

## **The Extraordinary Rise and Sudden Decline of Law School Tuition: A Case Study of Veblen Effects in Higher Education**

*Paul F. Campos\**

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### I. INTRODUCTION

Thirty years ago, John Kramer looked back over the previous two decades of rapid growth in the cost of attending law school, and made a sobering prediction:

Law schools for the last twenty years have been testing the elasticity of demand for their product. As tuition has increased each year, outpacing even the rate of inflation, law schools have been pressing toward the point where significant numbers of college graduates may decide that it makes good economic sense to seek less expensive forms of graduate education or forgo additional credentials altogether.<sup>1</sup>

On the other hand, Kramer noted that despite this startling increase in tuition, the demand for legal education had proven remarkably insensitive to rapidly rising prices: “Research to date has yielded no firm answer to the

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\*Professor of Law, University of Colorado. The author thanks Orin Kerr, Deborah Merritt, William Ian Miller, and Brian Tamanaha for comments and suggestions.

<sup>1</sup> John R. Kramer, *Will Legal Education Remain Affordable, by Whom, and How?*, 1987 DUKE L.J. 240 (1987).

question of how elastic the demand for legal education is. Superficial evidence, however, suggests that demand has proven amazingly inelastic with reference to price.”<sup>2</sup>

The three decades after Kramer published his piece would constitute a natural, ongoing experiment with regard to the elasticity of the demand for legal education. Over this time, law schools would continue to raise tuition at a dizzying pace, eventually reaching levels that, it is safe to say, would have astounded Kramer had he foreseen them when he addressed the issue in 1987.

This Article attempts to give a partial answer to the question of why, over a period of several decades, American law schools were able to continually raise tuition far faster than the rate of inflation. My thesis is that from at least the middle of the 1950s until the early years of the present decade, law school tuition often displayed the characteristics of a Veblen good, a good for which demand increases as price increases.<sup>3</sup> I then argue that over the past few years, what I call the “law school reform movement” has made it increasingly difficult for law schools to market their credentials as Veblen goods. As a result, after more than half a century of constant increases, real law school tuition has suddenly fallen significantly.

Part II of this Article reviews the history of American law school tuition from the 1950s to the present day. Part III examines the concept of a Veblen good and looks in detail at the tuition history of one law school over a fifteen-year period to help illustrate that concept. Part IV considers how this tuition history helps explain the causal mechanisms that produce Veblen goods, especially in higher education. Part V reveals that, over the past five years or so, American law schools have moved into a new era—one featuring falling rather than rising prices—and it analyzes some possible causes of this sudden and startling reversal of a trend that has lasted more than half a century. Part VI concludes.

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<sup>2</sup> *Id.*

<sup>3</sup> I acknowledge that there are difficulties with implicitly framing the economics of legal education in terms of a neoclassical market, in which individuals (law school applicants) are trying to maximize utility and firms (law schools) are attempting to maximize profit. For example, it is certainly the case that the people running the “firms” in this market generally reject the idea that they are pursuing profit maximization. Discussing the many interesting issues raised by this disjunction is beyond the scope of this Article.

## II. THE HISTORY OF AMERICAN LAW SCHOOL TUITION FROM THE 1950S TO PRESENT DAY

In 1954, the Association of American Law Schools commissioned a report on the state of American legal education. The report was eventually published in 1961,<sup>4</sup> containing data regarding tuition charged at 121 of the Association's 129 members during the 1956-1957 academic year. The report found that the median annual resident tuition and fees charged to full-time students by these schools was \$475.<sup>5</sup> This covered a range of \$50 to \$1,050. Public law schools charged a median resident tuition of \$204.<sup>6</sup>

Of course, these nominal dollar amounts do not reflect sixty years of subsequent inflation. When the prices are adjusted to reflect changes in the consumer price index, the median tuition charged by law schools in 1956-1957 becomes \$4,191 in 2016 dollars, with a range of \$441 to \$9,265.<sup>7</sup> Interestingly, Harvard Law School charged \$7,558 in 2016 dollars: nearly 20% less than the most expensive law school at the time.<sup>8</sup> Public school median tuition was \$1,800 in 2016 dollars.

Contemporary observers, especially those currently paying law school tuition, may take a certain mordant amusement from the study's authors' observations regarding the latest data from 1959-1960, indicating that tuition was continuing to rise:

[D]ata available would seem to establish a strong upward trend reaching toward tolerable limits in view of the circumstances that the charges are largely being made to students in their seventeenth, eighteenth, and nineteenth years of formal education, following upon considerable antecedent expense for schooling. This upward trend in charges to students should hardly further be encouraged by this report.<sup>9</sup>

Despite the study's cautionary conclusion, this upward trend continued, and to such a remarkable extent that in 1987, thirty years after the study's data was collected, John Kramer, the then dean of Tulane University Law

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<sup>4</sup> ASS'N OF AM. LAW SCHS. SPECIAL COMM. ON LAW SCH. ADMIN. & UNIV. RELATIONS, ANATOMY OF MODERN LEGAL EDUCATION: AN INQUIRY INTO THE ADEQUACY AND MOBILIZATION OF CERTAIN RESOURCES IN AMERICAN LAW SCHOOLS (1961), <https://babel.hathitrust.org/cgi/pt?id=uc1.b4087946;view=1up;seq=9> [hereinafter ANATOMY OF MODERN LEGAL EDUCATION].

<sup>5</sup> *Id.* at 80.

<sup>6</sup> *Id.*

<sup>7</sup> Inflation adjustments are based on the U.S. Bureau of Labor Statistics's Consumer Price Index. See CPI Inflation Calculator, BUREAU OF LABOR STATISTICS, [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited Sept. 26, 2017) (online calculator).

<sup>8</sup> OFFICIAL REGISTER OF HARVARD UNIV., THE CATALOGUE OF THE LAW SCHOOL 1956-1957 94 (1956).

<sup>9</sup> ANATOMY OF MODERN LEGAL EDUCATION, *supra* note 4, at 81-82.

School, warned that the cost of legal education would soon put law school beyond the reach of non-wealthy Americans, along with a small number of others receiving significant need-based scholarship aid. He also suggested that spiraling costs would affect the educational value of law school and the career goals of law graduates:

The seats may be full in most law schools today. They may remain full tomorrow. They may even remain full until the year 2000 or beyond. But those seats may be filled almost exclusively by the sons and daughters of rich and upper-middle class white families and a handful of black and brown students from relatively impoverished backgrounds who receive substantial grants. Moreover, the seats may be filled in name only after the first year, with even the sons and daughters of the well-to-do working twenty hours a week in local law offices during the semester and forty hours a week during their summer “vacations.” Finally, the seats may be filled with many more students who, as they become lawyers, do so with the single-minded objective of milking the profession for all it is worth in order to be able to pay retrospectively for their legal education.<sup>10</sup>

What alarmed Kramer was the extent to which increases in law school tuition were outstripping even the notable spike in the cost of undergraduate education. “While college costs have climbed rapidly, law school costs have leaped,” he wrote.<sup>11</sup> He then catalogued the latter’s increases between the 1974-1975 and 1986-1987 school years.

Between 1974-1975 and 1986-1987, median tuition at private law schools increased from \$2,350 to \$8,042.<sup>12</sup> Resident median tuition at public law schools had grown from \$673 to \$1,998.<sup>13</sup> Translated into 2016 dollars, the increase at private schools was from \$11,441 to \$17,611, while public law school resident tuition rose from \$3,276 to \$4,375.<sup>14</sup> While these price changes between 1974 and 1986 were certainly striking, Kramer’s analysis did not capture the extent to which the 1974 figures already represented a massive run-up in costs from where they had been less than two decades earlier.<sup>15</sup> By 1974, in constant, inflation-adjusted dollars, median tuition at private law schools was nearly three times higher than what tuition had been at the typical law school in 1956. Indeed, by the mid-1970s, public resident

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<sup>10</sup> Kramer, *supra* note 1, at 240–41.

<sup>11</sup> *Id.* at 242.

<sup>12</sup> *Id.* at 242.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 242–43.

<sup>15</sup> See Kramer, *supra* note 1, at 240, and accompanying text. Kramer notes that Harvard Law School’s tuition underwent a nine-fold increase in nominal dollars between 1961 and 1986.

tuition, in real dollars, was nearly as high as private law school had been in the mid-1950s.

Kramer's concerns regarding the long-term effects of this dizzying price spiral would likely have been even more pronounced if he could have foreseen what was to come. In recent years, discussions about historical increases in law school tuition have tended to begin at the point where Kramer's analysis ended, that is, in the mid-1980s.<sup>16</sup> This is probably because the most easily accessible tuition statistics have been those published by the American Bar Association on its website, which, as of this writing, lists annual changes in law school tuition from 1985 through 2013.<sup>17</sup> As a result, such discussions tend to miss that by 1985, law school tuition had *already* increased several times over in constant dollars in the course of the previous thirty years.<sup>18</sup>

In any case, by the 2016-2017 academic year, median tuition at private law schools had increased to \$46,055.<sup>19</sup> This represents, in constant dollars, a 162% increase since 1986, a 303% increase since 1974, and a 1,002% increase since 1956. By the fall of 2016, sticker tuition at the average American private law school was, in real dollars, six times more expensive than Harvard Law School had been when current Supreme Court Justice Ruth Bader Ginsberg attended that institution in the late 1950s.<sup>20</sup> And yet even these numbers are dwarfed by the increase in public law school resident tuition, which has risen in constant dollars by 492% since 1986, 690% since 1974, and 1,338% since 1956.

We can better grasp the practical significance of this almost incredible price increase by placing it in the context of the American economy as a whole. Let us use median family income as a proxy for measuring the relative affordability of an American legal education.<sup>21</sup>

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<sup>16</sup> See, e.g., Matt Leichter, *ABA Regulations Don't Cause Tuition Increases, Law Schools Do*, AMLAW DAILY (Dec. 22, 2011), <http://amlawdaily.typepad.com/amlawdaily/2011/12/aba-regs-dont-cause-tuition-increases-law-schools-do.html>.

<sup>17</sup> See ABA, *Statistics: Financial Information-Law School Tuition (1985-2013; Public/Private)*, [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited Sept. 27, 2017) [hereinafter ABA Statistics].

<sup>18</sup> See Kramer, *supra* note 1, and accompanying text.

<sup>19</sup> Author's own calculation. Tuition figures taken from ABA Rule 509 Law School Disclosure Forms. See also Law School Transparency, *Tuition Tracker: Nominal Tuition Averages for ABA-approved schools*, <https://www.lawschooltransparency.com/reform/projects/Tuition-Tracker/> (showing \$45,099 as the actual average annual tuition for private law schools in 2016 and noting that "private law school is now 2.7 times as expensive as it was in 1985 after adjusting for inflation").

<sup>20</sup> See also Kramer, *supra* note 1, and accompanying text.

<sup>21</sup> I am using median family income, rather than the more commonly cited statistic of median household income. Median family income tends to be about 20% higher than median household income. The census defines a household as including persons living alone, while a family is defined as two or more people related by blood, marriage, or adoption living

In 1956, median law school tuition represented 9.9% of the median American family's annual income.<sup>22</sup> Median resident tuition at public law schools equaled 4.3% of the median family's income.<sup>23</sup>

By 1974, private law school tuition was equivalent to 18.2% of median family income, while public resident tuition was equivalent to 5.2% of that income.<sup>24</sup>

Twelve years later, in 1986, private law school tuition now took up 27.2% of median family income, and public resident tuition equaled 6.8% of that income.<sup>25</sup>

By 2015, the most recent year for which data on family income are available, private law school tuition represented 64.3% of median family income, and public resident tuition was equivalent to 33.3% of that income.<sup>26</sup>

Here is what the past sixty-year history of American law school tuition looks like in the context of changes in median family income, expressed in constant, inflation-adjusted dollars.<sup>27</sup> First, the numbers for private schools:

For private law school tuition to be as affordable as it was for the typical family in 2006, a family today has to make \$88,200.

For private law school tuition to be as affordable as it was for the typical family in 1996, a family today has to make \$109,500.

For private law school tuition to be as affordable as it was for the typical family in 1986, a family today has to make \$169,000.

For private law school tuition to be as affordable as it was for the typical family in 1976, a family today has to make \$253,000.

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together. I am using the latter statistic, both because it is more representative of the social groups that typically deal with the financial issues raised by the cost of higher education, and because the census does not publish household income data from years prior to 1967.

<sup>22</sup> See *Historical Income Tables, Families*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-families.html> (last updated Aug. 10, 2017); Law School Transparency, *Tuition Tracker: Nominal Tuition Averages for ABA-approved schools*, <https://www.lawschooltransparency.com/reform/projects/Tuition-Tracker/> (last visited Sept. 27, 2017).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Here is an example of how these calculations are made: In 1974, median resident tuition at public law schools was \$673. At that time, median family income was \$12,902, so median resident tuition was 5.2% of median family income. Because median resident tuition in 2016-2017 at public law schools is \$23,540, a family at the income median would have to have an income of \$453,000 for this to represent 5.2% of its income.

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For average law school tuition to be as affordable as it was for the typical family in 1956, a family today has to make \$383,000.

Here is the same analysis in the context of median resident tuition at public law schools<sup>28</sup> :

For public law school tuition to be as affordable as it was for the typical family in 2006, a family today has to make \$105,000.

For public law school tuition to be as affordable as it was for the typical family in 1996, a family today has to make \$189,000.

For public law school tuition to be as affordable as it was for the typical family in 1986, a family today has make \$342,000.

For public law school tuition to be as affordable as it was for the typical family in 1976, a family today has make \$453,000.

For public law school tuition to be as affordable as it was for the typical family in 1956, a family today has to make \$547,000.

Several things are evident from these numbers. First, the enormous run-up in private law school tuition between the mid-1950s and the mid-1970s was to some extent ameliorated by the rapid rise in the income of American families during this time. In the eighteen years between 1956 and 1974, real median family income grew by nearly 50%—from \$42,675 to \$63,552—in 2017 dollars.

Indeed, these same increases in family income mostly offset the rise in public law school tuition, which remained roughly as affordable as it had been two decades earlier, in relative terms. Yet over the next four decades, law school tuition continued to rise at a breakneck pace, even as family income growth slowed to a crawl. By 2015, median family income was just 12.6% higher than it had been 41 years earlier, while private law school tuition had increased by 297% in constant dollars since then, and public law school resident tuition had risen by a mind-boggling 690%, even after adjusting for inflation.<sup>29</sup>

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<sup>28</sup> I am using “typical” in these examples to signify “median.” Median family income was \$55,775 in 2015. See KIRBY G. POSEY, U.S. CENSUS BUREAU, HOUSEHOLD INCOME: 2015 2 (Sept. 2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/acsbr15-02.pdf>.

<sup>29</sup> *Id.*

Thus, the devastating consequences of rapidly increasing tuition and flat income growth are seen in their starkest form when considering the effect of these dual trends on the affordability of public legal education in particular. When compared to family income, public law schools now cost considerably more than private law schools did as recently as the 1980s, let alone in the decades before then. Resident tuition at public law schools is now higher, in real terms, than the tuition charged by Harvard and Yale law schools when a large percentage of today's law professors attended the latter institutions.<sup>30</sup>

Such a remarkable price history surely has a complex explanation, in which many factors have played a role.<sup>31</sup> In this Article, I will focus on one possible cause for the gradual destruction of affordable legal education in contemporary America: the extent to which law school tuition has functioned as a Veblen good.

### III. THE CONCEPT OF A VEBLEN GOOD AS ILLUSTRATED BY THE RECENT TUITION HISTORY OF ONE LAW SCHOOL

The basic law of demand, taught in every introductory economics course, is straightforward: all other things being equal, as price increases, demand decreases, and vice versa. Indeed, this law would appear to be practically axiomatic if one assumes that rational actors are maximizing their utility via their spending decisions.

Once the introductory course is left behind or perhaps progresses to the latter stages of the semester, complications arise. For our purposes, one such complication is particularly germane: the Veblen good. A Veblen good is an item whose demand is proportionally rather than inversely related to its price. In short, as the good's price increases, demand increases as well, thus reversing the classic relationship between price and demand.<sup>32</sup>

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<sup>30</sup> See Paul Campos, *Lawyers and Spoiled Identity*, 28 GEO. J. LEGAL ETHICS 73, 87 (2015) (regarding the overwhelming relative percentage of Harvard and Yale law school graduates on law school faculties).

<sup>31</sup> Some other likely factors in the extraordinary rise of law school tuition include: optimism and confirmation bias on the part of both applicants and law schools regarding the odds of graduates earning large salaries; federal educational loan policies that allow students to borrow the full cost of law school attendance with no control on what schools charge; the historical expectation of university administrators that law schools should cross-subsidize other departments with surplus tuition revenue; and pure rent-seeking on the part of both law schools and their parent universities, to name a few. For an explicit argument that the vast majority of law graduates receive an excellent return on their investment, and an all-but explicit argument that this in turn justifies rent-seeking via massive tuition hikes on the part of law schools, see Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. LEGAL STUD. 249 (2014).

<sup>32</sup> Richard H. McAdams, *Relative Preferences*, 102 YALE L.J. 1, 13 (1992). There is a small but growing literature on the various ways in which contemporary American higher education is beset by Veblen effects. See, e.g., Siva Vaidyanathan, *A Study in Total*



Named after sociologist Thorstein Veblen who developed the theory of conspicuous consumption in *The Theory of the Leisure Class*, the Veblen good represents a potential problem for neoclassical economic theory.<sup>33</sup> Why would purportedly rational consumers pay more for something as its price increases? Two explanations have been offered for this behavior.

First, Veblen goods may be a reflection of the so-called “snob effect.”<sup>34</sup> The snob effect is a key factor in the market for luxury goods. Such goods are purchased, in part, precisely because they *are* expensive, since owning them is a mark of economic status and higher economic status brings associated social prestige. In markets where prestige signaling is a driving force, a good’s higher price is itself a key part of the quality that consumers are seeking by purchasing it, since they are thereby signaling that they can afford to make the purchase. This is what Veblen termed “conspicuous consumption.”<sup>35</sup>

Second, the existence of Veblen goods may be due in part to consumers treating price as a perfect or nearly perfect proxy for quality.<sup>36</sup> In situations where consumers have little basis for making quality comparisons between competing goods and in which the consumers are one-shot players—that is, it is difficult or impossible for them to purchase more than one good of the relevant type—it can be reasonable for consumers to rely on price signals for most or all of their information about the quality of the goods in question and to make purchase decisions accordingly. A related concept is the so-called common law of business balance, which asserts, in less technical terms, that “you get what you pay for.”<sup>37</sup>

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*Depravity*, BAFFLER (July 2015), <https://thebaffler.com/salvos/study-total-depravity>.

<sup>33</sup> THORSTEIN VEBLÉN, *THE THEORY OF THE LEISURE CLASS* (1899), <http://moglen.law.columbia.edu/LCS/theoryleisureclass.pdf>.

<sup>34</sup> Harvey Leibenstein, *Bandwagon, Snob, and Veblen Effects in the Theory of Consumers' Demand*, 64 Q.J. ECON. 183, 189 (1950), <http://areadocenti.eco.unicas.it/bianchi/LEIBENSTEIN.50.QJE.pdf>.

<sup>35</sup> In some cases, what appears to be a Veblen good may be an example of complete inelasticity of demand for a necessity, as opposed to a luxury good. For example, consumers may purchase a life-saving medical treatment without regard to rising prices. If both the need for the treatment and its price are rising, demand for the good will have a proportional rather than inverse relationship to price. In this situation, consumers are neither using price as a proxy for quality, nor engaging in conspicuous consumption, but demand for the product will still resemble that seen in the former circumstances.

<sup>36</sup> Akshay R. Rao, *The Quality of Price as a Quality Cue*, 42 J. OF MKTG. RES. 401 (2005).

<sup>37</sup> The classic formulation of this principle, usually attributed (without any apparent basis) to John Ruskin, is: “[t]here is hardly anything in the world that someone cannot make a little worse and sell a little cheaper, and the people who consider price alone are that person’s lawful prey.” See *THE YALE BOOK OF QUOTATIONS* 657 (Fred R. Shapiro ed., 2006).

Of course these explanations are closely related to each other: consumers seeking prestige through conspicuous consumption may well consider the supposedly higher quality of the higher-priced good to be central to its snob appeal.<sup>38</sup> Thus, some law school applicants may put significant weight on attending a prestigious school, not only for practical reasons such as the employment opportunities available to the school's graduates, but also because of the snob appeal such schools have for them. Such applicants may then rationalize what others might consider a vain or contemptible concern with prestige for its own sake by convincing themselves that price and prestige are both excellent proxies for inherent quality.

I suggest that both of these explanations and the relationship between them help account for the existence of the proportional rather than inverted demand curves, which have characterized the extraordinary increase in law school tuition over the past two generations.

Let us examine a particularly stark individual example of this general price history. Between the 1996-1997 and 2011-2012 application cycles, the University of Colorado Law School raised its resident tuition from \$4,560 per year to \$31,114 per year.<sup>39</sup> This was a far faster rate of increase than among law schools as a whole. Over this same time, median private law school tuition rose from \$17,785 to \$39,184, while median public law school resident tuition increased from \$5,269 to \$19,376.<sup>40</sup> Over the span of 15 years, the average private law school tuition increased by 120.3% in nominal terms, and 57.2% in constant dollars, and average public resident tuition increased by 267.7% in nominal terms, and 162.4% in constant dollars. Meanwhile, Colorado's tuition rose by 582.3% in nominal terms, and 386.8% in constant dollars. The school's tuition had risen nearly seven times faster than the average rate of increase in private law school tuition, and nearly two-and-a-half times faster than average resident public school tuition.

The general theory of demand holds that, all other things being equal, a competitor who raises its prices relative to its competition, and especially one who raises prices as drastically as Colorado did, will experience markedly reduced demand, as other competitors undercut it on price. Let us

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<sup>38</sup> Cf. EDGAR SALTUS, OSCAR WILDE: AN IDLER'S IMPRESSION 20 (1917), <https://archive.org/details/oscarwildeandl00saltgoog> ("I have the simplest tastes. I am always satisfied with the best.").

<sup>39</sup> All law students at Colorado receive resident tuition no later than the beginning of their second year. Throughout this article, "tuition" means tuition and mandatory fees. All numbers were based on rates taken from the annual LSAC Official Guide to ABA Law Schools. See LSAC OFFICIAL GUIDE TO ABA LAW SCHOOLS, [https://officialguide.lsac.org/release/OfficialGuide\\_Default.aspx](https://officialguide.lsac.org/release/OfficialGuide_Default.aspx).

<sup>40</sup> See ABA Statistics, *supra* note 17.

consider what happened to the demand for potential admission to the University of Colorado Law School, both in absolute terms and relative to its competitors, nationally and locally.

The table below lists the total applications to Colorado Law by year, from the 1995-1996 application cycle through the 2011-2012 cycle. It then lists the total number of fall applicants who enrolled in the fall term at all ABA schools following that application cycle, and gives the percentage of those applicants who applied to Colorado Law. Finally, it lists the tuition that Colorado Law charged in the academic year during which applicants applied for admission.<sup>41</sup>

1995-1996:	2,292	84,305	2.72%	\$4,323
1996-1997:	1,846	76,687	2.41%	\$4,560
1997-1998:	1,731	72,340	2.39%	\$4,953
1998-1999:	1,836	71,726	2.56%	\$5,410
1999-2000:	1,947	74,380	2.62%	\$5,917
2000-2001:	2,239	74,550	3.00%	\$5,917
2001-2002:	2,907	77,235	3.76%	\$5,917
2002-2003:	3,132	90,853	3.45%	\$6,352
2003-2004:	2,899	100,585	2.88%	\$7,645
2004-2005:	2,537	95,811	2.65%	\$10,737
2005-2006:	2,517	88,681	2.84%	\$13,546
2006-2007:	2,579	84,012	3.07%	\$16,738
2007-2008:	3,000	83,397	3.60%	\$18,594
2008-2009:	3,059	86,588	3.53%	\$22,048
2009-2010:	2,906	87,921	3.31%	\$25,399
2010-2011:	3,175	78,473	4.04%	\$28,934
2011-2012:	2,801	67,914	4.13%	\$31,114

These figures indicate that, especially during the last third of this time period, tuition increases at Colorado Law that were far larger than those at other law schools correlated with large increases in applications to the school, in both absolute and relative terms. In short, the more expensive Colorado Law became relative to other law schools, the more applications it received in comparison to schools that were rapidly becoming (relatively) less expensive. This is the demand curve we would expect to see for a classic

<sup>41</sup> Because law schools usually do not publish their tuition for an academic term until after the conclusion of the formal application cycle, applicants must rely on the published tuition rates for the previous year. So, for example, someone applying for admission to a law school in the fall of 2012 could ascertain what tuition at the school was during the 2011-2012 academic year, but would not know what tuition rates would apply at the time of the applicant's potential enrollment. It is a peculiarity of higher education that applicants apply, and indeed often enroll, without yet knowing the price of what they will be buying. *See supra*, note 39.

Veblen good.

Another striking aspect of the application market to Colorado Law during this time frame is that the school's admissions standards rose markedly—again, both in absolute terms and relative to other law schools. In the late 1990s, when less than 2,000 people per year were applying to Colorado Law, the 75th, 50th, and 25th percentile LSAT scores of matriculants averaged 162, 160, and 158.<sup>42</sup> By the end of the following decade, when applications to the school had risen by around 50% in both absolute and relative terms, those same percentiles had risen to 165, 164, and 161.<sup>43</sup> The boom in applications to Colorado that took place when the school radically raised prices also allowed it to raise the price of admission in terms of the entrance credentials that it demanded of applicants.

Just how remarkable this state of affairs was is made clearer by focusing on the local, as opposed to the national, market for law school admissions. The State of Colorado has one other law school—the University of Denver. The two schools are only thirty-five miles apart, and both send the vast majority of their graduates into the Colorado legal market. They are, in other words, direct competitors for potential applicants. Furthermore, measuring the relationship between tuition increases and application totals at Colorado's other law school helps control for the possibility that changes in applicant totals to the state's law schools during this time frame were being driven by region-specific factors, such as the state's economic growth.

The table below records the University of Denver School of Law's applicant totals, over the course of a decade during which the University of Colorado raised its law school tuition at a breakneck pace. Again, application totals are expressed both in absolute terms and as a percentage of all applicants in that application cycle. This is followed by the tuition charged by the school during the application cycle year.

2001-2002:	3,116	4.03%	\$21,784
2002-2003:	3,802	4.18%	\$23,308
2003-2004:	3,769	3.75%	\$23,308
2004-2005:	3,555	3.71%	\$29,622
2005-2006:	3,596	4.05%	\$30,634
2006-2007:	3,341	3.98%	\$33,318
2007-2008:	3,140	3.76%	\$33,990
2008-2009:	2,925	3.38%	\$35,711
2009-2010:	3,129	3.56%	\$37,150
2010-2011:	2,425	3.09%	\$38,522

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<sup>42</sup> *See supra*, note 39.

<sup>43</sup> *Id.*

In 2001-02, Denver received 7.2% more applications than Colorado, at a time when its tuition was 268.2% higher. A decade later, the gap between the two schools' tuition had shrunk drastically to 33.2%. Yet despite losing the vast majority of what was at the beginning of the decade a massive comparative price advantage, Colorado was now receiving 30.7% more applications than Denver. During this time, Colorado's entrance requirements increased in both absolute terms and relative to Denver's. Again, these are precisely the sorts of contrasting demand curves we would expect to see in the context of competing Veblen goods. It would be difficult to formulate a starker contradiction of the general theory of demand.

#### IV. VEBLEN GOODS AS EXPLAINED BY TUITION HISTORY IN HIGHER EDUCATION

What could account for an enormous increase in tuition correlating with a large increase in applications, in both absolute and relative terms? One explanation for the apparent existence of Veblen goods is that they are a form of conspicuous consumption: that people sometimes pay more for something precisely because it costs more, not despite that fact. Former long-time George Washington University president Stephen Trachtenberg has been remarkably candid (and cynical) about his belief that higher education in contemporary America traffics in Veblen goods:

Mr. Trachtenberg, however, understood something crucial about the modern university. It had come to inhabit a market for luxury goods. People don't buy Gucci bags merely for their beauty and functionality. They buy them because other people will know they can afford the price of purchase. The great virtue of a luxury good, from the manufacturer's standpoint, isn't just that people will pay extra money for the feeling associated with a name brand. It's that the high price is, in and of itself, a crucial part of what people are buying.

Mr. Trachtenberg convinced people that George Washington was worth a lot more money by charging a lot more money. Unlike most college presidents, he was surprisingly candid about his strategy. College is like vodka, he liked to explain. Vodka is by definition a flavorless beverage. It all tastes the same. But people will spend \$30 for a bottle of Absolut because of the brand. A Timex watch costs \$20, a Rolex \$10,000. They both tell the same time.

The Absolut Rolex plan worked. The number of applicants surged from some 6,000 to 20,000, the average SAT score of students rose by nearly 200 points, and the endowment jumped from \$200

million to almost \$1 billion.<sup>44</sup>

Did applications soar to the University of Colorado Law School because the school started charging luxury rather than bargain-brand prices? Is the upsurge in applicants explained by what economists call the “snob effect?”

Law is a prestige-obsessed profession and legal academia reflects and reproduces this obsession in many ways.<sup>45</sup> People who seek prestige and the social markers that signal it are probably more prone than average to behave in ways that illustrate the snob effect. Some law school applicants, particularly those who are deeply concerned with various rankings of law schools and law firms and even with the “lay prestige” that schools and firms supposedly possess, may associate low cost with lack of prestige and high cost with its presence.<sup>46</sup> All other things being equal, a law school that wants to attract such applicants will raise its prices, in the same way that a luxury brand will take care to avoid the appearance of offering its customers anything in the way of a price bargain.<sup>47</sup>

Perhaps some applicants who were considering Colorado in the 1990s and early 2000s, at a time when the school’s tuition was a quarter of that being charged by private schools, saw this price gap not as evidence of a great potential bargain, but rather as a reflection of the traditional lack of prestige, relatively speaking, of low-cost public education in general—a prestige gap, which, for such applicants was emphasized precisely by the school’s low cost. In sum, it is indeed possible that some of the upsurge in applications to Colorado when the school raised its prices to near private school levels was a product of the snob effect.

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<sup>44</sup> Kevin Carey, *How to Raise a University’s Profile: Pricing and Packaging*, N.Y. TIMES (Feb. 6, 2015), [https://www.nytimes.com/2015/02/08/education/edlife/how-to-raise-a-universitys-profile-pricing-and-packaging.html?ref=education&\\_r=0&mtrref=www.lawyersguns.moneyblog.com&gwh=F9A49E69DB4AE20505DB63CD0768534A&gwt=pay&assetType=nyt\\_now](https://www.nytimes.com/2015/02/08/education/edlife/how-to-raise-a-universitys-profile-pricing-and-packaging.html?ref=education&_r=0&mtrref=www.lawyersguns.moneyblog.com&gwh=F9A49E69DB4AE20505DB63CD0768534A&gwt=pay&assetType=nyt_now). For a critique of the accuracy of Trachtenberg’s self-promoting claims, see Paul Campos, *The First Rule of Journalism*, LAWYERS, GUNS & MONEY BLOG (Feb. 13, 2015), <http://www.lawyersgunsmoneyblog.com/2015/02/first-rule-journalism>.

<sup>45</sup> See Campos, *supra* note 30.

<sup>46</sup> “Lay prestige” refers to the perceptions of relative institutional prestige that non-lawyers purportedly have of various law schools and law firms. While it may seem incredible that law students and law school graduates would concern themselves with questions such as whether non-lawyers consider Sullivan & Cromwell LLP to be more or less prestigious than Skadden, Arps, Slate, Meagher & Flom LLP, for example, such people clearly do exist. See *How low would you go on Vault 100?*, TOP-LAW-SCHOOLS.COM (Sept. 19, 2016), <http://www.top-law-schools.com/forums/viewtopic.php?f=23&t=269240&p=9557624&hilit=Sullivan+Cromwell+logo#p9557456>.

<sup>47</sup> Laurie Simon Bagwell & B. Douglas Bernheim, *Veblen Effects in a Theory of Conspicuous Consumption*, 86 AM. ECON. REV. 349, 349 (June 1996), <http://www.jstor.org/stable/pdf/2118201.pdf?refreqid=excelsior%3Aea10a2302119dbf26516f3c481f6f2f3> (citation omitted) (“Our customers do not want to pay less. If we halved the price of all our products, we would double our sales for six months and then we would sell nothing.”).

Another explanation for the existence of Veblen goods has had particular salience in the context of the demand for law school admission. Recall that another way of accounting for the existence of Veblen goods is to treat them as consequences of low-information consumption in one-shot purchasing scenarios. When consumers have little basis for comparing the quality of goods, and when they can as a practical matter purchase the good in question only once, price may become the dominant heuristic for purchasing decisions. This is especially the case in a society, such as ours, in which extreme forms of free market ideology often go so unchallenged that they end up being treated as self-evident truths.<sup>48</sup> In such societies, the notion that the prices in an entire economic sector might have little to do with the actual quality of the goods sold in that sector will be highly counter-intuitive.

To test this hypothesis, let us consider what information was available to law applicants about law schools during the time period we are examining. There was not, and there still is not, any practical way for potential applicants to compare the quality of education provided by different law schools, other than to use extremely crude proxies (faculty-student ratio, volumes in the law library, and the like). Furthermore, until very recently, only fragmentary information about initial employment outcomes for law graduates of specific law schools was available, while information about school-specific long-term career outcomes was practically non-existent.<sup>49</sup>

The dearth of information regarding the inherent quality of, or even the results associated with, the education provided by individual law schools, especially when considered in the light of the stupendous rise in the average cost of attendance at these institutions, helps explain the emergence of various schemes to formally rank law schools against each other. In particular, the eventual dominance of the U.S. News rankings, so decried by practically everyone within legal academia itself, was a predictable outcome of the combination of severe information scarcity and skyrocketing costs that law school applicants faced in recent decades.<sup>50</sup>

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<sup>48</sup> For a general critique, see THOMAS FRANK, *MARKET UNDER GOD: EXTREME CAPITALISM, MARKET POPULISM, AND THE END OF ECONOMIC DEMOCRACY* (2001). For an analysis of the remarkable influence Ayn Rand's ideas in particular have had on contemporary American politics, see Jonathan Chait, *Wealthcare*, *NEW REPUBLIC* (Sept. 13, 2009), <https://newrepublic.com/article/69239/wealthcare-0>.

<sup>49</sup> See Elie Mystal, *Most Law Schools Would Like Law School Transparency to Just Go Away*, *ABOVE THE LAW* (Sept. 14, 2010), <http://abovethelaw.com/2010/09/most-schools-would-like-law-school-transparency-to-just-go-away/>.

<sup>50</sup> See WENDY NELSON ESPELAND & MICHAEL SAUDER, *ENGINES OF ANXIETY: ACADEMIC RANKINGS, REPUTATION, AND ACCOUNTABILITY* 16–17, 105–06 (2016) (providing a good overview of the rise of educational rankings, and law school rankings in particular).

Yet the rankings themselves have turned out to be a very inadequate response to this problem. As many people have pointed out, the rankings are at best a pseudo-scientific and self-referential exercise, which to some extent actually generate what they purportedly measure (which is, at bottom, institutional prestige).<sup>51</sup> Worse yet, from the perspective of applicants attempting to investigate if they will get what they are being asked to pay for, the U.S. News rankings have used institutional spending as a proxy for educational quality. In other words, if two law schools are otherwise identical in every respect, but one spends more money per student than the other, the higher spending school will be more highly ranked. It would be difficult to construct a more perverse fiscal incentive structure.<sup>52</sup>

Furthermore, in legal academia in particular, institutional prestige turns out to be extraordinarily sticky. For example, since the U.S. News rankings became an annual ritual nearly three decades ago, the same fourteen law schools have been ranked in the top fourteen of the rankings every single year—a fact that by itself ought to discredit any notion that the rankings actually measure comparative institutional educational quality in any meaningful way.<sup>53</sup>

All of which is to say that until about five years ago and the rise of the law school reform movement,<sup>54</sup> the major sources of comparative information that law school applicants had available to them when considering the quality of various law schools were very fragmentary and often misleading, price, employment statistics, and law school rankings of obviously dubious value that almost always only fluctuated within rather than between pre-existing reputational bands.<sup>55</sup>

Given the scarcity of meaningful comparative information available to applicants, using price as a proxy for institutional quality seems at least an arguably reasonable thing for applicants to have done. This is especially true given the extent to which especially zealous forms of free market ideology have come to dominate American political discourse, particularly over the course of the past generation.<sup>56</sup> In its extreme form, this ideological

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<sup>51</sup> See, e.g., Colin Diver, *Is There Life After Rankings?*, ATLANTIC (Nov. 2005), <https://www.theatlantic.com/magazine/archive/2005/11/is-there-life-after-rankings/304308/>.

<sup>52</sup> Robert Morse & Kenneth Hines, *Methodology: 2018 Best Law Schools Rankings*, U.S. NEWS & WORLD REPORT (Mar. 13, 2017), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> (explaining the current methodology for the rankings).

<sup>53</sup> See *Top Law School Rankings from US News*, 7SAGE.COM (2016), <https://7sage.com/top-law-school-rankings/>.

<sup>54</sup> See *infra* note 63, and accompanying text.

<sup>55</sup> Kyle P. McEntee & Patrick J. Lynch, *A Way Forward: Transparency at American Law Schools*, 32 PACE L. REV. 1 (2012) (summarizing and critiquing the pre-reform movement situation).

<sup>56</sup> See FRANK, *supra* note 48, and accompanying text.



orientation treats it as almost axiomatic that market transactions usually take place between rational, self-interested actors, who possess sufficiently symmetrical information and bargaining power to make those transactions efficient, wealth-maximizing exchanges. Deviations from this norm are treated as rare “market failures,” usually caused by some violation of laissez-faire principles, most typically various types of purportedly unjustified government intervention and regulation.

A scene from the film *Pulp Fiction* dramatizes the sort of well-functioning market that free market acolytes tend to treat as representative of almost all economic activity, at least in a properly deregulated society. The gangster Vincent Vega is taken aback when his companion, Mia Wallace, orders a \$5 milk shake (which, since the film was released in 1994, would equal \$8.19 in 2017 money). “That’s a shake. That’s milk and ice cream. . . . That’s five dollars?” he asks incredulously. “You don’t put bourbon in it or nothing?” he asks the waiter. “No,” the waiter replies. When the drink arrives, he asks Mia for a sip, and is suitably impressed: “Goddamn! That’s a pretty fuckin’ good milkshake. . . . I don’t know if it’s worth five dollars, but it’s pretty fuckin’ good.”<sup>57</sup>

Via its price, the seller of the milkshake signals to potential customers that it is an unusually high-quality product. For a relatively small sum (or, in Vincent’s case, for “free,”<sup>58</sup> since he asks for a sip of his companion’s drink), this signal can be evaluated immediately for accuracy, and if the product is judged to be reasonably priced, the satisfied customer is likely to purchase it again, and/or spread the word that it is indeed worth its high cost.

The problem, of course, is that many economic transactions are far more fraught with informational deficits, and other practical difficulties, than buying high-end milkshakes. Potential law school applicants cannot sample the product beforehand and until very recently, they had almost no basis for genuinely comparing even vaguely similar schools to each other. They can make only one purchase, and it is essentially non-refundable.

Law school is not a milkshake, but potential applicants are socialized within a culture that constantly repeats to them the mantra that “the market works” (subject again to rare exceptions, which tend to be dismissed via no true Scotsman-style argumentation).<sup>59</sup> It is hardly surprising that under such

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<sup>57</sup> PULP FICTION (Miramax Films 1994).

<sup>58</sup> As many observers have pointed out, gifts are only “free” in the formal, legal sense of the word. See WILLIAM IAN MILLER, *HUMILIATION* 15 (Cornell Univ. Press 1995).

<sup>59</sup> The “no true Scotsman” fallacy involves making ad hoc exceptions to supposedly valid general statements. So, for example, if it is pointed out that a certain market is beset by severe inefficiencies, it will be claimed that the market in question is not a “true” free market because of various purportedly illegitimate confounding factors. Such distinctions between inefficient markets and “true” free markets must be made within an ideological frame in which free markets are by definition efficient. See generally *Fallacies*, INTERNET ENCYCLOPEDIA OF

circumstances applicants have treated price as a reliable indicator of quality.

This dynamic, I believe, is the key to understanding the remarkable rise in law school tuition. The University of Colorado Law School provides a particularly sharp example of this phenomenon. Colorado quintupled its tuition over the course of a decade—raising it seven times faster than private law school tuition rose over this time—and yet the school saw applications rise by 35% relative to applications nationally, and by even more relative to its only local competitor. Note that over this time frame, the law school's U.S. News ranking actually declined slightly and what little employment information was available to applicants did not indicate any discernable change in the outcomes students could expect when they graduated. In other words, the only substantial piece of information applicants had that could (at least implicitly) explain or justify the school's remarkable price increase relative to its competition, was the price increase itself.

Note, too, that we can readily ask why applications to Colorado were so low in the late 1990s and early 2000s, rather than framing the question as why applications increased so much over the course of the decade. In both cases the answer is the same, or at least is symmetrical: applicants apparently did not apply to Colorado at the beginning of this period because the school did not charge enough; they (or more precisely, their successors in the law school applicant pool), however, did apply a few years later because the school had become much more expensive and therefore, according to the logic of various extreme and politically influential versions of free market ideology, necessarily much better.

#### V. A NEW ERA: AN ANALYSIS OF POSSIBLE CAUSES FOR DECREASING LAW SCHOOL TUITION RATES

Over the course of the present decade, the market for law school admissions has changed in a number of striking ways. First, demand has plunged: while 87,900 people applied for fall admission to ABA law schools in 2010, by 2015 that figure had declined to 54,500. Applicant totals fell again in 2016, and as of this writing, they are on track to decline for this year's entering class.<sup>60</sup>

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PHILOSOPHY, <http://www.iep.utm.edu/fallacy/#NoTrueScotsman> (last visited Sept. 27, 2017).

<sup>60</sup> It is not possible to directly compare application totals from all the years prior to 2016, because the Law School Admissions Council (LSAC) changed its reporting system in 2016 to include applicants for admission to all terms. In prior years, LSAC only reported applicants for the fall term. Nevertheless, LSAC did record the all-term application totals in 2014 and 2015. The 2016 all-term total (56,500) was 0.9% lower than in 2015 and 2.9% lower than in 2014. The 2014 and 2015 fall term numbers had each featured the lowest applicant totals since at least 1983. In regard to the 2017 cycle, as of August 8, 2017, LSAC reported that applicant totals were 0.1% lower than in 2016.

Second, information about employment prospects for new graduates, which most schools provided in only the most cursory—and sometimes misleading—form prior to 2012, has become far more detailed and revelatory.<sup>61</sup>

Third, discounts on sticker tuition, which essentially did not exist prior to the 1990s and were on average still quite modest until a few years ago, became far more common and financially significant.<sup>62</sup>

These trends are all closely related. For more than fifty years, law schools had raised their tuition at a much faster pace than the rate of inflation, and this eventually generated significant backlash. In particular, some people who are now bearing the immense financial burden that this trend created began to demand better answers to questions such as what sorts of employment outcomes a six-figure investment in law school tuition could expect to garner, and whether there was a good justification for law schools spending so much more money than they had been spending in the fairly recent past. By the early years of this decade, such demands had coalesced into what I am calling the “law school reform movement.”

The law school reform movement is a loose and informal network of law graduates, law students, legal academics, investigative journalists, and others who, in recent years, have exposed and criticized the status quo in legal academia.<sup>63</sup> The movement’s initial focus was on pushing for more transparency about law school costs and especially law graduate employment outcomes.<sup>64</sup> These efforts have produced significant

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<sup>61</sup> See ABA, *Statistics: Employment*, [https://www.americanbar.org/groups/legal\\_education/resources/statistics.html](https://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited Sept. 27, 2017) (listing law graduate employment data for years 2012 through 2016). On the misleading reporting practices of law schools, see *supra* note 55, and accompanying text.

<sup>62</sup> See *infra* note 67, and accompanying text.

<sup>63</sup> Detailing the full contours of the law school reform movement is beyond the scope of this Article. Very briefly, some key events in the initial formation of the movement include, in chronological order: the rise of law school “scam blogs” in the last few years of the previous decade; the early work of Bill Henderson, who first identified the problem of the bimodal salary distribution for new law graduates; the founding of the public interest organization Law School Transparency by two Vanderbilt law students, Kyle McEntee and Patrick Lynch; the 2011 publication of a series of high-profile stories in *The New York Times* on problems in legal education; letters sent that year by Senator Barbara Boxer and Senator Charles Grassley to the ABA, expressing concern about law schools publishing potentially misleading employment statistics, which convinced that organization to require schools to publish more reliable employment numbers; and the publication of Brian Tamanaha’s book *Failing Law Schools* in 2012. See generally Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177 (2012). This is a far from exhaustive list.

<sup>64</sup> The fruits of these efforts can be witnessed most readily at Law School Transparency’s web site, which offers prospective students a host of tools for evaluating both projected costs and likely initial employment outcomes at each of the more than 200 ABA-approved schools. See *Law School Transparency*, <http://www.lawschooltransparency.com/> (last visited Sept. 27, 2017).

improvements in the quantity and quality of information available to prospective law students.

Better information has meant that prospective students are less dependent on tuition price signaling the quality of education when comparing law schools to determine which school to attend. It has also allowed applicants to force schools to engage in more vigorous competition, especially price competition, as they deal with a sharply contracting applicant pool.<sup>65</sup> In short, the law school reform movement has helped transform the market for law school applicants into something that more closely resembles an efficient, well-functioning market.<sup>66</sup> As a consequence, after many decades of non-stop increases, effective law school tuition—that is, the tuition that students really pay—is actually falling, for the first time in at least 60 years.

The history of tuition discounting at American law schools is both brief and straightforward. Prior to the 1990s, almost all law students paid sticker tuition.<sup>67</sup> The small number that did not were beneficiaries of real scholarships, that is, of income streams from endowments set up for that purpose, which replaced some or all of the tuition that the students would have otherwise owed. Law school scholarships in the traditional sense continue to be granted to students, but the vast majority of what law schools call “scholarships” are not scholarships in this sense at all, but rather cross-subsidized discounts on sticker tuition.

Here is a simplified example of how such discounts work. Suppose that a hypothetical law school purportedly charges \$40,000 per year in tuition, but it actually charges only half of its students this sum. The other half of the student body is charged \$20,000 per year. The law school’s effective tuition—the amount it actually collects—is \$30,000 per student. The students who pay full price therefore subsidize the educational expenses of the students who pay half of the advertised sticker price.

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<sup>65</sup> For a wealth of information on tuition discounting, *see generally* Law School Numbers, <http://lawschoolnumbers.com/> (last visited Sept. 27, 2017).

<sup>66</sup> “More closely resembles” is not meant to imply a close resemblance in absolute terms, but rather a marked change from the previous status quo. The question of which aspects of the law school reform movement have had what practical effects on legal academia is complex and difficult to answer. Suffice it to say here that while correlation is not causation, the economic status quo for law schools has undergone a radical change since Brian Tamanaha observed in the Fall of 2011 that while many recent graduates were drowning in debt and struggling to find jobs, law schools themselves were not in crisis. *See* Brian Tamanaha, *Law Schools are Not in Crisis*, BALKINIZATION (Oct. 31, 2011), <https://balkin.blogspot.com/2011/10/law-schools-are-not-in-crisis.html>. As this Article documents, that is certainly no longer the case—in no small part due to Tamanaha’s own pioneering work.

<sup>67</sup> For example, in 1978-1979, ABA law schools distributed a total of \$13,165,000 in scholarships to students. *See* Kramer, *supra* note 1, at 243 n.18. I estimate that this represented approximately 4% of the cost of tuition at these schools at the time.

Effective law school tuition is the percentage of sticker tuition that students actually pay.<sup>68</sup> Thirty years ago, effective tuition at ABA law schools equaled approximately 93% of advertised sticker tuition (and almost all of that 7% difference was accounted for by endowment income, i.e., real scholarships).<sup>69</sup> Beginning in the 1990s, law schools became increasingly concerned with competing for students with high LSAT scores and undergraduate grade point averages because these metrics made up a significant part of the formula U.S. News employed to rank law schools.<sup>70</sup> This led to a limited amount of price competition in the form of discounts off sticker tuition.

The history of tuition discounting at American law schools is both brief and straightforward. Prior to the 1990s, almost all law students paid sticker tuition.<sup>71</sup> The small number that did not were beneficiaries of real scholarships, that is, of income streams from endowments set up for the purpose, that replaced some or all of the tuition that the students would have otherwise owed. Law school scholarships in the traditional sense continue to be granted to students, but the vast majority of what law schools call “scholarships” are not scholarships in this sense at all, but rather cross-subsidized discounts on sticker tuition.

But although these discounts crept slowly upward, they never came close to keeping pace with the rate at which sticker tuition was increasing. The result was that by 2012 effective tuition was now approximately 80% of sticker tuition, yet effective tuition had still increased by nearly 90% in real, inflation-adjusted terms since the advent of tuition discounting approximately 20 years earlier.<sup>72</sup>

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<sup>68</sup> Effective tuition is not exactly synonymous with sticker tuition minus discounts because effective tuition also reflects traditional scholarships, which use endowment income to replace tuition that would otherwise be paid by students. The vast majority of the discount rate that makes up effective tuition, however, is accounted for by actual discounts off the advertised tuition rate rather than scholarship funds.

<sup>69</sup> I calculated this sum by comparing the total dollar amount of scholarship aid given to law students in 1986-1987 to the sticker tuition charged by law schools that year. See Kramer, *supra* note 1, at 243.

<sup>70</sup> See ESPELAND & SAUDER, *supra* note 50.

<sup>71</sup> For example, in 1978-1979, ABA law schools distributed a total of \$13,165,000 in scholarships to students. See Kramer, *supra* note 1, at 243. I estimate that this represented approximately 4% of the cost of tuition at these schools at the time.

<sup>72</sup> Sticker tuition rose by 110% in constant dollars between 1991 and 2012, while effective tuition rose by 87% in constant dollars over this time. I calculated these figures by estimating total sticker tuition paid in each year and comparing it to the total dollar amounts of grants and scholarships made by law schools to students in that year. The data on grants and scholarships can be found at ABA, *Internal Grants and Scholarships Total Dollar Amount Awarded 1991-2012*, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/internal\\_grants\\_scholarships\\_awarded.auth\\_checkdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/internal_grants_scholarships_awarded.auth_checkdam.pdf) (last visited Sept. 27, 2017).

This was the point, approximately five years ago, when the law school reform movement began to have a discernable effect on both the quality of the economic information available to prospective law students, and not coincidentally, on the number of people applying to law school. Faced with a rapidly shrinking and far better informed applicant pool made up increasingly of applicants who were willing and able to pit law schools against each other in a competition for their tuition dollars, law schools found themselves with no choice but to engage in what has now apparently become an all-out price war.<sup>73</sup>

That price war remains invisible if one only looks at the sticker tuition law schools charge. Yet at many law schools sticker tuition has over the past few years become an increasingly meaningless number. This is because after decades of slow increases, tuition discounting in legal academia has suddenly taken a great leap forward. Between 2011 and 2015, the average discount on sticker tuition at private ABA-approved law schools increased by more than 60%.<sup>74</sup> In just four years, the average percentage discount off sticker tuition grew by as much as it had over the entire previous quarter century. The result was that, while sticker tuition at private law schools grew by 16% between 2011 and 2015, average effective tuition actually declined by approximately 10.6%. If we exclude elite schools—where effective tuition rose by an average of 9%—tuition declined by 12.5%. After more than a half century of unbroken growth, law school tuition was finally going down: indeed, at many schools, by 2015 effective tuition rates had declined by 20% or more from their levels four years earlier.<sup>75</sup>

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<sup>73</sup> One can track the growing financial sophistication of prospective law students in regard to negotiating with law schools by comparing the advice given over time to applicants by law graduates and current students at the web site Top Law Schools. *See generally* TOP-LAW-SCHOOLS.COM, <http://www.top-law-schools.com/> (last visited July 27, 2017).

<sup>74</sup> I calculated this figure by using the data published on ABA Rule 509 disclosure forms.

<sup>75</sup> The change in effective tuition rates at private law schools in the state of New York between 2011 and 2015 captures the national pattern well:

Albany:	Down 21.1%
Brooklyn:	Down 23.3%
Cardozo:	Down 14.3%
Columbia:	Up 8.1%
Cornell:	Down 6.4%
Fordham:	Down 6.6%
Hofstra:	Down 9.1%
New York Law School:	Down 18.8%
New York University:	Up 9.3%
Pace:	Down 28.3%
Syracuse:	Down 37%
St. John's:	Down 20.6%
Touro:	Down 10.7%

And of course at many of those same schools, the decline in the per-student tuition they were able to charge combined with a sharp drop in the total number of students they were able to enroll. When combined with a 22% decline in national enrollment between 2011 and 2015, the sudden drop in effective tuition resulted in total law school tuition revenue dropping by more than 30% in just four years.<sup>76</sup>

One way of interpreting this reversal of a six-decade-long trend is that it was a result of the sudden waning of law schools' ability to market their degrees as a Veblen good. Recall that in the market for higher education credentials, such credentials can function as Veblen goods to the extent that applicants are pursuing prestige signaling, while depending on price to function as a supposedly accurate proxy for quality, in the absence of better sources of information.

The law school reform movement has undercut both of these conditions. By revealing the extent to which recent law graduates have struggled to find work (and in particular well-paying work) as lawyers, and by making clear how problematic the cost of law school has become in relation to the job opportunities recent graduates have had, the law school reform movement has helped puncture various cultural myths about the legal profession, myths that help shape perceptions regarding the profession's prestige.<sup>77</sup>

Even more significantly, the movement has led to the publication of much richer sources of relevant information for prospective students, who no longer need to rely on published tuition rates as (very misleading) proxies for the quality of the education and of the professional outcomes that various law schools provide. The reform movement has also brought much more attention to the practice of tuition discounting, which means that prospective students—or at least those with enough cultural capital to find and take advantage of this information<sup>78</sup>—are in a better position to negotiate with schools. The movement has also made it clear—again, to sufficiently sophisticated applicants—how remarkably eager (sometimes to the point of desperation) many law schools have become to negotiate with prospective

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<sup>76</sup> Enrollment data can be found at ABA, *Statistics: Current Year Enrollment*, [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited Sept. 27, 2017). Note that all calculations in this Article are for JD students only. Currently, 11% of law students are enrolled in non-JD programs. Effective tuition figures are not available for non-JD students.

<sup>77</sup> See Campos, *supra* note 63.

<sup>78</sup> This is a critical caveat. Online discussions regarding the costs and benefits of attending various law schools reveal what appears to be an enormous range of financial sophistication, or lack of such sophistication, among potential law school applicants. For many representative examples, see *Choosing a Law School forum*, TOP-LAW-SCHOOLS.COM <http://www.top-law-schools.com/forums/viewforum.php?f=1> (last visited Sept. 27, 2017).

enrollees.<sup>79</sup>

This new pressure to compete for students that law schools began to feel with the advent of the rankings culture in the 1990s has been intensified greatly by the recent sharp decline in applicants and the growing sophistication applicants bring to the process of negotiating with law schools. These changes, which are in large part due to the efforts of the law school reform movement, have finally stopped and indeed reversed, the seemingly inexorable climb in the average cost of attending law school.<sup>80</sup>

In sum, law school tuition is ceasing to be a Veblen good. Instead, the general theory of demand—which asserts that, everything else being equal, consumers will always prefer a lower price to a higher price—is finally asserting itself as the dominant force in the increasingly fierce competition for increasingly scarce law school applicants.

#### VI. CONCLUSION

The conclusions that this Article raise produces at least as many questions as they answer. For example, to what extent does the history of law school tuition over the past 60 years throw light on the costs of American higher education in general? Will the current decline in average real law school tuition continue or accelerate? If so, how many law schools will be able to tolerate losses in tuition revenue that, at least at non-elite schools, have already reached an average of perhaps 35% over the past five years?<sup>81</sup> What are the implications, for the legal profession and society as a whole, of a tuition discounting system that is becoming ever-more pervasive and intense? Note that it is now the case that around half of all law students pay either sticker tuition or something close to that, while those students whose legal educations are subsidized by the former group pay tuition that, in real dollars, is similar to tuition rates 20 or 30 years ago. Given that those paying full price are both disproportionately poorer and more likely to be members of ethnic minority groups than those they subsidize, this “reverse Robin Hood” system should trouble anyone concerned about the ways higher education can reinforce rather than break down existing class and race hierarchies.<sup>82</sup>

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<sup>79</sup> Based on messages I have received from prospective law students seeking advice, I have concluded that it is now apparently common at many law schools for the school’s dean—not the school’s dean of admissions, but the dean of the entire law school—to make what are essentially sales calls to admitted applicants.

<sup>80</sup> The only class of schools that continues to raise real tuition consists of elite national institutions, who for the most part compete only with each other. In 2015, effective tuition was 9% higher at these schools than it had been in 2011.

<sup>81</sup> While effective tuition figures are not yet available for 2016-2017, total JD enrollment was down 2.6% from the previous year. *See supra*, note 75.

<sup>82</sup> *See Law School Survey of Student Engagement, 2016 Annual Survey Results: Law*



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All these questions deserve further close investigation. This initial foray into the (disappearing?) world of law school credentials as Veblen goods merely suggests how complex the political economy of law school education, and of American higher education in general, may ultimately prove to be.