2012

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Recommended Citation

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The Pedigree Problem

ARE LAW SCHOOL TIES CHOKING THE PROFESSION?
By William D. Henderson and Rachel M. Zahorsky

John, a senior associate at a regional law firm, read the recruiter’s email a second time, still in disbelief.

An experienced litigator, John (who asked not to be identified out of concern for future job prospects) graduated in the top 10 percent of his law school class in 2006 with a résumé that boasted the brass rings of law review and moot court, where he won numerous awards. His undergraduate GPA was equally stellar, and in the past six years he’d run numerous litigation matters. His annual billed hours remained in the top 5 percent of his firm.

Yet, according to the message, his legal career hinged on a single factor: the name of his second-tier law school.

“We don’t typically recruit from [school X],” the recruiter wrote, noting that John’s pre-law-school professional background would be the sole reason the firm might reconsider in the future. “We’ll pass.”

John’s experience is far from isolated. Decades after graduation, elite law school degrees continue to open doors closed to graduates of less-favored schools. Prestige drives a huge proportion of law firm hiring, judicial clerkships, and coveted positions at the U.S. Department of Justice and within the legal academy.

In contrast, law degrees from lower-ranked schools can create enormous uphill struggles for even the most talented and determined lawyers. A student from a nonelite law school may still get a foot in the door with high marks, but very few opportunities go to law students just because their schools more effectively develop core skills and knowledge or adopt innovative curricula or teaching methods.

“There was such a panic among my classmates regarding the ranking of our school and how it would impact job prospects,” says Niko Marneris, who transferred to Chicago-Kent College of Law after ranking in the top of his class at John Marshall College of Law in Chicago as a 1L. “The move 100 percent came down to fear of having a diploma from a lower-ranked versus a higher-ranked school.”

Marneris gave up opportunities for law review and a 3.9 GPA when he made the switch.

“I thought that for the rest of my career I’d have this black mark, despite the great reputation of graduates from my school among local judges and lawyers,” he says. “Being in practice now as a solo, I could not have been more wrong.”

BRAND BIAS

Snobbism and elitism are the last socially acceptable prejudices. If law school rankings accurately foretold lawyer success, there’d be good reason for thousands of law graduates to be demoralized. But statistics have shown decidedly that they don’t. Instead, the preference toward the so-called elite is largely rooted in vanity and identity.

John’s experience is no different from Philip Corboy’s being shut out of Chicago’s LaSalle Street firms for being Catholic, Sandra Day O’Connor’s having been rejected by the Arizona corporate bar because she is a woman, or Joseph Flom’s being snubbed by top firms because he was Jewish.

This near obsession with pedigree is not only paralyzing to the career prospects of individual lawyers; it is damaging to the entire profession. Legal educators, engulfed in turmoil over skyrocketing tuition rates and dwindling job prospects for graduates, have little incentive to change when opportunities for their students are determined largely through letters of admission rather than the substance and quality of the education provided.

Yet the legal profession is in dire need of fresh ideas and broader skills for lawyers to effectively adapt to the changes brought on by technology, economic duress and globalization.

Most students, lawyers and law professors get hung up on how much a great legal education costs in terms of time and money. But the more important question is this: How much is it worth to them and to the profession?

The most recognized measure of law school prestige is provided by U.S. News & World Report in its annual rankings, which nearly perfectly correlate with the academic achievements of the entering classes. The formula places heavy emphasis on Law School Admission Test scores and grade point averages, implying that the quality of legal education output is based on the quality of input.

This system and the current market fail to discern between a legal education done well versus one done poorly. As firms face economic stagnation and fight over market share, hiring Ivy Leaguers without a passion for corporate law or BigLaw becomes an economic tax.

ELITE HISTORY

The brands of elite law schools were created decades before U.S. News published its first college rankings in 1983. One thread that binds the elite law schools is nearly a century of allegiance among the nation’s corporate law firms.

The lawyers who counseled the nation’s great industrial and financial enterprises of the early 20th century suffered an enormous imbalance between the needs of their clients and the availability of lawyers with suitable experience and training. In the early 1900s, very few law students enjoyed the prospect of paid employment upon graduation. New lawyers moved into independent practice and relied on loose affiliations with more experienced attorneys. They overcame inexperience at the expense of their unknowing, unsophisticated clients. A supply of top-quality lawyers simply did not exist; it needed to be created.

The most successful of corporate law firms adapted to this business climate by hiring promising law school graduates and embedding them into their own training system, which over several years supplied inductees with a well-rounded and complete skill set that could be deployed for the benefit of clients.

The most famous training program was implemented by Paul Cravath, the brilliant business lawyer who went on to build the white-shoe firm of Cravath, Swaine & Moore. According to the firm’s history, published eight years after Cravath’s death in 1948, the primary purpose of the Cravath system was to create “a better lawyer faster.”

One key operational question of this training model was entry-level hiring. Cravath and his contemporaries favored
The stratification of the corporate bar also extended to the industrial heartland; 73 percent of lawyers in Detroit also went to one of five national schools: Harvard, Yale, Columbia, or the universities of Chicago or Michigan, according to professor and sociologist Jack Ladinsky of the University of Wisconsin Law School.

Today, the largest U.S. law firms compete for the highest possible percentage of hires among elite law school graduates to signal a place in the pecking order of firm prestige.

BUYING THE BRAND

Although often perceived as a bastion of left-leaning educators allied against the corporate establishment, the legal academy has adopted a brand sensitivity that mirrors corporate America.

This is true even among law schools in the middle or bottom of the U.S. News rankings that place few, if any, graduates in large corporate law firms.

Similar to the corporate bar, the legal academy's devotion to elite educational credentials can be traced to prevalent historical conditions. In efforts to limit indiscriminate entry into the practice of law and elevate the status of the profession, the American Bar Association and the Association of American Law Schools lobbied state legislatures for lawyer licensing regimes that required higher levels of formal education.

By the mid-1920s, the die of educational quality was almost fully formed and the case method, originally created at Harvard Law School, became the touchstone of modern legal education. Bar exams were soon modeled on curricula taught at the national law schools. And in 1946, the LSAT appeared for the first time.

"Wherever one looked ... the change was on. Any university president wishing to have a first-rate law school had to subscribe," said historian Robert Stevens in his book *Law School: Legal Education in America from the 1850s to the 1980s*.

Institutions signaled their commitment to modern legal education by hiring deans and faculty members with credentials from Harvard or similar elite institutions, who replicated the teaching methods and academic norms of their alma maters.

However, law schools may soon be forced to reconcile whether today's homogenous faculty hiring practices reflect a refusal to be dynamic and receptive to change, says Vanderbilt University Law School professor Tracey E. George, who along with University of Toronto law professor Albert Yoon has studied the hiring patterns of U.S. law schools.

"The rub for some is that if we continue to hire professors who look exactly like existing ones, we aren't introducing innovative practices and methodologies," George says. "The question is whether law schools can innovate within that group or need to diversify faculty portfolios; and if they do, will that diversity translate to students in the classroom?"

THE 'ASSOCIATIVE GOODS' APPROACH

There is little evidence that legal employers or law professors believe elite law schools provide a substantially better legal education. Rather, the vaunted status is largely attributable to the provision of "associative goods": the personal attributes and characteristics of other customers who are buying the same product or service, according to Yale Law School professor and economist Henry Hansmann.

Associative goods are particularly common in higher education because students exert a strong influence on the social and educational experience, marriage prospects, and future personal and professional reputations of their peers.

"In short," Hansmann wrote in a 1999 essay, "the thing that a college or university is selling its students is, in large part, its other students." As a result, educational quality and price become secondary factors in the decision to enroll.

Hansmann's theory may explain the persistent dominance of elite law schools, yet the underlying composition of the associative goods has changed meaningfully over time.

In the 1920s and '30s, graduates of elite law schools tended to be white male Protestants from upper-class families. With the advent of standardized admission tests and affirmative action, law school doors slowly opened to a broader demographic that was deemed to be a diverse and academically able elite.

But the rise of the U.S. News rankings has caused law schools to narrow their focus on the academic credentials of
each entering class and drastically reduce the weight formerly given to personal statements, work experience and letters of recommendation. It has also significantly affected student preferences. Yale’s rate of offers to acceptances increased from 50 percent to 80 percent in the early to mid-1990s, a statistic Hansmann attributes to Yale’s consistent No. 1 status in the rankings. This transformation changed the associative goods from those most able in the eyes of admissions committees to those with the highest LSAT scores and GPAs, stripping virtually all human judgment from determinations of academic merit.

And the prevalence of belief in associative goods may explain why the hiring factor second in importance for many firms and clients (after duration of experience) is where that lawyer graduated from law school, says Mark Britton, founder and president of Avvo, a Seattle company that rates lawyers and other professionals.

Since Avvo’s creation, Britton’s team has culled data from thousands of lawyers and clients through surveys, focus groups and usability tests, some of which use computer-mounted cameras to detect eye movements of both lawyers and consumers as they scan attorney resumes, a telling sign of what each finds most important.

“Among the dozens of things on a lawyer’s resume,” says Britton, “law school is one of those shortcuts or signals used to judge experience, quality and affinity. In addition to expertise, hiring partners and consumers look at resumes for common elements and to better gauge whether that person is someone they can relate to. Those are the two biggest reasons the brain moves to thinking about school.”

That’s another powerful indicator of the successful branding campaigns of the nation’s elite law schools.

**TWO THEORIES**

One way to assess the legal market’s skepticism toward legal education is to consider two theories and ascertain which is closer to the truth.

In Theory 1, a person’s potential as a lawyer can be accurately measured by GPAs and LSAT scores; thus the input-based market for educational quality is rational and makes sense. It all boils down to raw smarts. It’s a paradigm supported by the broader U.S. cultural belief that innate talent drives success.

Theory 2 hypothesizes that three years of extraordinary legal education confer a long-term competitive advantage that accelerates a student’s career and benefits employers and society. But there is a limited market for high-quality legal education defined outside the parameters set by the current rankings and college accreditation standards. Few law schools and faculty are willing to differentiate themselves based on their teaching techniques rather than their academic scholarship, particularly when school rank depends on the constant churn of law review articles—no matter how esoteric or irrelevant the topic.

Students vetted through the rankings-era admissions process are now midcareer professionals who hold positions of influence in major law firms and law schools. They strongly adhere to law school brands in their own hiring practices. This promotes Theory 1.

And when the associative nature of legal education is so powerful, legal employers largely ignore claims of superior educational quality, and law professors don’t waste their energies on ambitious curricular endeavors.

Many quarters of the profession have adopted a cramped view of how much legal education can accomplish. Whatever competitive advantage might be conferred by world-class teaching, the conventional wisdom of Theory 1 concludes, it will eventually be eclipsed by a few IQ points.

“There is a lot of innovation in legal education today,” says David N. Yellen, dean of Loyola University Chicago School of Law. “Unfortunately, legal employers don’t reward law schools for the quality of their educational innovation. Firms tend to decide where to interview based on where partners went to school or the school’s reputation based on things like the U.S. News rankings.”

“IT would be great if employers really got to know their area law schools, and weighed in on who they think is doing a good job of actually preparing students for the practice of law by interviewing and hiring more of those schools’ graduates.”

Although both positions can elicit strong opinions from the legal community, the theories are largely empirical questions that can be evaluated with hard data. Social science literature is replete with...
examples of how brainpower predicts job performance, but that predictive power carries much less punch in occupations made up of high-ability people. According to University of California at Berkeley education professor Arthur Jensen, who is sometimes cast as an IQ fundamentalist, differences in the upper part of the IQ scale "are generally of lesser importance for success in the popular sense than are certain traits of personality and character."

These findings are consistent with a recent landmark study of thousands of lawyers and law students conducted by UC Berkeley professors Marjorie Shultz and Sheldon Zedeck: Identification, Development and Validation of Predictors for Successful Lawyering.

Drawing upon the techniques of industrial psychology, Shultz and Zedeck identified 26 competencies that form the basis for effective lawyering. Using behaviorally anchored rating scales that had been empirically developed, peers and supervisors were asked to evaluate the skills of 1,105 law alumni of UC Berkeley and UC Hastings, ranging from two to 35 years of practice experience, and approximately 200 students.

Remarkably, LSAT scores, undergraduate GPA and first-year law school grades (the basis for a significant portion of hiring decisions) were positively correlated at statistically significant levels with only six to eight of the 26 success factors, depending upon the subtest. The strongest correlations (albeit still only moderate) were to abilities associated with the traditional law school curriculum, such as writing, research and writing, reasoning law, and engaging in analysis and reasoning.

Further, within the alumni sample, higher LSAT scores and first-year grades were negatively correlated with networking, serving the community and business development. In the student sample, high undergraduate GPAs were positively correlated with no effectiveness factors, but negatively associated with practical judgment, the ability to see the world through the eyes of others, skill in developing relationships, living with integrity and honesty, and contributions of community service. Similarly, high LSAT scores were negatively associated with networking and business development.

The Shultz-Zedeck study contained other surprises. Although traditional measures had limited power in predicting lawyer effectiveness, a variety of other psychometric tests were positively correlated at statistically significant levels with many of the 26 lawyer effectiveness factors. These tests focused on personality attributes, structured questions about biographical information, situational judgment and a candidate's motivations, values and preferences.

A Law School Admissions Council committee originally funded the Shultz-Zedeck study to explore alternative admission criteria that could be empirically tied to lawyer effectiveness but lacked the persistent test performance gap for many minority subgroups. In evaluating why the various achievement tests added little predictive power to law school grades (beyond what is already predicted by GPA and LSAT scores), the authors acknowledged that a large proportion of the lawyer effectiveness factors are seldom taught or formally assessed in law school.

"It's very hard cognitively for admissions committees to balance fairly something that purports to be an objective statement of performance and then a fuzzy letter of recommendation," Shultz says. "It's hard not to be pulled in by the apparently precise LSAT and GPA numbers."

"The de facto LSAT score doubles and triples the odds of admission when GPA and college major among two applicants are the same. However, very few people have focused on the fact the LSAT itself says it only tries to predict three things: analytic reasoning, logical reasoning and reading skills," she says. "While I certainly want lawyers to be skilled at those things, nobody has asked whether if you know about a candidate's logic and analytical skills, do you know all you need to know to evaluate them for entering the legal profession?"

NEW FRONTIER?

Gradually, a significant number of legal educators and professionals are beginning to unite around the findings of the Shultz-Zedeck study. One reason for the interest is the growing belief that the legal profession's ignorance or neglect of a broad base of lawyer competencies represents a whole new frontier for legal education. Moreover, it reflects an opportunity for an ambitious law school to create a model of legal education that goes beyond the case method and teaches competencies such as teamwork, emotional intelligence, leadership, decision-making (based on empirical psychology) and communication with clients.

“One of the clear dangers of hiring based largely on prestige of school attended and grades is the potential resegregation of the upper levels of a highly stratified profession," Shultz warns. "Although clients press for diversity among legal counsel, law firms fail to consider many potentially effective minority lawyers because not many underrepresented minority students graduate from top schools with top grades."

This may revitalize Theory 2, the view that a great education can provide a lifelong competitive advantage that is distinct and separable from raw intelligence. Also causing difficulty for Theory 1 are the results of the many interschool trial advocacy competitions in which
teams from more than 100 law schools compete in simulated trial exercises that progress from a regional format to the National Trial Competition. Since its inception in 1986, a handful of teams has dominated the league tables, including Stetson (five-time winner), Northwestern (four-time winner), Chicago-Kent (three-time) and Temple (three-time). The trial teams are judged blind; law school affiliations are not revealed until the end of the tournament.

The appearance of top-tiered Northwestern Law with tier-two Temple and Chicago-Kent and tier-three Stetson suggests incoming credentials do not preordinate performance as a lawyer. And the repeat appearance of a handful of schools suggests expert coaching and practice—a form of legal education—may be the real linchpin of excellent courtroom advocacy. This strikes quite a blow for Theory 1 and provides at least some support for Theory 2.

Meanwhile, though the raw-intelligence view of Theory 1 may have many adherents, the most difficult data points to explain are those that are exceptions to the rule. These include the lawyer with sterling credentials who fails to achieve professional prominence—place here any name you know that fits. Then there is the regional law school graduate who becomes an icon in the field, like former SEC Chairman Harvey Pitt, the St. John’s University School of Law graduate who built one of the largest securities practices in New York.

The most experienced law firm headhunters are familiar with this seeming paradox. It is far from rare.

**GROWTH MINDSET**

The limited predictive power of Theory 1 may be partially explained by the research of Stanford professor Carol Dweck, one of the nation’s leading cognitive psychologists. Dweck’s research focuses on the concept of “self-theories.”

According to Dweck, self-theories can be divided into two groups: Those with a fixed mindset believe talent and ability are largely determined by genetic endowment. In contrast, those with a growth mindset believe one can substantially change one’s abilities and intelligence through focused effort and learning.

Self-theories affect our choices and behavior. According to Dweck’s research, people with a fixed mindset tend to prefer activities that validate their abilities. They shy away from tasks that may provide the world with evidence that they lack innate talent. In contrast, people with a growth mindset believe they can acquire important skills, knowledge and abilities through effort. So floundering at a task is not failure—it’s learning.

The two mindsets evaluate opportunities very differently and thus tend to accumulate different life experiences.

Psychology has amassed mountains of evidence that people have a tendency to overestimate their own abilities. To determine whether the deception varies by mindset type, Dweck and her colleagues collected self-assessments of ability and compared them with objective measures of performance. Growth-mindset people had a near-perfect correlation between self-perceptions and their performance. Fixed-mindset people accounted for virtually all of the exaggerated self-perception.

Dweck explains, “If, like those with the growth mindset, you believe you can develop yourself, then you’re open to accurate information about your current abilities, even if it’s unflattering. What’s more, if you’re oriented toward learning... you need accurate information about your abilities in order to learn effectively. However, if everything is either good news or bad news about your previous traits—as it is with fixed-mindset people—distortion always inevitably enters the picture.”

Who is most at risk to suffer from the fixed mindset? According to Dweck, those who obtain high standardized test scores at a young age and become addicted to the adulation and praise. Thereafter, all their efforts become narrowly focused on academic achievement.

Does this sound like any lawyer you know? The final irony of the fixed mindset is that it can be cured—through education on self-theories and the implications of affirmatively choosing the growth mindset.

**TIME FOR CHANGE**

It is worth recalling today that Paul Cravath’s common-sense commitment to lawyer education and development provided the blueprint for the successful law firm of the 20th century.

Innovation and change in legal education have stalled badly because law firms, law professors and law students have leaned too heavily on Theory 1, which places too great a weight on academic pedigree and unduly discounts the power of education to build careers and transform lives.

“Schools like ours, and probably all law schools, have to start from this premise: The rankings system is what it is, and it’s quite powerful right now,” says University of Tulsa law dean Janet Levit, whose school advanced 48 places in the U.S. News rankings in the past three years. As a result, the law school saw an instant boost in applications—from six received the day before the 2013 U.S. News rankings release to 23, and 19 applications in the next two days. (Levit hopes law firms will also take note of the jump during on-campus interviews this fall.)

Although the school made strides to lower student-faculty ratios and improve median LSAT and GPA scores through smaller entering-class sizes and selective faculty hiring, Levit sees the school’s rise in the rankings as long-awaited due recognition.

“It’s impossible to say whether the education is better or whether we are 48 spots better,” she acknowledges. “All I can say is our rank is finally catching up with the on-the-ground reality.”

As the law profession undergoes a major structural transformation, it needs assessment based on reality. It needs law professors with a faith in a better way of educating lawyers. It also needs employers who are willing to consider the value of these innovations with fresh eyes.

Absent this maneuver, there is no market for high-quality legal education, only a crude sorting system based on aptitude tests and law school brands.

It all comes back to that most important question: How much is an excellent law school education worth to students and the profession? Once we know the answer to this question, we will know how to focus our efforts.

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