

# THE BUSINESS OF RUNNING A LAW SCHOOL

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I confess that as a faculty member I gave little thought to the business of running a law school. Deans do not have that luxury. Someone has to pay attention to things like the budget, payroll, physical plant, purchasing, admissions, career services, and (most important of all) the kind and quality of service that we provide to students in the classroom. Stated abstractly, we are a nonprofit business that provides a service to about 800 customers each year, and we, like all businesses, have to balance our books. From a business point of view the most interesting challenge we face is that our costs increase every year, and they are driven by social changes over which we have no control. I will explain briefly why costs keep going up, and mention some of the strategies that schools employ to cover them.

The biggest cost involved in running a law school is the cost of instruction. Let us use the courses we teach as a rough index of that service. (There is more involved: time outside class, teaching in the library and on computers, work on journals, etc.) When Boston College Law School opened its doors in 1929 its first-year curriculum was not *very* different from what it is today. The second- and third-year curriculum looked like Table 1 in the appendix. An example of the second- and third-year courses we offered last year can be found at Table 2. Table 3 shows how each category's courses has grown at 20-year intervals. That, in briefest form, is why legal education is more expensive today than it was 72 years ago—we have to pay more people to teach more courses.

Of course, there are other costs involved, and I should address them before I say why the curriculum has grown so. One added cost is inflation. But I will set that aside because the dollars students are paying have changed at the same rate as our costs. A second and more significant one is that when the curriculum changes shape, so must our buildings. If all students take the same courses, as they do in the first year, and as they used to in the second and third years, we can teach them all together at the same time in large rooms. However, if we offer a large number of elective courses, classes will perforce be smaller and more numerous, and this calls for more and smaller rooms. We also need more offices to house a larger number of faculty. A third cost is the expense of running a library capable of serving a much larger curriculum. We need books on international law and intellectual property law, for example.<sup>1</sup>

Why has the curriculum grown so? This is the interesting point, and it is one that makes us a very different kind of business than McDonald's. McDonald's hires more employees as its customer base expands; it builds more and bigger stores as the demand for its hamburgers increases. Law schools grow at a much faster rate than their customer base. To put it in the terms we usually employ, the

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1. Library costs have also gone up because of changes in technology, but that is a separate matter.

student/faculty ratio is constantly decreasing. A graph of the rate of growth in our faculty and student body, taking 1940 as the norm, can be seen at Table 4.<sup>2</sup>

We add faculty so that we can teach a constantly expanding curriculum. If McDonald's operated this way, they would hire more employees as their menu got larger. They would also quickly go out of business. So why do we do it? How can we survive if we pay so little heed to elementary market forces? The answer to the first of those questions is actually fairly obvious. We are in the business of educating students for the practice of law, and the law is much more complicated than it was just a few decades ago. There is much more law today than there was 20, 40, and 60 years ago. One reason for this is scientific progress.

Property is one area of law that has expanded substantially over the last forty years. In 1960 we taught four Property courses. In 2000 we taught fourteen. This is because between 1960 and 1980 we had an explosion in environmental law. Congress enacted the Clean Air Act, the Clean Water Act, and the Environmental Protection Act. We also made laws dealing with radiation, ocean dumping, noise abatement, pesticides, sewage sludge, and toxic substances. Between 1980 and 2000 we saw the development of intellectual property: personal computers, cable TV, digital recording, the world wide web, cloning, the human genome project. To regulate this activity Congress passed the Digital Millennium Copyright Act and the Audio Home Recording Act. We cannot prepare students to practice law in these areas by teaching them about mortgages and Blackacre.

Changes in communication and travel have also affected the law school curriculum. In 1960 we taught one course in international law. Today, we teach sixteen. The world is a much smaller place than it was only a few years ago because we can deal instantly with Bonn and Hong Kong. Fax, e-mail, portable phones, fiber optics, and satellite communications have replaced the postal service. Containers have revolutionized international trade. As a result we have laws like NAFTA, markets like the European Union and the World Trade Organization. We cannot prepare students for these changes by teaching them Grotius and Pufendorf.

I am tempted to say that moral progress is also driving the growth of the law, but that is not exactly right. I do not believe that people are better today than they were forty years ago. But it is certainly true that we rely on the law much more often to enforce our moral convictions. Examples include courses in public and criminal law. The increase in public law resulted from the civil rights revolution begun in the 1960s: the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Age Discrimination in Employment Act (1967), the Fair Housing Act (1968), Title IX (1972), the Rehabilitation Act (1973), the Individuals with Disabilities Education Act (1975). The growth of Criminal Law began with the Warren Court's efforts to write a constitutional code of criminal procedure.

You get the idea. I need to add one more point that concerns how rather than what we teach. The fastest growing part of our curriculum is our clinical courses. There were none in 1960, four in 1980, and twenty-two in 2000. This actually understates the amount of faculty resources we devote to this area. We have six full-time faculty members who teach Legal Reasoning, Research, and Writing

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2. I use 1940 rather than 1929 because the numbers of faculty and students in our first few years may have been warped by variables involved in starting up.

(LRR&W) in the first year, and the various charts I have provided depict only the upper-class curriculum.

The explanation for this change has something to do with an intellectual shift in pedagogy. In 1987 the ABA Section of Legal Education and Admissions to the Bar created a task force to study what it perceived to be a growing disjunction between the academy and the practicing bar. The product of that study was the *MacCrate Report* published in 1992.<sup>3</sup> It stressed the importance of skills like counseling, negotiation, communication, factual investigation, and the recognition of ethical dilemmas, in addition to legal research, reasoning, analysis, and problem solving. In 1996 the ABA amended its Standards for Approval of Law Schools to require "at least one rigorous writing experience," "adequate opportunities for instruction in professional skills," and "live-client or other real-life practice experiences."<sup>4</sup>

This change in how we teach has altered the faculty composition even more than it has affected the curriculum, because clinical and legal writing faculty teach smaller classes, on average, than traditional faculty. For example, we have four clinical faculty assigned to our Legal Assistance Bureau in Waltham. Each teaches a section of the Civil Litigation Clinic that is limited to six students per semester.

The Immigration Law Practicum taught by one of our clinical faculty and a graduate assistant is limited to fifteen students. The LRR&W faculty teach almost exclusively in the first year. Typical sections of first-year classes, like my Constitutional Law class, have ninety students. LRR&W faculty each teach forty-five students. The reason for this significantly lower student-faculty ratio is that the teaching of skills requires closer individual attention and more feedback, a difference not unlike the one we see in medical education when students move from the classroom to internship and residency.

I have been discussing the reasons for the growth in our curriculum and faculty. The picture I have described is not unique to Boston College. It is the same everywhere. And it is such a radical shift that when I first recognized it (remember I'm new to the business end of law schools) I wondered how we manage to survive, with costs continually going up and student/faculty ratios going down. It turns out that there are a dozen strategies for coping. We have adopted some of them. If the trend continues (and it will), we will have to look at others.

## 1 *Stasis*

One way to cope with the problem might be to hold costs constant by freezing the curriculum in its current (or some earlier) form. The extreme form of this suggestion is out of touch with the reality of modern law practice. We cannot ignore ERISA and teach Wills because Wills are more basic or traditional. Pension plans are where Americans have their money. Neither can we decline to teach Title VII,

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3. See Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR (Robert MacCrate ed.).

4. Standard 302(a)(2)-(3), (d). This year the ABA added a requirement of a writing experience in the upper years.

or the Clean Water Act, or the Digital Millennium Copyright Act. They are the laws that our graduates must be familiar with in their practice.

## 2. *Course Loads*

We could reduce costs by giving faculty bigger course loads. But among elite schools there is actually a trend in the opposite direction—to reduce the load from four to three courses per year to allow more time for scholarship. Resisting this trend is a way to get more courses per dollar of income. For some faculty it is a good match with their skills and interests. But as a comprehensive solution it has serious drawbacks. One is that scholarship is itself the most important means of education for faculty, who are paid with tuition dollars to be on the cutting edge of their fields. A second is that scholarship is itself a form of public service, in the long run perhaps our most lasting contribution to the practice of law. The reputation of our faculty (the most important factor in rankings polls) is established on the basis of what they write. The market for teachers is an efficient one, and if we want to attract the best faculty we need to keep an eye on what the competition is doing.

## 3. *Tuition*

There is a little room for increasing tuition, but not enough to solve the problem. We already charge \$25,854. If we increased that by 10%, we would be at the high end of the market. Ten percent more tuition revenue would buy about four more associate professors. But it would also have side effects. We might scare away poor but well qualified students. There must be some relation between price and demand.

## 4. *Student Body Size*

We could increase this. We aim for a student body of 808. Georgetown has 1964 Suffolk has 1708. Harvard has 1655 That would give us more income, and more customers, for more courses. But it too would have side effects. One would be a need for more space. A second would be an impact on our ranking. We accept the best students we can attract, so additional students would come in at the lower half of the class. In this regard it pays to be small. A smaller student body gives us a better student/faculty ratio, better GPAs, and better LSAT scores. A third consequence is intangible, but maybe more important. Boston College is a very happy school where the faculty know the students and the students are pleased with their educational experience. This might be less true if we were bigger.

## 5. *Faculty Tracks*

The sector of our faculty that recently has increased the fastest is the long-term contract faculty—those who teach clinical courses or Legal Reasoning, Research, and Writing (LRR&W). In 1960 there were no such people. Today there are twelve, six of each. Clinical and LRR&W faculty are regular full-time faculty members, but they are hired on a long-term contract basis. They do not get tenure, although after six years of teaching and a faculty review process they are given a

form of job security that is reasonably similar. As a condition of their employment neither clinical nor LRR&W faculty are expected to do published legal research (though they may do so if they wish). Because they do different work than tenure track faculty and come with credentials and experience appropriate to their roles, most law schools pay them less than tenure-track faculty who graduated the same year. This is a common method of hiring more faculty at a lower cost, but one effect is decreased job satisfaction. At Boston College we have attempted to ameliorate these differences, though doing so forecloses one common route to cost savings.

## 6. *Adjuncts*

A better way to save money on teachers is to hire adjuncts. Last year we had 30 in the fall and 35 in the spring. This is something that schools in big cities do. Boston University last year had 59 and 48; Columbia had 51 and 74; Northwestern had 104 and 42. It is harder for schools located in small towns (Cornell had 9 and 15) because there are not as many qualified lawyers practicing there. This practice is understandable and useful. Like all part-time employees, adjuncts cost less than full-time workers because they are not paid benefits. Adjunct teachers at law schools come even cheaper because most earn a substantial income from the practice of law. Many are alumni who offer their services at sub-market rates out of attachment and a feeling of gratitude to their alma mater. Staffing courses with adjuncts rather than regular faculty costs about one-fifth as much per credit hour, figuring in only salary and benefits. If we add the savings on office space, staff support, and so on, the difference is more impressive still. Adjuncts are not just cheaper than regular faculty. At some things they are better. We offer eight sections of Trial Practice, and all are taught by adjunct faculty who are judges or practitioners. The class prepares students for all aspects of jury trials including jury selection, opening and closing arguments, and direct and cross-examination.

There are reasons to be careful about overdoing it with this solution. Our regular faculty provide students with benefits no group of adjuncts, however able, could hope to offer. If we hire right, our full-time faculty will be the real experts, often internationally renowned experts, in what they do. They are not just really smart. Life in the academic world gives them the freedom to develop their expertise to an unusual degree. It is the rare practitioner who has time to write the definitive treatise on Environmental Law, or The Federal Law of Attorney Conduct. Moreover, the full-time faculty are here all the time. This is their job. And much of the job of teaching takes place in the office, at lunch, and before and after class.

## 7 *Partnerships*

Boston College offers twenty-one courses in business law (loosely defined). We can increase our course possibilities through a partnership with Boston College's business school (the Carroll School of Management). We offer a joint JD/MBA program, which opens up the Carroll School's curriculum to our students. There is room for expansion and efficiency here. I think we could make better use of these resources, and perhaps achieve some economies, if we put our minds to it.

## 8. *Graduate Programs*

LLM programs allow law schools to add tuition-paying students who will use the building in off-peak hours, who will not count for *U.S. News & World Report* rankings purposes, and who will help to pay the cost of additional faculty. In some kinds of programs classes can be offered at night because many students work downtown during the day. Because these are not JD students, their GPAs and LSAT scores do not figure in the rankings numbers. At Boston College we have historically frowned on the idea of graduate programs. But from a business point of view they might be worth a look. The challenge is to build in a way that capitalizes on and reinforces the intellectual and community culture already in place.

## 9 *Executive Education*

Business schools do this and make a great deal of money on it. Law schools traditionally have not. Once again we might ask why not.

## 10. *Endowment*

This is obviously an important component of any solution. What it really amounts to is getting our most successful students to help pay our rising costs after they graduate. The most attractive aspect of this solution is that it has none of the side effects of the first six and can be implemented without program changes.

## 11 *Foundations*

The Hewlett Foundation just gave Stanford University \$400 million dollars. The Soros Foundation (the Open Society Institute's Program on Law and Society), the Olin Foundation, the Keck Foundation, and the Lilly Foundation also give money to law schools. Like most law schools, we have not utilized these sources much in the past, but we should look at areas of the school that might attract such support.

## 12. *Government*

It is surprising to me that the training of lawyers is not more generally understood as a public good. Part of the explanation for this is that the media are fond of portraying the plaintiffs' bar in an unfortunate light. The legal profession bears the burden of making and enforcing rules that allow our increasingly complex society to function smoothly and of counseling people about how to live within them. If the cost of education for this work outstrips the resources of students who pay for it, society will be the loser. We understand that government should bear part of the burden of training people to provide other public goods (like medicine). We willingly provide tax support for legal education at state universities. Private schools provide public benefits in equal measure. They are justified in asking for public support.

## CONCLUSION

I do not think that there is a “right” combination of these solutions. I am certain that standing still is a mistake. Most people would agree that gifts and grants are particularly appealing because they have fewer side effects than other solutions. It is this, and of course the need for new infusions of capital, that explains the explosion of fundraising activity at law schools in the past twenty years. These are now things that every law school has to do. Government help offers the prospect of almost unlimited support. But it would come with strings attached, and some schools would rather not pay that price. As for the others, different ones will appeal to different schools. The balance of course loads and scholarship is a zero-sum game. Schools that want to hold an elite position must give their faculty time to write, and this means smaller course loads. However, not everyone cares about rank in the polls. The amount of tuition a school can charge varies somewhat with rank.

The ability to use adjuncts depends on geographic location. It also affects the teaching environment in a variety of ways. The formation of partnerships is easier at universities with other strong graduate programs. I do not have recommendations about how to balance these various factors; the decision is one that people close to the school can make best.

## APPENDIX

TABLE 1

<b>1929 Courses</b>		
<b>Business</b>	<b>Civil Dispute Resolution</b>	<b>International</b>
<i>Commercial</i> Bankruptcy Bills and Notes Sales Suretyship <i>Corporate</i> Agency Common Carriers Corporations Partnership Public Utility Law <i>Tax</i> Income Tax Law Inheritance Tax Law	Code Practice Conflict of Laws Damages Equity Evidence Federal Procedure Legal Ethics Practice and Pleading at Law & in Equity Quasi Contracts	International Law
<b>Other</b>	<b>Property</b>	<b>Public Law</b>
Admiralty Domestic Relations Insurance	Mortgages Property II Property III Trusts Wills and Probate	Constitutional Law Municipal Corps. Workmen's Comp.



TABLE 2

<b>2000 Courses</b>		
<b>Business</b>	<b>Civil Dispute Resolution</b>	<b>International</b>
<p><i>Commercial</i></p> <p>Business Bankruptcy: Ch. 11            Commercial Law: Payment ...            Commercial Law: Secured (2)            Consumer Bankruptcy            Consumer Law</p> <p><i>Corporate</i></p> <p>Antitrust (Trade Regulation)            Introduction to Accounting            Business Planning            Corporate Finance            Corporations (3)            Employee Benefits Law            Internet Law ...            Mergers and Acquisitions            Securities Regulation</p> <p><i>Tax</i></p> <p>Estate Planning            Estate &amp; Gift Tax (2)            Int'l Aspects of US Income Tax            Partnership Tax            Taxation I (2)            Taxation II (2)            Tax Policy</p>	<p><i>ADR</i></p> <p>Arbitration (2)            Dispute Negotiation (2)            Mediation</p> <p><i>PR</i></p> <p>Legal Ethics Seminar            Moral Responsibility            Professional Responsibility(4)            Prosecutorial Ethics</p> <p><i>Trials and Appeals</i></p> <p>Appellate Advocacy: full year            Complex Litigation            Conflict of Laws            Domestic Relations: Trial Practice            Evidence (4)            Federal Courts            Legal Interview &amp; Counseling            Libel Litigation            Pretrial Litigation (2)            Scientific &amp; Expert Evidence            Trial Practice/Evidence (2)            Trial Practice (8)</p>	<p>African Law &amp; Development            Comparative Constitutional            Comparative Law            European Union Law            Foreign Relations Law-U.S.            Immigration Law            Int'l Business Transactions            Int'l Commercial Dispute Res.            Int'l Environmental Law            Int'l Human Rights Seminar            International Law            International Organizations            International Trade Seminar            Law of War, War Crimes ...            London Program/Class            Transnational Mergers</p>
<b>Other</b>	<b>Property</b>	<b>Public Law</b>
<p>Employment Discrimination            Employment Law            Entertainment Law            Family Court Practice            Family Law            Fam. Law: Child, Parent, State            Fam. Law: Child Protection            Fam. Law: Hot Topics for ...            Fam. Law: The Concept of ...            Health Law &amp; Policy            Health Law &amp; Policy II            Insurance Law            Labor Law            Products Liability            Regulation of Prof. Athletics</p>	<p>Trust &amp; Estates (2)</p> <p><i>ELU</i></p> <p>Adv. Prop: Property &amp; Society            Adv. Prop: Commercial (2)            Environmental Law            Environmental Law, Advanced            Environmental Law: Teaching            Environmental Law: Toxic Torts            Frontiers in Env. Law &amp; Policy            Land Use Planning            Real Estate Transactions</p> <p><i>IP</i></p> <p>Copyright            Intellectual Property Seminar            Patent Law            Trademarks &amp; Unfair Comp.</p>	<p>Administrative Law (2)            Adv. Con Law-Federalism            Civil Rights..Public Schools            Civil Rights Litigation            Communications Law            Constitutional Law II (4)            First Amendment            Housing Policy &amp; the Law            Legislative Process (2)            Local Government Law            State Constitutional Law            Supreme Court Seminar</p>

<b>Clinical</b>	<b>Criminal</b>	<b>Perspectives</b>
<p><i>Civil</i></p> <p>Atty. Gen. Clinical Program (2)</p> <p>Atty. Gen... Seminar (2)</p> <p>Civil Litigation Clinic (4)</p> <p>Civil Litigation Clinic Sem. (4)</p> <p>Homelessness Litigation Clinic</p> <p>Judge &amp; Community Courts (2)</p> <p>Judge &amp; Comm... Seminar (2)</p> <p>ULL Externship Program (2)</p> <p>Women and the Law Clinic</p> <p>Women &amp; the Law ... Seminar</p> <p><i>Criminal</i></p> <p>Criminal Justice Clinic (4)</p> <p>Criminal Justice Clinic/Seminar</p> <p>Judicial Process</p> <p><i>Immigration</i></p> <p>Adv. Immigration...Clinic</p> <p>Adv. Immigration...Seminar</p> <p>Immigration Law Practicum</p> <p><i>Juvenile</i></p> <p>Juvenile Justice Seminar</p> <p>Juvenile Rights Advocacy (2)</p> <p>Juvenile Rights Advocacy II (2)</p> <p><i>Legal Writing</i></p> <p>Advanced Legal Research</p> <p><i>Advanced Legal Writing (6)</i></p>	<p>Criminal Law (3)</p> <p>Criminal Law Seminar</p> <p>Criminal Procedure Advanced</p> <p>Criminal Procedure (3)</p> <p>Death Penalty Seminar</p> <p>Domestic Violence and the Law</p> <p>Federal Criminal Law</p>	<p>American Legal Education</p> <p>American Legal History</p> <p>American Legal Theory</p> <p>English Legal History</p> <p>Equity Concepts Seminar</p> <p>Foundations of Western Law I</p> <p>Foundations of Western Law II</p> <p>Gender and Legal Theory</p> <p>Judging</p> <p>Jurisprudence: Cont. Probs.</p> <p>Law, Medicine &amp; Pub. Policy</p> <p>Life and Death Decisionmaking</p> <p>Postmodern Legal Theory</p> <p>The Constitution at the Start ...</p>

TABLE 3

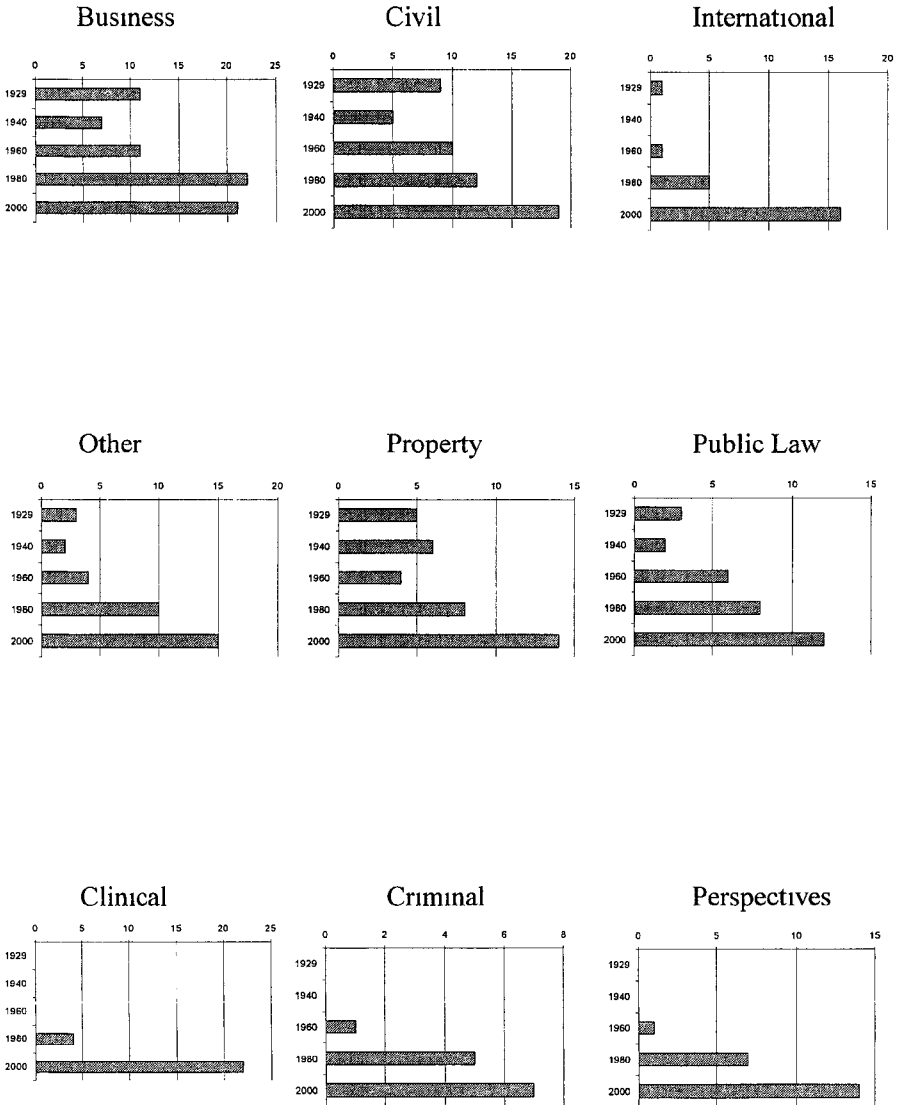


TABLE 4

