit rating for a minimum of 7 years. However, in light of the time it takes to repay many loans, 7 years may be the lesser of two evils.

¹⁷ *Rodriguez v. West Publishing Corp.*, 563 F.3d 948 (C.A. 9, April 23, 2009).

¹⁸ U.S.C. §§523(a)(8); 1328.

¹⁹ *United Student Aid Funds v. Espinosa*, 08-1134.

Conclusion

In sum, the legal educational system in America is currently one that sets individuals up for failure, both financially and professionally. Looking to the European model for guidance may serve U.S. legal educators well, as the general populations in Europe maintain a high educational level without having to fall victim to overwhelming debt. While there are certainly many benefits to attending law school and becoming a practitioner in the U.S., in order for the profession to thrive, modifications must be made to ensure that the next generation of law school students and lawyers do not have to endure the same plight that I and many others have in order to become licensed to practice. Curtailing the law school population, providing clear indications of employment prospects, the creation of a nationwide bar exam and expanded debt forgiveness are all measures that, if properly administered, could help release the curse of our golden handcuffs.

