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## ARTICLES

### CURRICULAR CHANGE IN LEGAL EDUCATION

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#### I. INTRODUCTION

It is almost trite today to catalog the problems of modern legal education. The popular press and the internet have done a pretty good job of making the professional concerns of legal educators almost popular fare for casual readers and especially for prospective law students. But, just to hit the highlights, here is a list of the better-known grievances: high tuition, too many law schools, broken accreditation system, inappropriate training for modern practice of law, unneeded and esoteric courses, ideological bias in teaching, arbitrary admissions policies, undue reliance on standardized tests, underworked, overpaid and inaccessible faculty, “publish or perish” mentality instead of focus on quality of teaching, ideological hiring practices, lack of specialization and innovation, bloated administrative staffs, exorbitant administrative salaries, promotional materials misleading about prospective employment, inadequate preparation for the bar exam or conversely too much attention to the bar exam.<sup>1</sup>

Retirement and age provide opportunities for reflection. While one senses that the profession of legal education has changed, and some elements, such as faculty diversity are obvious, my interest is in what we teach our students, not who teaches them. This represents a personal journey through the modern history of legal education. It is obvious to the casual observer that these two subjects are not entirely unrelated, but that is not my subject of inquiry, except to separate interdisciplinary faculty from what I will call “lawyers.” The professoriate has become less professional and more academic and, in some cases, more ideological in its orientation. Over a longer span than I choose to examine, that is obvious from the disappearance of YMCA law schools, proprietary night schools and the like, taught largely by practicing attorneys and judges.<sup>2</sup> I suspect

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1. Henry G. Manne, *How the Structure of Universities Determined the Fate of American Legal Education - A Tribute to Larry Ribstein*, 38 INT’L REV. LAW & ECON. 107 (2014).

2. George B. Shepherd, “*No African-American Lawyers Allowed: The Inefficient Racism*

it also affects the background of new law teachers, in terms of the extent of their practice experience. With eleven years of practice and no publications beyond briefs and memoranda, I suspect I would have had a more difficult time obtaining an entry level appointment today.

My investigation has turned up evidence of poor management of law school economics. The size of the law schools' entering class in 2017 was almost the same as that of 1973. At the same time, law schools were added, and the total size of the faculty grew by 70%.<sup>3</sup> Given the existence of tenure, law schools are now faced with the dilemma of paying for the faculty hired during the high enrollment years.<sup>4</sup> There was apparently little recognition of business and employment cycles, or the need to be prepared to downsize. Change can come only slowly, perhaps too slowly, as free-standing law schools' deaths or mergers evidence, with either the enrollment of less-qualified students, higher (and unsustainable) tuition increases, or greater university subsidization of previous (and continuing) mistakes.<sup>5</sup> Nominal tuition, adjusted for inflation, has more than doubled at private schools and quintupled at state supported schools, while bar passage rates have declined from 82% to 72% for first time takers.<sup>6</sup> This bodes ill for many schools, as the American Bar Association now requires that 75% of graduates pass a bar exam within two years of graduation.<sup>7</sup>

A subsidiary question that I will not explore fully in this article is, given the proliferation of courses, including many subjects not classified by the AALS, is whether the purpose of the law school is to educate tuition-paying students to prepare them for practices successful enough to pay off their growing student debt, or to prepare them to favor the subjects of faculty interest in society. My study shows dramatic increases in faculty size, course offerings, tuition, and evidence from bar passage rates of a less prepared graduate. All this is similar to what one would expect from cartel behavior. That similarity is partly a function of a U.S. News rating system largely irrelevant to professional preparation and uninformed applicants subsidized by aggressive student loan programs without adequate controls over the expected ability of students to repay these loans in the

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*of the ABA's Accreditation of Law Schools,*" 53 J. LEG. ED. 103 (2003).

3. At one extreme, Emory faculty grew by 150% during this period.

4. I benefitted from a system of protection against age discrimination, not retiring until I was 75, while others last even longer. Schools seem unlikely to examine falling productivity of some ageing faculty (not to mention younger ones). William L. Prosser, then dean at the University of California, Berkeley, lamented the results of this system 70 years ago, when he wrote: "There is no law school, no matter how distinguished its reputation, that has not numbered on its faculty some such men as these . . . . The tragedy is that [owing to tenure] nothing much can ever be done about it." William L. Prosser, *Lighthouse No. Good*, 1 J. LEGAL ED. 257, 259 (1948), as quoted in BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, 5 (2012).

5. *Id.* at 61-68.

6. *1973 Statistics, infra* note 67; *2017 Statistics, infra* note 68.

7. Karen Sloan, *ABA's Tougher Bar Pass Rule for Law Schools Applauded, Derided*, LAW.COM (May 21, 2019), <https://www.law.com/2019/05/21/abas-tougher-bar-pass-rule-for-law-schools-applauded-derided/> (last visited Aug. 30, 2019).

future.<sup>8</sup> Others have noticed the effect of the American Bar Association's control over law schools as creating such market power.<sup>9</sup>

## II. METHODOLOGY

My research involves a comparison of the 1973 American Association of Law Schools ("AALS") Directory of Law Teachers in 1973, the year I entered teaching, with the 2017-2018 edition.<sup>10</sup> Table A begins with the "List of Subjects" in the 1973 Directory, stricken out and italicized to show the changes that have occurred by 2017- 2018. Where titles have changed without substantive changes of apparent significance I have indicated that in parentheses. I have grouped the courses somewhat arbitrarily under major subject classifications. These subjects were drawn from concentrations shown on the web pages of the University of Minnesota (a state school) and Boston University (a private school).<sup>11</sup> The last subject, Law and Social Change, was drawn from Harvard Law School.<sup>12</sup> The assignment of courses to each classification was mine, and is necessarily subject to some subjective, if not arbitrary judgments. For example, Administrative Law might have been included in civil litigation, instead of being included in "unclassified."

There are limits to this research. For one, the lists of teachers shown as teaching subjects includes retirees—as I discovered my own name still on lists six years after my retirement. I have assumed that this phenomenon is not new, and that inclusion of retirees does not distort the relative size of the professoriate over time, if this is not a recent practice.

Second, the population of the legal academy has grown relative to the current student population. In 1973 there were 125 AALS member schools. By 2017 54 new member schools had been added, a 43% increase. Student populations have varied with economic cycles. In 1973 there were 37,018 first year students, while

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8. For a discussion of the role of the American Bar Association (ABA) in adding to costs by adding requirements for costly programs for experiential learning, generally carried out in low (and costly) faculty-student ration clinics, see Victor Gold, *Reducing the Cost of Legal Education: The Profession Hangs Together or Hangs Separately*, 66 SYRACUSE L. REV. 487 (2015).

9. George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091 (1998).

10. ASS'N OF AMERICAN LAW SCH., AALS DIRECTORY OF LAW TEACHERS (1973), <https://www-heinonline-org.proxy.library.emory.edu/HOL/Print?collection=aals&handle=hein.aals/aalsdlt1973&id=124> [hereinafter *1973 Directory*] (last viewed 7/18/2018) and AALS DIRECTORY OF LAW TEACHERS 2017-2018 [hereinafter *2017 Directory*].

11. UNIVERSITY OF MINNESOTA LAW SCHOOL, *Concentrations*, <https://www.law.umn.edu/academics/concentrations> (last visited June 21, 2020); BOSTON UNIVERSITY SCHOOL OF LAW, *Areas of Study at BU School of Law*, <https://www.bu.edu/law/academics/areas-of-study/> (last visited June 21, 2020). The categories were drawn from the 2018 web pages, and may have changed by 2020.

12. HARVARD LAW SCHOOL, *Programs of Study*, <https://hls.harvard.edu/dept/academics/programs-of-study/> (last visited June 21, 2020). The description of this area may have changed since 2018.

in 2017 the number was 37,400. In between there was a peak (or bubble) in 2010, when there were 52,404 first year students, an increase of 42% over 1973.<sup>13</sup> At the same time, tenured faculty represent fixed (and rising) costs. The 2017 directory contains information on teachers at fee-paid schools, which number 18 more schools, which would add another 14%. Another measure of the magnitude of the increase is represented by a total of 20,711 teachers listed as teaching courses in 1973, while 35,309 were listed in 2017, an increase of 70%, considerably greater than the apparent increase in attendance at law schools, even at its peak, and far greater than current admissions. How many individual teachers are represented would require a body count of the AALS directory, which I have chosen not to do. A good rule of thumb might be to assume that faculty members teach an average of 3.5 courses per year, although at elite schools the more likely number is three courses.<sup>14</sup>

Third, there are some small measurement errors. I did not manually count the number of teachers listed for each subject. Instead, I did manual counts of a few pages, and measured the counts by the centimeter. Thereafter I used those standards to count on all other listings, rounding by one or two names where it seemed appropriate to reach a previously measured number. Errors in these counts should cancel out in most cases. In rounding percentages, I only rounded to one decimal point, which results in rounding errors summarized at the end of Table A, of about one percent.

Fourth, course content may have changed in ways not obvious from course names. Since examining course content under each label is impracticable, some titles may be somewhat deceptive as a measure of change.

Fifth, the course classifications appear to undercount teaching resources, by not counting courses that do not neatly fit into a category. As an example, Professor Kathryn Abrams teaches a course called “Law and Social Movements,” at Berkeley Law.<sup>15</sup> No AALS category lists such a course, and her biography does not, either. The same can be said for Professor Russell Robinson of Berkeley, who teaches a course called “Intersectionality, Law, and Popular Culture,” and for Professor Molly Van Houweling, who teaches “Satisfaction in Law and Life” at the same school.<sup>16</sup> I cannot guess at how widespread this phenomenon is, but

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13. LAW SCHOOL TRANSPARENCY, *Law School Enrollment*, <https://data.lawschooltransparency.com/enrollment/all/> (last visited Aug. 9, 2018) [hereinafter *Enrollment*].

14. TAMANAHA, *supra* note 4 at 42. My study of Berkeley reveals a load of 5.2 hours per year for tenure track faculty.

15. This course is no longer listed. She currently teaches “Gender and Sexuality in the Era of Me Too.” BERKELEY LAW, *Kathryn Abrams*, <https://www.law.berkeley.edu/our-faculty/faculty-profiles/kathryn-abrams/> (last visited June 21, 2020).

16. Professor Robinson is not currently teaching the course he offered in 2018, but is now teaching Critical Race Theory and Race, Sexuality and the Law, and a colloquium on the worldwide #MeToo Movement. BERKELEY LAW, *Course Listing for Russell Robinson*, <https://www.law.berkeley.edu/php-programs/courses/facultyCourses.php?plD=6781> (last visited June 22, 2020). Professor Van Houweling is no longer listed as teaching that course. BERKELEY LAW, *Course Listing for Molly S. Van Houweling*, <https://www.law.berkeley.edu/php->

only that it exists. Harvard's Law and Social Change program lists courses under headings such as Community Economic Development, Economic Justice, Gender and Sexuality, and Poverty.<sup>17</sup>

Finally, titles do not necessarily measure resources devoted to a subject. Business Associations may be taught in anywhere from three to five semester hours, from my experience.

In order to compare apples to apples in terms of course emphasis, I calculate the percentage of all teachers listed as teaching each course. Using percentages allows a calculation of the relative resources devoted to each subject over time. This comparison is complicated by the fact that there has been a net addition of twenty-two new listings by 2017. Necessarily, this will dilute the percentages of at least some older listings.

Not surprisingly, many of the subject areas remain relatively constant, perhaps with minor name changes over time. There are some deletions that raise questions. "Introduction to Law" has disappeared, and it is not clear where related courses might cover this in the current taxonomy. "Atomic Energy," once a growth industry, has understandably disappeared. Courses in "Personal Property" have disappeared, and one wonders if current students are ever exposed to "Bailments," or if they need to be. Several other subjects have disappeared.

### III. COMMENTS AND ANALYSIS

Table A is a summary of the data drawn from AALS directories for 1973 and 2017. The other lists are drawn from this base. While this overly detailed table can be interesting for looking at particular courses, its primary purpose is to form the basis for the following tables, which attempt to isolate important changes.

#### *A. Old and New Courses*

Table B lists courses that have disappeared and been added. Some of the courses received very few teaching resources in 1973, such as Atomic Energy (12 teachers) and Roman Law (22 teachers). Others had sufficient teachers that courses could have been offered at all 125 law schools if evenly distributed: Future Interests, Introduction to Law, Legal Bibliography, and Legal Process. Others, with fewer resources, still seemed mainstream in their subject areas: Damages and Restitution.

Some added courses reflect changes in law practice, such as Alternative Dispute Resolution and Employment Discrimination, both of which have more than one percent of all listed teachers. Others with over 0.5% can be similarly explained: Health Care Law (0.8%) and Immigration Law (0.6%).

Others can represent subdivisions of special parts of other courses. As a teacher, I saw my courses in both Corporate Finance and Mergers and Acquisitions as specialized courses in contracting, both of which address risks

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programs/courses/ facultyCourses.php?PID=5837 (last visited June 22, 2020).

17. HARVARD LAW SCHOOL, *Law and Social Change*, <https://hls.harvard.edu/dept/academics/programs-of-study/law-and-social-change/> (last visited Sept. 3, 2018).

and opportunities difficult to teach in a basic course. Nonprofit and Philanthropy Law (0.1%) may represent such a subdivision of entity law. Products Liability (0.4%) presumably was previously covered in Torts. Legal Drafting (0.4%) could be described as Advanced Contracts, while Consumer Law (0.3%) involves regulation of consumer contracts. Sports Law (0.3%) has been defined by a former colleague who represented a Heavyweight Champion of the World as “just deals.” Presumably he would characterize Entertainment Law (0.3%) in the same manner. Tax has been further subdivided into Estate and Gift Tax (0.4%), Corporate Tax (0.3) and Tax Policy (0.4). It is interesting that there are more resources in a Tax Policy course than in a Corporate Tax course.

Some represent specialized courses in regulation, such as Communications Law (0.3%) and Election Law (<0.1%). Some courses with smaller numbers apparently represent specialties appropriate in various geographic locations, such as Agricultural Law (0.1%) and Native American Law (0.3%).

One group, Law and Social Change, probably represents the largest percentage of law teachers who also have graduate degrees in other fields, such as Law and Economics (0.7%) and Law and Literature (0.4%).

Some courses draw on social legislation that created new if limited specialties, such as Disability Law (0.2%) and Elder Law (0.2%). Others defy my attempts to rationalize their existence, either because of my ignorance of their content or suspicions about their usefulness in the practice of the profession. In some cases, they appear to represent approaches that are more political and polemic than legal. In this broad grouping I put Animal Law (0%); Critical Race Theory (0.3%), Feminist Legal Theory (0.2%), Human Rights (0.8%) and Sexual Orientation and Gender Issues (>0.1%).

The net effect of these changes is more courses, some dilution of traditionally heavily subscribed courses, and a less focused curriculum. Ten subjects have disappeared, with a total of 5.4% of faculty resources and an average of 0.54% per course. Two course offerings, Atomic Energy and Roman Law, were statistically insignificant. Thirty-two subjects have been added, consuming 10.8% of faculty resources, and an average of 0.47% of total resources per course. Three courses, Animal Law, Election Law and Sexual Orientation and Gender Issues, were statistically insignificant. One might speculate on why these courses were substituted for some heavily staffed subjects that have been deleted. What students are to make of this vast array, without careful counseling, is not clear. The University of California at Berkeley offered approximately 250 separate courses in the Spring and Fall of 2018, for example.<sup>18</sup> I began teaching at the University of Wyoming, with a faculty of thirteen that seemed able and willing to cover what we thought was the core of what competent lawyers needed to know. Additional areas of law have assumed importance since that time, such as intellectual property, which would require additional faculty.

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18. BERKELEY LAW, *Schedule of Classes*, <https://www.law.berkeley.edu/php-programs/courses/courseSearch.php> (last visited Aug. 31, 2018).

### B. Concentration of Faculty Resources

Table C examines the courses to which the greatest percentage of faculty resources were devoted in each period. Constitutional Law remains first. The next two courses, Criminal Law and Business Associations, fall precipitously in their rankings, while Federal Taxation, Criminal Procedure and Administrative Law drop off this list entirely. New to the list is Legal Research, which I attribute to the professionalization of teaching this subject - I was taught by a 3L after a lecture or two by a librarian. Clinical teaching has risen dramatically, apparently due to student demand for some preparation for practice and ABA requirements for more experiential learning.<sup>19</sup> Professional Responsibility has entered the list. In the early 1960's Yale used the "pervasive method" of teaching the subject, which meant that I knew nothing about conflicts of interest, as I quickly learned in practice. Introduction of the Multi-State Professional Responsibility Exam was probably the occasion for schools to take the subject more seriously.

### C. Winners and Losers

Table D looks at courses that have gained and lost significant shares of faculty resources over this period. The cut-off was that winners had to at least double their shares, while losers had to lose at least half their shares. The notable winners were Financial Institutions and Law and Computers (now Computers and the Law), (both up 500%), Civil Rights (up 367%), Natural Resources (up 330%), Legal Clinics (up 312%), Regulated Industrial and Other Activities (up 166%) and Intellectual Property (formerly Patents, Copyrights and Trademarks), up 143%. The others on the list gained 100%. Some losers virtually disappeared, such as Judicial Administration (down virtually 100%), Trade Regulation (down 94%), Equity (down 92%), Government Contracts (down 95%), Air Law (down 90%) and State and Local Taxation (down 80%). A significant number lost 75% (Law and Poverty, Military Law, Oil and Gas and Water Rights). The decline in Labor Law (-57%) apparently reflects the decline in demand, caused by the decline in private sector union representation.<sup>20</sup> On the other hand, Employment Discrimination has been added (Table B), so overall losses in Labor and Employment Law were minimized. Here new laws on employment discrimination created work for former labor lawyers, and the teachers.<sup>21</sup>

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19. Some pressure for this expansion came from the ABA's MacCrate Report. *See generally* ROBERT MACCRATE ET AL., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (Am. Bar Ass'n Sect. of Legal Educ. & Admissions to the Bar 1992) [hereinafter *MacCrate Report*]. *See also* TAMANAHA, *supra* note 4, at 173-77; Gold, *supra* note 8. In recent years the ABA has added requirements of six hours of experiential learning in order to graduate. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2019-2020, STANDARD 303(A)(3) (Aug. 2019).

20. Union membership was reported to have declined by nearly half between 1983 and 2019. *Union Membership Still on the Decline*, LABORPAINS, <https://laborpains.org/2020/02/10/union-membership-still-on-the-decline> (last visited June 21, 2020).

21. Federal law is found in Title VII of the federal Civil Rights Act of 1964, 42 U.S.C.

Some of the percentages are the result of small numbers in 1973.

*D. A Bigger Picture of Changes*

Table E attempts to examine larger trends by measuring the changes in areas of concentration. Environmental and Energy Law lost the most, at -36%. Criminal Law is the next largest loser, at -24%. Business Law and Labor & Employment Law are the only other losers at -19% and -10%, respectively. My reaction is that the relative demand for lawyers in most of these fields has probably not diminished. Crime doesn't seem to be declining, and in the business law field many new regulations have been introduced.<sup>22</sup> It has always been my claim that as long as Congress sits, there will be new areas for business lawyers to handle. If that is true, how does one explain the fact that all other areas experienced positive percentage growth? Intellectual Property (+163%) is easy, as we entered an era of technological change.<sup>23</sup> The next largest increase is in Health and Bioethics (+55%), which appears to be a small numbers phenomenon, followed by Law and Social Change (+40%). I believe that to a large extent these increases reflect changes in faculty preferences in their teaching loads. Others may draw further conclusions. One would be the likelihood that more teachers now have PhDs and want to relate that expertise to legal studies. Civil Rights has grown enormously (+367%), which seems not to correlate with the height of the Civil Rights movement and laws and ensuing changes in the 1960s and perhaps into the 1970s, but less so in today's world. The increase in the teaching of Women and the Law cannot be explained by the proportion of women in society, nor by the numbers in the labor force, but rather the proportion in law teaching. While I have not systematically studied the composition of the faculty, a quick glance at the names to those teaching this subject reveals relatively few males.

IV. ANALYSIS

I began this study because my thirty-nine years in legal education left me with a feeling of changes that I could not generalize based on personal experience. My sense was that new resources were being directed into areas other than business law, and that our education did not fully prepare students for the business law they (and business litigators) would face. In my own school's case, when the administration had made no plans to offer Secured Transactions, when one senior faculty member inquired of an associate dean about the reasons, he was told, "who would want to take Secured Transactions?" When fifty students

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§2000e. A survey of state employment discrimination laws appears at *Discrimination – Employment Laws*, NAT'L CONF. OF ST. LEGIS., <https://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx> (last visited June 22, 2020).

22. B. Peter Pashigian, *Regulation, Preventive Law, and the Duties of Attorneys*, in *THE CHANGING ROLE OF THE CORPORATE ATTORNEY* 3, 13, 20 (William J. Comey ed., 1982).

23. Total patent applications rose from 109,622 in 1973 to 629,647 in 2015. U.S. PATENT & TRADEMARK OFFICE, U.S. PATENT STATISTICS CHART CALENDAR YEARS 1963-2015, [https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us\\_stat.htm](https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm) (last visited July 30, 2019).



enrolled in the class to be taught by an adjunct professor, the question was answered. The students knew better what they would need.

*A. Overstaffing and Underteaching*

A 70% increase in the number of teachers for the same size entering class as in 1973 suggests at least three possibilities. First, there could be more teachers available for smaller and more personalized sections of many courses. Second, teaching loads could be reduced. Third, course offerings could increase the number of advanced courses students are likely to encounter in practice. I explore those possibilities below.

*1. More Teachers for Smaller Sections.*—Here I examine typical first-year courses and foundation courses in other areas, most of which involve larger sections. Keep in mind that during the boom (bubble) years of legal education, there were 41% more entering students than in 1973 or 2017.<sup>24</sup>

Percentage Change

Real Property	-3 percent
Contracts	+14 percent
Torts	-12 percent
Constitutional Law	+25 percent
Civil Procedure	+32 percent
Criminal Law	-29 percent
Business Organizations	-29 percent
Environmental Law	+30 percent (small numbers issue)
Domestic Relations	-26 percent
Law and Medicine	-58 percent
Intellectual Property	+ 500 percent (small numbers issue)
International Law	+29 percent
Labor Law	- 61 percent
Welfare Law	-83 percent

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24. *See supra* text accompanying note 13.

If we begin with an assumption of peak enrollments 42% over 1973 levels, only Intellectual Property kept apace with the growth, and its result was influenced by a starting number of 144 teachers, not enough to cover all accredited schools. Thus staffing of these basic courses did not keep up with the growth of the student population over the boom years.

2. *Reduction in Teaching Loads.*—Increasing numbers of teachers for a stable number of law students (2017 compared to 1973) necessarily leads to less teaching per professor, as Tamanaha has noted.<sup>25</sup> Berkeley now boast a 5.2:1 student faculty ratio, but the teaching loads belie that notion of personal faculty attention (See below).<sup>26</sup> I visited at the University of Virginia after an enormously successful capital campaign, where the dean explained to the faculty that it was unwise to use funds to add faculty, because this would lead to faculty competing to teach their favorite courses, and unnecessary costs. Apparently deans at other schools have not followed this caution. Brian Tamanaha reported that as of 2006 professors at the top ten schools averaged just under eight hours per year, while teachers at third and fourth tier schools taught an average of 11.13 hours.<sup>27</sup> My own research on the California at Berkeley faculty reveals teaching loads of an average of 5.2 hours per year, with a significant number of listed faculty not teaching at Berkeley during this two semester period.<sup>28</sup> I have no information on how many were visiting elsewhere or on research leaves.

3. *Increases in Advanced Courses Useful in Practice.*—Aside from the smaller group of courses in Environmental and Energy Law and Criminal Law (-25%), Business Law is the largest loser of courses. Of the 23 courses listed in 1973, only three, Contracts (+14%), Financial Institutions (+500%) and Regulated Industrial and Other activities (+150%), show an increase. A number of courses show a decline in absolute numbers from a much larger professoriate, as well as large percentage declines. Accounting (-66%), Agency [and Partnership] (-112%), Corporation Finance (-38%), Creditors' [and Debtors'] Rights (-42%), Credit Transactions [Real Estate Transactions] (-67%), Government Contracts (-95%), Insurance (-70%), Negotiable Instruments [Payment Systems] (-50%), Federal Taxation (-48%), State and Local Taxation (-80%) and Trade Regulation (-94%), are all big losers. Twenty years ago when I told my friend Professor Ron Gilson that I was preparing a new Mergers and Acquisition casebook, his response was “welcome to a very small market.” He was right, and that has not changed. I have learned that many teachers adopting my casebook are adjunct professors, rather than full-time faculty. I can only conclude that few tenured faculty are willing to undertake the work of a fresh preparation. The subject has not made it into the AALS list of courses, despite the

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25. TAMANAHA, *supra* note 4.

26. U.S. NEWS & WORLD REPORT, *University of California-Berkeley*, <https://www.usnews.com/best-graduate-schools/top-law-schools/university-of-california-berkeley-03016> (last visited Aug. 14, 2018).

27. TAMANAHA, *supra* note 4, at 42 (citing Theodore P. Seto, *Understanding U.S. News Law School Rankings*, 60 SO. METHODIST UNIV. L. REV. 493, 546 (2007)).

28. *Supra* note 14.

fact that additional casebooks have been published, and that it provides a profitable business practice for many large law firms. My other casebook is on Corporation Finance, an area that has also declined.

A supporting anecdote involves Berkeley Law, which lists 62 full-time tenure track professors and 127 Lecturers (adjunct professors) teaching in the 2018 calendar years. Many of the Lecturers teach what would be characterized as advanced courses, but that is a subject for another paper.

One might argue that practicing members of the bar have a more accurate perception of what knowledge is generally necessary for a successful law practice, which may lead in many different directions. The Multistate Bar Exam, now employed in 26 states and the District of Columbia, consists of the following equally weighted subjects:

- Civil Procedure
- Constitutional Law
- Contracts
- Criminal Law and Procedure
- Evidence
- Real Property
- Torts<sup>29</sup>

A local example of supplemental essay questions in Georgia will draw from any of the following additional areas:

- Business Organizations
- Georgia Practice and Procedure
- Non-monetary Remedies (which must be Equity)
- Professional Ethics.<sup>30</sup>

#### IV. TESTS OF CRITIQUES OF LEGAL EDUCATION

So far the observations of change have been largely positive, rather than normative. But there have been important complaints about the direction of legal education for some time.<sup>31</sup> The data above, and some provided below, provide a means of testing the criticisms. I have used the outlines of Henry Manne's and Harry Edwards' critiques as the basic organizing structure. Manne's outline appears in bold faced headings, while I have italicized Edwards' criticisms following Manne's. Some of the topics are not directly related to my curricular study, and in those cases I will only briefly review the existing literature.

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29. EMORY LAW, *Bar Readiness at Emory Law* <http://law.emory.edu/academics/academic-engagement/bar-readiness.html#mbe> (last visited Aug. 28, 2020).

30. *Id.*

31. Manne, *supra* note 1, at 107; Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) [hereinafter *Edwards I*], and Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession*, 69 WASH. L. REV. 561 (1994) [hereinafter *Edwards II*].

### *A. High Tuition*

Brian Tamanaha has documented how rising tuition has pushed graduating student debt to higher levels, allowing rising salaries and perquisites for faculty, with students ill-informed about how much debt they can bear after graduation.<sup>32</sup> One result of these changes has been a dramatic rise in tuition costs in excess of inflation, 271% from 1985 to 2018 for private schools, and 579% for public schools, adjusted for inflation.<sup>33</sup> Not surprisingly, student debt has also risen.<sup>34</sup> At the same time, student interest in law school has fallen, as evidenced by smaller first year enrollments, and in order to pay the high fixed costs of faculty salaries, competition for applicants has risen, resulting in recent discounting of tuition for first year students.<sup>35</sup> Law schools in the high tuition range had 1L discounts rise from 41% of list price in 2015 to 42% in 2016.<sup>36</sup> Overall tuition discounts for these schools dropped to 38%. This suggests either a lag in discounts for 2Ls and 3Ls, or a “bait and switch” strategy in which not all discounts continue after the first year.

### *B. Too Many Law Schools*

Recent law school closings, mergers and ABA threats on other accredited schools<sup>37</sup> are evidence that fewer schools are needed to fill the demand from

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32. TAMANAHA, *supra* note 4, Chs. 10-11, 107-144 (2012); *see also* LAW SCHOOL TRANSPARENCY, *Law School Transparency Data Dashboard*, <https://data.lawschooltransparency.com/costs/tuition/?scope=national> (last visited Aug. 13, 2018).

33. *Id.*

34. LAW SCHOOL TRANSPARENCY, *Law School Transparency Costs*, <https://data.lawschooltransparency.com/costs/debt/> (last visited Aug. 13, 2018). From 2010 to 2017 average debt for students at private law schools rose from \$126,678 to \$130,145 with a high end of the range at \$196,000 in 2017. Public law school students borrowed slightly less than \$100,000. This study discusses the difficulties graduates at various income levels will face repaying these debts.

35. While first-year enrollments have fallen, that is only part of the story. In order to preserve U.S. News rankings, many higher ranked law schools admit large numbers of transfer students, who would not have been admitted as 1Ls, in order to generate revenue to support the scholarship awards of the 1Ls. In some cases Law Schools became cash cows for universities during the flush years, and that may continue at some of them. *See* Gold, *supra* note 8, at 500, which I estimate to approximately equal the revenues from transfer students and foreign graduate students. A recent dean at Emory told me that about \$10 million of law school tuition revenues went to the central administration.

36. NAT'L ASS'N OF COLL. AND UNIV. BUS. OFFICERS/ACCESSLEX CTR. FOR LEGAL EDUC. EXCELLENCE, *TUITION DISCOUNTING STUDY OF PRIVATE LAW SCHOOLS 2016*, at 4-5, <https://www.accesslex.org/resource/tuition-discounting-study> (last visited Sept. 8, 2018).

37. Schools receiving disciplinary notices concerning admissions practices include Lincoln Memorial University, Ave Maria Law School, North Carolina Central University, Appalachian School of Law, Thomas Jefferson School of Law, Thomas M. Cooley School of Law, Florida Coastal School of Law, Texas Southern University, SUNY Buffalo, and Arizona Summit School of Law during 2017-18. LAW SCHOOL TRANSPARENCY, *Law School Transparency Data*

qualified students. Whittier Law School,<sup>38</sup> Charlotte School of Law,<sup>39</sup> Savannah School of Law<sup>40</sup> and Indiana Tech<sup>41</sup> and Arizona Summit Law School<sup>42</sup> are closed or closing, while Thomas M. Cooley School of law is closing one campus.<sup>43</sup> Other schools are either merging or being acquired by more prosperous and stable institutions - Valparaiso,<sup>44</sup> Franklin Pierce Law Center,<sup>45</sup> John Marshall (Chicago) Law School,<sup>46</sup> and Hamline,<sup>47</sup> so far. An indication of forthcoming doom is evidenced by Vermont Law School's removal of tenure for 75% of its tenured faculty.<sup>48</sup>

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*Dashboard*, <https://data.lawschooltransparency.com/transparency/aba-compliance/> (last visited Aug. 14, 2018)

38. Sonali Kohli, Rosanna Xia, & Teresa Watanabe, *Whittier Law School is Closing, Due in Part to Low Student Achievement*, L.A. TIMES (Apr. 20, 2017), <http://www.latimes.com/local/education/la-me-edu-whittier-law-school-closing-20170420-story.html> (last visited Aug. 14, 2018).

39. Staci Zaretsky, *Charlotte School of Law is Closing 'Effective Immediately'*, ABOVE THE LAW (Aug. 15, 2017), <https://abovethelaw.com/2017/08/charlotte-school-of-law-is-closing-effective-immediately/> (last visited Aug. 14, 2018).

40. Will Peebles, *Savannah Law School to Close After Spring Semester*, SAVANNAH NOW (Mar. 21, 2018), <http://www.savannahnow.com/news/20180321/savannah-law-school-to-close-after-spring-semester> (last visited Aug. 14, 2018).

41. Staci Zaretsky, *Indiana Tech Law School to Close, Citing \$20 Million in Losses*, ABOVE THE LAW (Oct. 31, 2016), <https://abovethelaw.com/2016/10/indiana-tech-law-school-to-close-citing-20-million-in-losses/> (last visited Aug. 14, 2018).

42. Anne Ryman, *Arizona Summit Law School Details Plans to Eventually Close its Doors*, AZ CENTRAL (Oct. 25, 2018), <https://www.azcentral.com/story/news/local/arizonaeducation/2018/10/25/arizona-summit-law-school-details-plans-close-its-doors/1763964002/> [<https://perma.cc/V2R7-6FSA>].

43. Karen Sloan, *Once the Nation's Largest Law School, Cooley Set to Close a Campus and Slash Tuition*, LAW.COM, <https://www.law.com/2019/08/30/once-the-nations-largest-law-school-cooley-set-to-close-a-campus-and-slash-tuition> (last visited Aug. 30, 2019).

44. Emma Whitford, *Valparaiso Law School May Move to Tennessee*, INSIDE HIGHER ED, <https://www.insidehighered.com/quicktakes/2018/06/25/valparaiso-law-school-may-move-tennessee> (last visited Aug. 14, 2018).

45. Elie Mystal, *Franklin Pierce Law Center in Talks to Merge with University of New Hampshire*, ABOVE THE LAW, <https://abovethelaw.com/2010/03/franklin-pierce-law-center-in-talks-to-merge-with-university-of-new-hampshire/> (last visited Aug. 14, 2018).

46. Lynne Marek, *UIC, John Marshall Law School on Track to Merge*, CRAIN'S CHICAGO BUSINESS, <http://www.chicagobusiness.com/article/20180608/ISSUE01/180609880/uic-john-marshall-law-school-on-track-to-merge> (last visited Aug. 14, 2018).

47. Maura Lerner, *Hamline, William Mitchell Law Schools to Merge*, STARTRIBUNE, <http://www.startribune.com/hamline-william-mitchell-law-schools-to-merge/291856891/> (last visited Aug. 14, 2018).

48. Katy Savage, *Vermont Law School Revokes Tenure for 75 Percent of Faculty*, VTDIGGER, <https://vtdigger.org/2018/07/15/vermont-law-school-revokes-tenure-75-percent-faculty/> (last visited Aug. 14, 2018).

### C. Broken Accreditation System

Tamanaha has detailed the American Bar Association's accreditation process.<sup>49</sup> It begins with the ABA appointing an inspection committee composed mostly of legal academics, while the subject law school appoints a committee of its faculty to produce a self-study. The faculty committee, following guidance from American Association of Law Schools ("AALS"), frequently focuses on limiting teaching loads, increasing time for research, including sabbatical leaves, and raising salaries.<sup>50</sup> All of this results in cartel-like creation of economic rents for faculty.

### D. Inappropriate Training for Modern Practice of Law

There appears to be no nationwide study of the specialties of lawyers. The American Bar Association has no available records of section membership. Consequently, the search has been for proxies. I located five states with such numbers: Louisiana, Massachusetts, Indiana, Ohio and Oregon, which appear in Table G.<sup>51</sup>

I aggregated their section membership numbers to accord proper weight to them. There are some obvious problems: some bar associations had sections not used by other bars. The small number of bars with section numbers listed may bias results in ways I cannot predict. Nevertheless, they are the only numbers available. I cannot locate numbers from 1973. The numbers are as follows (with rounding errors):

Area	% of teaching resources	% of section members
Business Law	22	29
Civil Litigation	12.4	14

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49. TAMANAHA, *supra* note 4, at 12-18.

50. Under pressure from an antitrust suit by the Justice Department, the ABA entered into a consent decree that faculty salaries would no longer be published nor used as a standard in accreditation. *Id.* at 13-14.

51. Indiana: *Sections & Committees*, IND. STATE BAR ASS'N, [https://www.inbar.org/members/group\\_select.asp?type=15056](https://www.inbar.org/members/group_select.asp?type=15056) [<https://perma.cc/2KPN-MEMB>] (last visited May 22, 2020).

Massachusetts: *Member Groups*, MASS. BAR ASS'N, <https://www.massbar.org/membership/member-groups> [<https://perma.cc/UW2B-L4DH>] (last visited May 22, 2020).

Ohio: *OSBA Sections*, OHIO STATE BAR ASS'N, <https://www.ohiobar.org/aboutus/OSBA/leadership/committees-sections/sections/> [<https://perma.cc/FC27-BEDD>] (last visited May 22, 2020).

Oregon: *OSB Sections*, OR. STATE BAR, <https://www.osbar.org/sections> [<https://perma.cc/H8GYXHW3>] (last visited May 22, 2020)

Louisiana: Current records do not provide section membership numbers.

Note: the numbers used were taken from 2018 statistics. 2020 numbers may vary.

Area	% of teaching resources	% of section members
Criminal Justice	4.6	6.6
Environmental and Energy Law	2.1	3.1
Family Law	5.6	18.5
Health Law and Bioethics	1.7	2.7
Intellectual Property and Technology Law	2.1	2.6
International Law	5.5	.3
Labor and Employment Law	1.8	8.3
Law and Social Change	7	2.3
Unclassified Courses	36.3	12.4

The section numbers differ substantially from the lateral placement numbers discussed below, apparently because some specialties are conducted primarily in smaller firms or solo practices, where clients cannot bear the higher hourly rates of large firm attorneys. Once again, the bread and butter areas of business law, family law (including trusts and estates), labor and employment law and criminal law are underemphasized in law school resource allocation. Health Law and Intellectual Property Law are probably underrepresented because teaching resources have lagged the growth in practice, and tenured faculty are less flexible than practicing lawyers. International law and Law and Social Change are overrepresented in law teaching. The relatively large proportion of unclassified courses includes many foundational courses that naturally would not lead to sections in many cases, and this large number blurs the overall impact.

BCG Attorney Search is a national placement firm that publishes annual statistics on the lateral placement of lawyers.<sup>52</sup> Table F contains the firm's 2018 statistics.

We can now test the current emphasis on subject areas against 2018 lateral job placements, as a proxy for entry level positions:

Area	% of teaching resources	% of job placements
Business Law	22	32
Civil Litigation	12.4	31.83
Criminal Justice	4.6	0
Environmental and Energy Law	2.1	4.34
Family Law	5.6	2.37
Health Law and Bioethics	1.7	1.27
Intellectual Property and Technology Law	2.1	16.1
International Law	5.5	0

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52. Harrison Barnes, *The BCG Attorney Search 2019 State of the American Lateral Law Firm Legal Market Report*, BCG ATTORNEY SEARCH, <https://www.bcgsearch.com/article/900050106/The-BCG-Attorney-Search-2019-State-of-the-American-Lateral-Law-Firm-Legal-Market-Report> (last visited Aug. 12, 2019) [hereinafter *BCG Attorney Search*].

Area	% of teaching resources	% of job placements
Labor and Employment Law	1.8	6.3
Law and Social Change	7	0
Unclassified Courses	36.3	5.8
Unclassified Courses	36.3	5.8

There are some obvious qualifications to be suggested here. Prosecutors' offices apparently do not participate in lateral hiring through this agency. International Law is more difficult to explain, except that much work described as "international" may represent advising inbound companies with U.S. problems. Family Law is generally not a priority of larger law firms likely to use placement agencies. While many unclassified courses such as Constitutional Law, Legal Profession and Torts are considered basic, few lawyers would be sought for those specialties, rather than for litigation. Similarly, the unclassified list includes roughly 20% of clinical teaching or Legal Clinics.

Otherwise, the disparity between teaching emphasis and job placement has dramatic examples, as in Business Law, Civil Litigation and Intellectual Property, although membership in sections raises question about the Civil Litigation disparity. The disparity in Intellectual Property is contrasted with section membership numbers. Total patent applications have grown from 109,622 in 1973 to 629,647 in 2015, an increase of 520,025, nearly 600%.<sup>53</sup> Where are the teachers to support this change?

#### *E. Unneeded and Esoteric Courses*

This issue can represent two distinct problems: both devotion of scarce faculty time to courses less likely to be taken because of their sometimes-tentative relevance to professional preparation, and because they distract students from adequately preparing for the profession. contains a list of courses on subjects unlikely to appear on a bar exam, a rough proxy for professional preparation. Some courses, such as law and economics, are likely to be more useful in analyzing legal problems than others. Table H includes a list of such courses at two schools: my former school, Emory, and the University of California at Berkeley. Some courses appear to be taught by adjunct professors, which blunts the first criticism but not the second. The length of the list at each school speaks for the lack of focus in modern curricula.<sup>54</sup> Several years ago the Registrar at Emory sent an e-mail to the faculty asking what courses they wanted to teach in the next semester and when they wanted to teach it. This is strong and sad

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53. U.S. PATENT AND TRADEMARK OFFICE, *U.S. Patent Statistics Chart, Calendar Years 1963-2015*, [https://www.uspto.gov/web/offices/ac/ido/oeip/taf/ys\\_stat.htm](https://www.uspto.gov/web/offices/ac/ido/oeip/taf/ys_stat.htm) (last visited Aug. 5, 2012).

54. In the past year my former school, Emory, has not offered courses in Commercial Law, Insurance, Land Use Planning, Negotiable Instruments, Personal Property, Sales, Taxation, State and Local, Equity, Workers' Compensation, Immigration Law, Local Government.



evidence of the lack of focus on professional preparation in at least one school.

#### *F. Ideological Bias in Teaching*

*Too many law professors hold the profession in disdain, and a number of such professors are assigned to teach basic law courses in which the students likely are most impressionable. Too many legal academics . . . view what practitioners and judges do as “mundane” and “dull” while the obscure work of a new breed of law scholars is viewed as “richer and more complex.”*<sup>55</sup>

Table H contains many examples of courses that depart from professional preparation, chosen by faculty who arguably regard them as “richer and more complex.” While not directly responsive to those comments, Professor James Lindgren found that 82% of law faculty were registered Democrats.<sup>56</sup> Discussing an alternative set of rankings, the author of *Above The Law* states:

“For starters, is Yale Law truly a “law school”? The school takes a highly theoretical, interdisciplinary approach to legal education that arguably takes the “law” out of “law school” (at least if we construe “law” as black-letter legal doctrine). Yale Law is a great something — writer and YLS alum Elizabeth Wurtzel describes it as “a cult of the Fourteenth Amendment... that happens to have a registrar’s office” — but that something might not be a law school (at least if we view law school narrowly, as a place that teaches students legal doctrine so they can practice law).”<sup>57</sup>

This author would add professional skills to the list of topics needed to prepare students for the practice. As a long-ago Yale Law School graduate, this author was competent at writing legal research memos, but very reliant on other sources, such as practice form books, for nearly everything else. Other subjects in Table H, such as Feminist Legal Theory, Critical Race Theory, and Law and Literature, to mention a few, appear to have little to do with understanding the world of legal problems.<sup>58</sup>

#### *G. Arbitrary Admissions Policies*

Yale Law School uses an admission procedure without any specified criteria -

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55. *Edwards II*, *supra* note 31, at 568.

56. James Lindgren, *Measuring Diversity: Law Faculties in 1997 and 2013*, 39 HARV. J. L. & PUB. POL’Y 89, 149 (2016).

57. David Lat, *Why Yale Law School Isn’t the Number-One Law School (In the ATL 2018 Law School Rankings)*, ABOVE THE LAW (June 7, 2018), <https://abovethelaw.com/2018/06/why-yale-law-school-isnt-the-number-one-law-school-in-the-atl-2018-law-school-rankings/?rf=1> (last visited Sept. 5, 2018).

58. *See, e.g.*, William J. Carney, *Martha Fineman: On Feminism, Politics and Rhetoric*, 54 EMORY L.J. 261 263 (2005) (characterizing her project as primarily political).

merely to look for potential “leaders.” Files are read by multiple faculty members, each apparently using his or her own criteria (and private agenda).<sup>59</sup>

#### *H. Underworked, Overpaid and Inaccessible Faculty*

Increasing numbers of teachers for a stable number of law students necessarily leads to less teaching per professor, as Tamanaha has noted.<sup>60</sup> Berkeley now boasted a 5.2:1 student-faculty ratio, but the teaching loads belie that notion of personal faculty attention (See below).<sup>61</sup> I visited at the University of Virginia after an enormously successful capital campaign, where the dean explained to the faculty that it was unwise to use funds to add faculty, because this would lead to faculty competing to teach their favorite courses, and unnecessary costs. Apparently deans at other schools have not followed this caution. Brian Tamanaha reported that as of 2006 professors at the top ten schools averaged just under eight hours per year, while teachers at third and fourth tier schools taught an average of 11.13 hours.<sup>62</sup> My own research on the California at Berkeley faculty revealed teaching loads of an average of 5.2 hours per year, with a significant number of listed faculty not teaching at Berkeley during this two-semester period. The difference from the U.S. News report may be because I only counted those actively teaching during 2018, while U.S. News may have counted some others on a variety of leaves. I have no information on how many were visiting elsewhere or on research leaves.

#### *I. Lack of Specialization and Innovation*

*Skewed faculty hirings arguably have limited advanced level offerings in a number of practical courses.*<sup>63</sup>

Aside from the smaller group of courses in Environmental and Energy Law and Criminal Law (-25%), Business Law is the largest loser of courses. Of the 23 courses listed in 1973, only three, Contracts (+14%), Financial Institutions (+500%) and Regulated Industrial and Other activities (+150%), show a proportionate increase. A number of courses show a decline in absolute numbers from a much larger professoriate, as well as large percentage declines. Accounting (-66%), Agency [and Partnership] (-112), Creditors' [and Debtors'] Rights (-42%), Credit Transactions [Real Estate Transactions] (-64%),

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59. Isaac Arnsdorf, *'Serendipity' Plays Role in Yale Law School Admissions*, YALE DAILY NEWS (Feb. 22, 2008), <https://yaledailynews.com/blog/2008/02/22/serendipity-plays-role-in-yale-law-school-admissions/> (last visited Aug. 28, 2020).

60. TAMANAHA, *supra* note 4.

61. U.S. NEWS & WORLD REPORT, *University of California-Berkeley*, <https://www.usnews.com/best-graduate-schools/top-law-schools/university-of-california-berkeley-03016> (last visited Aug. 14, 2018).

62. TAMANAHA, *supra* note 4, at 42 (citing Theodore P. Seto, *Understanding U.S. News Law School Rankings*, 60 SO. METHODIST UNIV. L. REV. 493, quote at 546).

63. *Edwards II*, *supra* note 31, at 568.

Government Contracts (-95%), Insurance (-95%), Negotiable Instruments [Payment Systems] (-44%), Federal Taxation (-46%), State and Local Taxation (-75%) and Trade Regulation (-94%), are all big losers. What has happened?

It is impossible to draw a line from a single loser to a single gainer. James J. White has a theory about what happened at the University of Michigan. In his "Letter to Judge Harry Edwards, he defines a group of professors with less interest in the law as "AC/DC" professors, who either hold a graduate degree in another field or write primarily in a non-law area.<sup>64</sup> He attributes their increased presence to the lack of advanced or specialized courses in "practical" areas of the law:

Even if the presence of many AC/DCs on the faculty does not affect the teaching in most traditional first-year courses, their presence does affect what is not taught. As I indicate below, the curriculum of a faculty with many AC/DCs will surely differ in systematic ways from a curriculum of a faculty of lawyers. One would expect [here he lists certain AC/DC faculty] to want to teach a course in [their non-law specialty]. . . . That would be their normal expectation, and it would be implicit in their hiring that they would have an opportunity routinely to do such teaching either in the law school or elsewhere. Of course, that means that their second course cannot be Tax, Labor Law, Commercial Transactions, Corporations, Trial Practice, or the like. Our second- and third-year curricula have been significantly, if subtly, shaped by the large number of AC/DCs on the faculty. If each of them were replaced with a lawyer, one would expect the Arts and Sciences curriculum to shrink and the pure law curriculum to grow both broader and deeper. Because students and the organized bar have little influence on the curriculum and because there are no other external restrictions, the presence of AC/DCs on the faculty can lead to significant curricular distortions. Particularly at elite law schools the curriculum fits the fancy - some might say the whim - of the faculty. I perceive no particular political bias in our selection of courses, only *laissez-faire* carried to the point of irresponsibility.<sup>65</sup>

While I claimed in the first paragraph of this article that my interest was in what was taught at law schools, rather than who teaches them, I contradicted myself in the next sentence, with my speculation that the professoriate had become more academic and less professional, as Professor White had observed

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64. "A comparison of the faculty of the law school today with the faculty as it existed in one of the school's prior golden periods, the late 1950s, shows dramatic differences. Today, about one-third of our faculty is AC/DC. For this purpose an AC/DC is anyone who: (1) holds an indefinite appointment in the law school and in any other department of the University, (2) has both a J.D. and a Ph.D., or (3) has a J.D. and writes principally in a cognate nonlaw area. For the purpose of this paper, all who are not AC/DCs are 'lawyers.'" James J. White, *Letter to Judge Harry Edwards*, 91 MICH. L. REV. 2177 (1993). TAMANAHA, *supra* note 4, at 58 (noting that at the top 13 law schools nearly one-third of the faculty have PhDs).

65. White, *supra* note 64, at 2181.

at Michigan.<sup>66</sup> I attempt to document this on a small scale with a study of professors whose last names begin with “A” in 1973 and 2017. I ignored advanced law degrees, and counted only other fields. I cannot include those, like myself, who, lacking a graduate degree, have an interest, as I do, in law and economics. Many entries omit the details of one’s education. A secondary problem is that many of the biographies don’t list educational background, but I have no reason to believe these deficiencies don’t apply to both lists. The list includes associate deans without teaching responsibilities, which also introduces a possible distortion. I excluded those that I could identify as not having teaching responsibilities, as well as a few lecturers and some clinicians, as not likely to have tenure track appointments (and thus voting power).

*Professors Whose Last Names Begin with “A”:*

1973: 120 listed: 11 with advanced degrees in other fields (9.2%).  
 2017: 348 listed: 55 with advanced degrees in other fields (15.8%).

I next looked at the entire faculty listings for four “elite” law schools, going beyond the AALS directory to the faculty web sites at each institution for further educational information. I selected four schools, two public and two private. Two were in the Midwest—the University of Michigan and Northwestern University. The other two were on opposite coasts—Yale and the University of California at Berkeley. I excluded visiting faculty, adjunct professors, (called lecturers at Berkeley), and clinicians, on the theory that most if not all of these are not voting members of the faculty for purposes of appointment, tenure and promotion. Here are the results (I use professor White’s AC/DC designation):

Michigan:	Total: 78	AC/DC: 21 (27%)
Northwestern:	Total: 56	AC/DC: 17 (30%)
Yale:	Total: 62	AC/DC: 27 (44%)
California at Berkeley:	Total: 91	AC/DC: 45 (49.%)

These percentages are dramatically different from those reported from my sample of faculty with last names beginning with “A.” Part of that results from the incomplete data in the AALS directory in some cases. Another part results from the exclusion of clinicians in my survey of these four schools. The combination of these two fails, I believe, to explain more than a small amount of the disparity. The more likely explanation, I believe is simply that elite schools

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66. TAMANAHA, *supra* note 4, at 56-57 (reporting that work involving legal doctrine “is no longer highly regarded scholarly work. Doctrinal articles tend not to be published in elite journals, and professors who wish to build a scholarly reputation and be hired by elite law schools do not write them. Theory has scholarly cachet. Interdisciplinary and empirical studies of law are especially popular at the moment. Theories of constitutional interpretation, normative arguments about what the law should be, legal philosophy, critical race theory, sociological studies of law, legal history, economic analysis of law, quantitative studies of judging— these and other perspectives on and *about* law are what occupy legal academics.”)

seek more faculty candidates with advanced degrees in other fields. One advantage these candidates have at the initial hiring stage is their experience with academic writing. Another unexplored possibility is that junior faculty writing with an interdisciplinary focus are more likely to get published in elite student-edited law journals.

*J. Inadequate Preparation for the Bar Exam or Conversely too  
Much Attention to the Bar Exam*

In 1973 the national average bar passage rate for first-time takers was 82%.<sup>67</sup> By 2017 the passage rate had fallen to 72%.<sup>68</sup> In California, the rate was 58%.<sup>69</sup> While I was concerned that this statistic was skewed by the presence of graduates from non-ABA approved law schools, this was not the case. The passage rate for graduates of ABA approved schools was 54%.<sup>70</sup> Berkeley, one of the most selective schools in the state, had a California bar passage rate of 60.2%, the same as Stanford.<sup>71</sup> A report on the July 2018 California bar exam shows that of 21 Emory graduates taking that exam, only 10 (48%) passed.

V. CONCLUSIONS

The losses in Environmental Law and Energy Law (-36%) Criminal Law (-25%), Business Law (-19%) and Labor and Employment Law (-14%), and the relatively small gains in Family Law (+6%) are dwarfed by gains in other areas, primarily Health Law and Bioethics (+42%), Intellectual Property and Technology Law (+175%) and Law and Social Change (+40%). Proportional increases in courses have not corresponded to the growth of legal education over this period. One can conclude that new blood has led to changes in faculty preferences for teaching loads over this time frame. Whether this benefits students or the profession can be debated.

The increase in the number of courses not directly related to preparation for the practice of law dilutes enrollments in more professionally oriented courses, without sufficient guidance from schools. I once hear a Harvard Law dean explain this by saying the approach was “to let every flower bloom.” The problem is that some “flowers” are weeds in disguise that have no place in the garden of practice.

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67. NATIONAL CONFERENCE OF BAR EXAMINERS, 1973 Statistics, Admission to Bar by Examinations in 1973, 113 (obtained from the NCBE by request; available from the author by request) [hereinafter *1973 Statistics*].

68. THE BAR EXAMINER, *2017 Statistics*, Spring 2018, at 17, <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F218> (last visited Sept. 4, 2018). [hereinafter *2017 Statistics*].

69. *Id.* at 16.

70. *Id.* at 18.

71. *2017 Raw Data Law School Rankings*, PUBLICLEGAL <https://www.ilrg.com/rankings/law/2/desc/Bar> (last visited Aug. 17, 2018). Both schools had higher passage rates for students taking other jurisdiction's exams.

**Table A****Percentage Changes by Subject Groups**

	1973		2018		Change %
	#	%	#	%	
<b>Business Law</b>					
Accounting (now <i>Law and Accounting</i> )	133	0.6	74	0.2	-66
Agency (now <i>Agency and Partnership</i> )	286	1.3	112	0.3	-77
Antitrust	248	1.1	268	0.8	-27
Business Organizations (now <i>Business Associations</i> ) (includes <i>Corporations</i> )	729	3.3	873	2.4	-27
Commercial Law (includes former <i>Sales</i> entry)	517	2.4	571	1.6	-33
Communications Law			103	0.3	
<i>Consumer Law</i>			113	0.3	
Contracts	605	3.1	1,150	3.4	+10
Corporation finance	268	1.4	282	0.8	-43
Creditors' (and <i>Debtors'</i> ) Rights	258	1.2	248	0.7	-42
Credit Transactions (now <i>Real Estate Transactions</i> )	301	1.4	186	0.5	-64
<i>Entertainment Law</i>			93	0.3	
Financial Institutions	25	0.1	212	0.6	+500
Future Interests	195	1.0	n/a	n/a	-100
Government Contracts	66	0.3	16	0	-95
Insurance	215	0.9	106	0.3	-67
Land Use (now <i>Land Use Planning</i> )	251	1.2	256	0.7	-42
<i>Legal Drafting</i>			122	0.4	
Negotiable Instruments (now <i>Payment Systems</i> )	198	0.9	182	0.5	-44
<i>Nonprofit and Philanthropy Law</i>			24	.01	
Real Property	646	3.0	1,045	3.0	0

	1973		2018		Change
	#	%	#	%	%
Regulated Industrial and Other Activities	128	0.6	558	1.5	+150
Securities Regulation	210	1.0	302	0.8	-20
<i>Sports Law</i>			90	0.3	
<i>Taxation, Corporate</i>			111	0.3	
Taxation, Federal	595	2.8	537	1.5	-46
Taxation, State and Local	94	0.4	49	0.1	-75
<i>Tax Policy</i>			142	0.4	
Trade Regulation	331	1.5	46	0.1	-94
<b>Totals</b>	6,299	27.2	7,871	22	-19

#### Civil Litigation

<i>Alternative Dispute Resolution</i>			502	1.4	
<i>Appellate Practice</i>			173	0.5	
Civil Procedure	509	2.4	1,213	3.3	+38
Conflict of Laws	411	1.9	331	0.9	-52
Damages	72	0.3	n/a	n/a	-100
Equity	255	1.2	34	0.1	-92
Evidence	479	2.2	717	2.0	-9
Federal Jurisdiction	355	1.6	562	1.5	-6
Judicial Administration	32	0.1	9	0	-99
<i>Products Liability</i>			140	0.4	
Remedies	192	0.8	315	0.9	+13
Restitution	101	0.5	n/a	n/a	-100
Trial and Appellate Practice	427	2.0	550	1.5	-25
<b>Totals</b>	2833	10.3	4546	12.4	+20

1973		2018		Change
#	%	#	%	%

**Criminal Justice**

	1973 #	1973 %	2018 #	2018 %	Change %
Criminal Law	733	3.4	907	2.5	-26
Criminal Procedure	577	2.7	780	2.1	-22
<b>Totals</b>	1310	6.1	1687	4.6	-25

**Environmental and Energy Law**

	1973 #	1973 %	2018 #	2018 %	Change %
Environmental Law	216	1.0	485	1.3	+30
<i>Natural Resources</i>	69	0.3	174	1.3	+330
Oil and Gas	69	0.3	38	0.1	-67
Water Rights	80	0.4	87	0.2	-50
Atomic Energy	12	0	n/a	n/a	-100
<b>Totals</b>	446	2.0	784	2.1	+5

**Family Law**

	1973 #	1973 %	2018 #	2018 %	Change %
Community Property	70	0.3	59	0.2	-33
Decedents' Estates (now <i>Estates and Trusts</i> )	257	1.2	505	1.4	17
Domestic Relations (now <i>Family Law</i> )	402	1.9	518	1.4	-26
<i>Elder Law</i>			64	0.2	
<i>Estate and Gift Tax</i>			150	0.4	
Fiduciary Administration	52	0.2	n/a	n/a	-100
<i>Juvenile Law</i> (formerly under Criminal Procedure)			208	0.6	
Trusts and Estates (now <i>Estates and Trusts</i> )	397	1.8	505	1.4	-22
<b>Totals</b>	1178	5.4	2009	5.6	+6



**1973                      2018                      Change**  
**#    %                      #    %                      %**  
**Health Law and Bioethics**

<i>Bioethics</i>			118	0.3	
<i>Disability Law</i>			52	0.1	
Law and Medicine	245	1.1	180	0.5	-55
<i>Health Care Law</i>			276	0.8	
<b>Totals</b>	245	1.1	626	1.7	+55

**Intellectual Property and Technology Law**

<i>Computers and the Law</i> (formerly Law and Computers)	28	.01	212	0.6	+500
<i>Intellectual Property</i> (formerly Patents, Copyrights and Trademarks)	144	0.7	560	1.5	+143
<b>Totals</b>	172	0.8	772	2.1	+163

**International Law**

International Law	353	1.6	812	2.2	+38
International Organizations	96	0.4	118	0.3	-25
International Transactions (now <i>International Business Transactions</i> )	251	1.2	497	1.4	+17
Comparative Law	272	1.3	577	1.6	+23
<b>Totals</b>	972	4.5	2004	5.5	+22

**Labor and Employment Law**

<i>Employment Discrimination</i>			390	1.0	
Labor Law	381	1.8	261	0.7	-61
Workmens' Compensation (now Workers' Compensation)	60	0.3	30	0.1	-67
<b>Totals</b>	441	2.1	681	1.8	-14

	1973		2018		Change
	#	%	#	%	%
<b>Law and Social Change</b>					
Civil Rights	61	0.3	518	1.4	+367
<i>Critical Race Theory</i>			89	0.2	
<i>Feminist Legal Theory</i>			59	0.2	
<i>Law and Economics</i>			266	0.7	
<i>Law and Literature</i>			143	0.4	
Law and Society (now <i>Law and Social Science</i> )	185	0.9	286	0.8	-11
Legal History	176	0.8	401	1.1	+37
Legislation	224	1.0	350	1.0	0
<i>Sexual Orientation and Gender Identity Issues</i>			9	0	
Women and the Law	57	0.3	228	0.6	+100
<i>Welfare Law</i> (formerly <i>Law &amp; Poverty and Social Legislation</i> )	373	1.1	110	0.3	-73
<b>Totals</b>	1176	5	2459	7	+40

**Unclassified Courses**

Administrative Law	500	2.3	669	1.8	-22
<i>Agricultural Law</i>			31	0.1	
Air Law (now <i>Aviation and Space Law</i> )	37	.02	16	0	-90
<i>Animal Law</i>			4	0	
Clinical Teaching	285	1.3	1,000	2.7	+107
Education, Legal Problems of (now <i>Education Law</i> )	45	0.2	154	0.4	+100
<i>Election Law</i>			12	0	
<i>Human Rights</i>			271	0.7	
<i>Immigration Law</i>			206	0.6	

	1973		2018		Change
	#	%	#	%	%
Jurisprudence	346	1.6	629	1.7	+6
<i>Law and Psychiatry</i>			87	0.2	
<i>Law and Religion</i>			101	0.3	
Law and Science	41	0.2	124	0.3	+50
<i>Law Office Management</i> (formerly Office Practice)	48	0.2	78	0.2	0
Legal Clinics (now <i>Clinical Teaching</i> )	150	0.7	1,100	3.0	+329
Legal Method	165	0.8	198	0.5	-37
Legal Profession (now <i>Professional Responsibility</i> )	358	1.8	933	2.6	+44
Legal Research and Writing	478	2.2	1212	3.3	+50
Local Government	278	1.3	262	0.7	-46
Military Law	80	0.4	44	0.1	-75
<i>National Security</i>			122	0.3	
<i>Native American Law</i>			112	0.3	
Torts	693	3.2	1,049	2.9	-9
Introduction to Law	182	0.8	n/a	n/a	-100
Constitutional Law	818	3.8	1448	4.0	+5
Legal Process	176	0.8	n/a	n/a	-100
Librarian	119	0.6	n/a	n/a	-100
Roman Law	22	0.1	n/a	n/a	-100
<b>Totals</b>	4821	22	9872	26.7	0.21
<b>Grand Total</b>	21,584	96	36,294	99.2	

**Table B**

Deleted 1973 Courses			Added 2017 Courses		
Course	# Teachers	%	Course	# Teachers	%
Atomic Energy	12	0	Agricultural Law	31	.1
Damages	72	.4	Alternative Dispute Resolution	502	1.5
Fiduciary Administration	52	.3	Animal Law	4	0
Future Interests	195	1	Appellate Practice	173	.5
Introduction to Law	182	.9	Bioethics	118	.3
Legal Bibliography	137	.7	Communications Law	103	.3
Legal Process	176	.9	Consumer Law	113	.3
Librarian	119	.6	Critical Race Theory	89	.3
Restitution	101	.5	Disability Law	52	.2
Roman Law	22	.1	Elder Law	64	.2
			Election Law	12	0
			Employment Discrimination	390	1.2
			Entertainment Law	93	.3
			Estate and Gift Tax	150	.4
			Feminist Legal Theory	59	.2
			Financial Institutions	170	.5
			Health Care Law	276	.8
			Human Rights	271	.8
			Immigration Law	206	.6
			Law and Economics	266	.8
			Law and Literature	143	.4
			Law and Psychiatry	87	.3
			Law and Religion	101	.3

Deleted 1973 Courses			Added 2017 Courses		
Course	# Teachers	%	Course	# Teachers	%
			Legal Drafting	122	.4
			National Security	122	.4
			Native American Law	112	.3
			Nonprofit and Philanthropy Law	24	.1
			Products Liability	140	.4
			Sexual Orientation and Gender Issues	9	0
			Sports Law	90	.3
			Taxation, Corporate	111	.3
			Tax Policy	142	.4

**Table C**  
**Top Ten Courses - 1973 and 2017**

1973			2017		
Course	# Teachers	%	Course	# Teachers	%
Constitutional Law	818	4.2	Constitutional Law	1448	4.3
Criminal Law	733	3.7	Civil Procedure	1213	3.6
Business Associations	729	3.7	Legal Research	1212	3.6
Torts	693	3.5	Contracts	1150	3.4
Real Property	646	3.3	Clinical Teaching	1100	3.3
Contracts	605	3.1	Torts	1049	3.2
Federal Taxation	595	3.0	Real Property	1045	3.1
Criminal Procedure	577	2.9	Professional Responsibility	933	2.8
Civil Procedure	509	2.6	Criminal Law	907	2.7
Administrative Law	500	2.6	Business Associations	873	2.6

**Table D**  
**Winners and Losers, Measured by Percentage Share**

Winners (>+100%)		Losers (>-50%)	
Course	%	Course	%
Civil Rights	+433	Accounting	-66
Clinical Teaching	+100	Agency	-80
Education	+150	Air Law	-90
Intellectual Property	+143	Conflict of Law	-50
Law and Science	+100	Credit Transactions	-60
Legal Clinics	+312	Equity	-93
Regulated Industrial & Other Activities	+143	Government Contracts	-90
Women and the Law	+133	Insurance	-72
		Judicial Administration	~100
		Labor Law	-57
		Law and Medicine	-62
		Law and Poverty	-75
		Military Law	-75
		Negotiable Instruments	-50
		Oil and Gas	-75
		Social Legislation	-57
		Taxation, State and Local	-80
		Trade Regulation	-94
		Water Rights	-75
		Workers' Compensation	-66

**Table E**  
**Changes in subject Groups**

Business Law	-19%
Civil Litigation	+20%
Criminal Justice	-25%
Environmental and Energy Law	+5%
Family Law	+6%
Health Law and Bioethics	+55%
Intellectual Property and Technology Law	+163%
International Law	+22%
Labor and Employment Law	-14%
Law and Social Change	+40%
Unclassified Courses	+21%



**Table F**  
**Lateral Placement of Lawyers**

VI. State of Individual Practice Areas in 2017<sup>72</sup>

Below we discuss the trends within the various practice areas. \* \* \*

Practice Area	Percentage of BCG's 2018 Placements
Litigation	29.75%
Corporate	14.06%
Labor & Employment	6.13%
Intellectual Property - Patent	5.79%
Real Estate	4.51%
Intellectual Property - Litigation	3.65%
Finance	3.59%
Environmental and Land Use	2.60%
Trusts and Estates	2.37%
Insurance Coverage	2.26%
Tax	2.20%
Insurance Defense	2.08%
Bankruptcy	1.74%
Energy and Oil & Gas	1.74%
Patent Agents/Technical Specialists	1.74%
Antitrust and Competition	1.50%
Construction	1.45%
Intellectual Property - General	1.45%
Intellectual Property - Trademark/Copyright	1.45%
Technology Transactions	1.45%
Immigration	1.39%
Health Care	1.27%
Municipal Law	1.16%
Entertainment and New Media	0.75%
ERISA/Executive Compensation	0.69%
Government and Government Relations	0.64%
Data Privacy	0.58%
Education	0.41%
Alcohol Beverage Law	0.35%
Food & Drug Administration	0.35%
Telecommunications	0.35%
Maritime and Transportation	0.23%
Other	0.17%
Workers Compensation	0.17%

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72. BCG Attorney Search, *supra* note 38.

Practice Area	Percentage of BCG's 2018 Placements
Electric Power	0.00%
Family Law	0.00%
Government Contracts	0.00%
International Trade	0.00%

**Table G**  
**Bar Association Section Membership**

	LA	MA	IN	OR	OH	Totals
Administrative Law	65			200		265
Admiralty				30		30
Agricultural Law			148	140		288
Alternative Dispute Resolution	131	712	184	250		1277
Animal Law						125
Antitrust and Trade Regulation	33		42	50	177	123
Appellate	129		246	350		725
Art, Entertainment and Sports Law	43					43
Aviation Law				50		50
Bankruptcy Law & Creditors Rights	126		348	650		1124
Cannabis Law				150		150
Civil Rights Law		1100		200		1300
Class Action, Mass Tort & Complex Litigation	211	3574	808	1200		5793
Constitutional Law				200	3000	200
Construction Law	144		126	400		670
Consumer Protection Law	23			200		223
Corporate and Business Law	403	2300	803	1825	1800	5331
Criminal Law	1325	1500	285	600		3710
Elder Law			498	550		1048
Environmental Law	216		127	760	456	1103
Family Law	201	1700	727	1000		3628
Government and Public Law	200	782		400		1382
Health Law	186	845	210	300		1541

	LA	MA	IN	OR	OH	Totals
Immigration Law	47					47
Indian Law				150		150
Insurance & Tort Law	610					610
Intellectual Property	100		161	650	587	911
International Law	33		27	100		160
Juvenile & Child Welfare Law		718		300		1018
Labor Relations and Employment Law	284	1700	367	750	1700	3101
Military & Veterans' Law				75		75
Mineral Law	198					198
Products Liability Law				150		150
Public Utility	62		177	200		439
Real Estate Law		2000	180	1200	2000	3380
Taxation	223	850	242	475		1790
Trusts, Estate, Probate Law	388	2000	121 2	1200	3000	4800
Workers Compensation & SS Disability		480	57	800		1337

**Table H**  
**Courses Unlikely to be on a Bar Exam**

**Emory:**

Critical Race Theory  
Feminist Legal Theory (Vulnerability)  
Law and Economics  
Law and Literature  
Law and Social Science  
Legal History  
Sexual Orientation and Gender Issues  
Women and the Law  
Human Rights  
Jurisprudence  
Jewish Law  
Islamic Law  
Access to Justice  
Canon Law  
Human Sex Trafficking  
Islamic Banking & Finance  
Seminar: Right to go to War  
Chinese Law  
English Legal History  
Law, Sustainability, & Development  
Religion, Culture & Law in Comparative Practice  
SEM: Corporate Accountability and Social Justice  
SEM: Global Histories of Sovereignty  
SEM: Law And Literature

**University of California at Berkeley:**

Public Opinion/Survey Research Methods  
Mindfulness for Lawyers  
Foundations of Political Philosophy  
Law, Economic and Business Workshop  
Trump and the Constitution  
Public Law and Policy Workshop  
Where Capitalism Meets Democracy: Federal Election Finance  
Selected Topics in Reproductive Justice  
Satisfaction in Law and Life  
The School to Prison Pipeline  
Skills of Exceptional Lawyers - Social Intelligence and the Human Dimension  
Sex, Gender and Transformation in Law and Literature  
Good Jobs, Bad Jobs, and the Law  
Social Enterprise Law  
Disputes with Sovereigns  
Business, Social Responsibility and Human Rights

Jewish Law

Qualitative Field and Observational Methods

Foundation Seminar in the Sociology of Law

Workshop in Law, Philosophy & Political Theory

Critical Theory and Social Science Method

Law & Classical Social Theory

Poetic Justice: Dostoevsky, Nabokov and Literature in the Shadow of the Law

Social Justice Issues in Entertainment and Media Law

Environmental Justice: Race, Class, and the Environment

Sexual Orientation, Gender Identity and the Law