Articles

Tamanaha and His Critics: Transatlantic Reflections on the "Crisis" in Legal Education

By Lawrence Donnelly[*]

Abstract

In this article, Lawrence Donnelly, an American born and trained attorney who is now a Lecturer & Director of Clinical Legal Education in the School of Law at the National University of Ireland, Galway, considers Professor Brian Tamanaha's seminal *Failing Law Schools*, a comprehensive critique of legal education in the United States. The article first thoroughly outlines and analyses the central lines of argument in *Failing Law Schools* and then evaluates the scholarship written in response to it. The article next compares and contrasts the state of play in legal education in the US with what is happening in Western Europe and posits that, for a variety of reasons, law schools on the eastern side of the Atlantic Ocean may actually be better – and more realistically – placed at present than their US counterparts. Lastly, the article urges that legal educators around the world continue an open dialogue on the "crisis" Professor Tamanaha presciently identifies in a concerted effort to ensure that law students receive the best possible training to equip them for working in legal careers that may not closely resemble those pursued by their predecessors in light of rapid globalization, ever-improving technology and consequent changes to how legal services are provided.

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A. Introduction: Whither Legal Education in 2015?

"Legal education is a broken, failed, even corrupt enterprise. It exalts and enriches law professors at the expense of lawyers, the legal profession, and most of all the students whose tuition dollars finance the entire scheme."[1] These are the words of Professor James Chen, the eminent former dean of the Louis D. Brandeis School of Law at the University of Louisville. Peruse U.S. media outlets, and one will discover a plethora of news items and opinion pieces proclaiming a terrible state of affairs in legal education. New law graduates are overburdened with debt, have a difficult time landing legal jobs, and are suffering a precipitous decline in salaries. Some law schools have been sued for allegedly massaging figures to improve law school standing to draw more tuition dollars.[2] In the wake of these alarming trends, many legal academics have proposed changes in the traditional model of U.S. legal education—most notably, to reduce the three-year degree to two years.[3]

While widespread media reports on legal education are troubling, Brian Tamanaha's tour de force on the topic, *Failing Law Schools*, has been far more distressing.[4] Tamanaha, the William Gardiner Hammond Professor of Law at Washington University School of Law, has a sterling track record as a scholar and professor, and has published widely in jurisprudence, his area of specialty.[5] Who he is, and what he has done, renders his comprehensive critique in *Failing Law Schools* more compelling, and difficult to rebut, than mainstream journalistic accounts of the "crisis" in legal education.[6] Notably, however, his arguments are not rooted primarily in pedagogy, but in economics.[7]

This article first outlines and evaluates the arguments made in *Failing Law Schools* and then considers the responses to Tamanaha. His critics have voiced countless objections to

[1] *See, e.g.*, BRIAN TAMANAHA, FAILING LAW SCHOOLS (John M. Conley & Lynn Mather eds., 2012).

[2] J. Maureen Henderson, *Why Attending Law School is the Worst Career Decision You'll Ever Make*, FORBES (June 26, 2012), http://www.forbes.com/sites/jmaureenhenderson/2012/06/26/why-attending-law-school-is-the-worst-career-decision-youll-ever-make/.

[3] *Reforming America's Legal Education: The Two-Year Itch*, THE ECONOMIST (Feb. 2 2013), http://www.economist.com/node/21571213/.

[4] TAMANAHA, *supra* note 1; *see also* Michael Olivas, *Ask Not for Whom the Law School Bell Tolls: Professor Tamanaha,* Failing Law Schools*, and (Mis)Diagnosing the Problem*, 41 WASH. U. J.L. & POL'Y 101 (2013) (describing *Failing Law Schools* as "apocalyptic" and a "shrill call to arms").

[5] *See* Philip Schrag, *Failing Law Schools—Brian Tamanaha's Misguided Missile*, 26 GEO. J. LEGAL ETHICS 387, 392 (2013) (noting that Tamanaha has produced a great deal of scholarship—not all of it practical in orientation).

[6] *Id.* at 387; *see also Legal Education Reform*, N.Y. TIMES (Nov. 25, 2011), http://www.nytimes.com/2011/11/26/opinion/legal-education-reform.html?_r=0 (positing that "case method" still employed in U.S. law schools was dated by the 1920s and a relic by the 1960s).

[7] *See* TAMANAHA, *supra* note 1, at xii.

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the analytical methodology and the conclusions reached in *Failing Law Schools*. Three main categories of criticism exist. First, critics assert that Tamanaha overstates the economic burden law graduates face. Second, they claim that his book is a harangue against the free market, which can be relied upon to work and will also itself correct the current "crisis" in legal education. Finally, in a wider sense, his pessimism underestimates the long-term value of a law degree. This article lastly questions the import, if any, of this ongoing debate in the context law schools—in Ireland, specifically, and in Western Europe, generally—now find themselves.

This article posits that law schools on this side of the Atlantic, which face similar challenges as U.S. law schools, may actually be better placed than U.S. law schools overall in 2015. Simultaneously, this article ponders what legal educators might do to ensure we continue to "roll with the punches" in the rapidly changing climate of technology and globalization. This article concludes with a parting thought on the need for international dialogue of what the future holds for legal education.

B. Failing Law Schools: Problems and Solutions?

Brian Tamanaha opens *Failing Law Schools* with an anecdote of his time at St. John's University School of Law in New York City. He recounts when then-Dean Rudy Hasl announced his resignation.[8] At least two of his fellow professors were in a celebratory mood, and they toasted the Dean's departure with plastic cups of whiskey.[9] Tamanaha notes many who were happiest about the news were the guiltiest of contributing to the law school's decline in reputation and to its increasingly fraught atmosphere. They were not producing scholarship; they devoted minimal time to students and teaching; they were seldom present at the law school; they were indulging in private law practices and consultancies; and they had become bitter and cynical about legal education.[10]

Legal academics, regardless of where in the world they are, will undoubtedly recognize their underperforming colleagues in Tamanaha's description of the problematic state of play at St. John's in 1997. To some extent, the recollection of Tamanaha's personal experience synopses his comprehensive and damning evaluation of American legal education in the early twenty-first century. The fourteen subsequent chapters of *Failing Law Schools* are divided into four parts: (1) Temptation of self-regulation, (2) law professors, (3) the *US News* ranking effect, and (4) the broken economic model. The

[8] *See id.* at 1 (stating that Dean Hasl has come under attack on the legal blogosphere as well for claiming that the media underestimates the long-term value of a law degree); *see also* Elie Mystal, *Outgoing Law School Dean Tries To Slip In One Last Dumb Comment*, ABOVE THE LAW (Nov. 9, 2012), http://abovethelaw.com/2012/11/outgoing-law-school-dean-tries-to-slip-in-one-last-dumb-comment/.

[9] *See* TAMANAHA, *supra* note 1, at 1.

[10] *See id.* at 2.

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following summarizes each part with particular attention to issues also faced by law schools on this side of the Atlantic.

I. Temptation of Self-Regulation

Tamanaha outlines a 1995 lawsuit filed by the U.S. Department of Justice against the American Bar Association (ABA), which alleged "legal educators have captured the ABA's law school accreditation process."[11] In many American states, only graduates of ABA accredited law schools are entitled to sit for the bar examination. The ABA ultimately settled the lawsuit, and entered into a consent decree where it agreed to: not share information about pay levels for legal academics in connection with accreditation processes; not exclude for-profit law schools, *per se*, from being accredited; eliminate the prohibition students from transferring from unaccredited to accredited law schools; and to include individuals from outside the ranks of legal academia on their accrediting committees and teams.[12] As Tamanaha observes, this was "[a] humiliating capitulation by the ABA . . . ."[13]

Next, he considers whether *Juris Doctor* programs—the three-year course of law study following an undergraduate degree—must necessarily be three years. As one law school dean has remarked, "[O]ne of the well known facts about law school is it never took three years to do what we are doing; it took maybe two years at most, maybe a year and a half."[14] Tamanaha charts the complex history of how legal education in the U.S. came to be a three-year, postgraduate course of study, and argues there is no compelling justification for why it must be so.[15] He claims that although some lawyers greatly benefit from, and embark upon, careers for which three years of academic training is useful, many do not.[16] For them, a two-year course would be just fine.[17] He argues law schools should be entitled to decide whether its degree is two or three years in duration.[18] He admits that the elite law schools would stay as they are, and many with less sterling reputations would embrace

[11] *Id.* at 11.

[12] *See id.* at 13–14.

[13] *Id*. at 14.

[14] *See id.* at 20 (quoting Big Think Editors, *Stanford Law's Larry Kramer on the Law School Revolution*, BIG THINK (Aug. 2, 2010), http://bigthink.com/the-voice-of-big-think/stanford-laws-larry-kramer-on-the-law-school-revolution).

[15] *See id.* at 20–25.

[16] *See id.* at 27.

[17] *See id.*

[18] *See id.*

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the two-year model.[19] Some might argue that would lead to even further stratification, but Tamanaha claims the two-year course would provide "affordable access to becoming an attorney."[20]

Tamanaha lastly considers the reality that law is both an academic and a vocational discipline. This is particularly the case in the U.S., where the law schools assume—expressly or impliedly—some responsibility for professional training because the U.S. does not have professional training schools like those in Ireland, the United Kingdom, or elsewhere.[21] The tension between academic and vocational discipline is manifest in the complex relationship between those who teach "academic" law subjects and those involved in "practical" teaching, such as clinical legal education.[22]

Tamanaha opines clinicians make valuable contributions to the experiences of thousands of law students in the US, but may have overplayed their hands.[23] Simultaneously, their representative body, the Clinical Legal Education Association (CLEA), assails those who teach "academic" law subjects for failing to prepare students for law practice and having overly favorable conditions of employment and salaries. The CLEA asserts the best way to ameliorate things is to expand these employment conditions and salaries to clinicians.[24] Insofar as clinical programs in the U.S. are extremely expensive for law schools, Tamanaha posits that clinicians "must consider the economic implications of clinical programs and separate more sharply those work conditions they would like for themselves from what is necessary to best educate law students at an affordable cost."[25] But Tamanaha does imply that the extraordinary import placed on scholarship is a substantial, and to some extent unjustified, impediment to some of CLEA's worthy educational goals.[26]

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[19] *See id.*

[20] *See id.*

[21] Marie-Luce Paris & Lawrence Donnelly, *Legal Education in Ireland: A Paradigm Shift to the Practical*, 11 GERMAN L.J. 1067, 1091 (2010).

[22] Todd Berger, *Three Generations and Two Tiers: How Participation in Law School Clinics and the Demand for 'Practice-Ready' Graduates will Impact the Faculty Status of Clinical Law Professors*, 43 WASH. U. J.L. & POL'Y 129, 137–44 (2013).

[23] *See* TAMANAHA, *supra* note 1, at 34–35.

[24] *See id.* at 32–35.

[25] *Id.* at 35; *see also* Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 191–92 (2012) (stating that clinical legal education programs in the U.S., which typically require an extremely low staff-student ratio and a high level of administrative support, have been one of the key factors in driving up the cost of legal education in the U.S.—even though many students never avail themselves of clinical course offerings).

[26] *See* TAMANAHA, *supra* note 1, at 59–60.

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II. About Law Professors

Tamanaha's second part charts the American legal academy's changes over the last century. In short, average teaching loads have declined significantly, while average salaries have climbed equally significantly.

As for salaries, in 1965, the average annual pay for a full-time law professor at a US law school had risen to $16,749 ($120,110 adjusted for inflation) and went up to $30,000 ($215,200 adjusted for inflation) for the best paid in their ranks.[27] The most reliable recent data, which only accounts for approximately one-third of all U.S. law schools and does not include many of the elite law schools paying the highest salaries, features in the 2013 edition of the Society of American Law Teachers (SALT) newsletter.[28] Data reveals an average salary for full-time legal academics, spanning from newly hired assistant professors to full professors, but not including deans, that is well in excess of $150,000.[29] These figures do not account for the summer research stipends—up to $30,000—virtually all the law schools provide, and any additional income legal academics derive from practice, consultancy, media work, and so on.[30] The high rate of pay has always been predicated on the fact that legal academics are highly educated and could make substantially more in full-time law practice.[31] As Tamanaha notes, however, practicing lawyers typically work much longer, and more tedious, hours, and successful performance on law school exams is no guarantee that one would have "cut it" in the rigors of corporate law practice.[32] Looked at any way—and there is no doubt what can be garnered from the SALT newsletter understates the average—American legal academics are now extremely well paid.[33] Their students help bear the cost of their salaries.[34]

In 1941, the teaching load was 6.71 hours per week at elite U.S. law schools, 7.65 hours per week at mid-tier law schools, and 8.66 hours per week at lower ranked law schools.[35] As of

[27] *See id.* at 46 (citing William Ferguson, *Economics of Law Teaching*, 19 J. LEGAL EDUC. 439 (1967)).

[28] *2012–13 SALT Salary Survey*, SALT EQUALIZER (May 2013), http://www.saltlaw.org/wp-content/uploads/2013/06/SALT-salary-survey-20131.pdf.

[29] *See id.*

[30] *See id.*

[31] *See* TAMANAHA, *supra* note 1, at 46–47.

[32] *See id.* at 47–48.

[33] Suffice it to say that legal academics everywhere else will undoubtedly salivate at their American counterparts' salaries.

[34] *See* TAMANAHA, *supra* note 1, at 51–53.

[35] *See id.* at 40.

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2006, teachers at elite law schools taught 3.97 hours per week, and those at schools with lesser reputations taught 5.57 hours per week—and these figures continue to decline.[36] The justification for this marked reduction has been to allow more time to produce scholarship. Yet Tamanaha notes that well-established scholars have continued to be prolific; spending less time in the classroom has had little effect on legal academics who are either somewhere in the middle or at the bottom when it comes to writing and productivity.[37] Moreover, law school deans have rarely penalized underperformers by allocating them additional teaching hours.[38]

Conversely, Tamanaha notes that the deliberate "academicization" of U.S. law schools, with more time and emphasis placed on research output and less on teaching, has led to the marginalization of American legal scholarship. As Justice John Roberts, Chief Justice of the United States Supreme Court, once put it, "[W]hat the academy is doing, as far as I can tell, is largely of no use or interest to people who actually practice law."[39]

As a jurisprudence scholar himself, Tamanaha is keen not to disparage the value of scholarship for scholarship's sake, yet cites a recent study of 385,000 U.S. law review articles—forty percent which are never cited and eighty percent which are cited less than ten times.[40] He notes law professors used to write articles about legal doctrine, often together with, or after, consulting with practitioners and judges, but this no longer counts as legal scholarship.[41] Tamanaha attributes this new reality, at least in part, to the background of new law teachers, who are more likely to have Ph.D. degrees in law or other disciplines than to have spent any time in law practice.[42] The system law schools created, and perpetuated, is responsible for the new reality. In this context, and while not demeaning academic research, Tamanaha observes that "not all law schools and not all law professors ['especially at lower ranked schools where graduates have a lower expected income'] must be oriented toward research" and "society would not suffer if the mountain of writing now coming out of law faculties is cut down to a less extravagant size."[43]

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[36] *See id.* at 42.

[37] *See id.* at 44–45.

[38] *See id.* at 45.

[39] *Id.* at 55 (quoting Adam Liptak, *Keep the Briefs Brief, Literary Justices Advise*, N.Y. TIMES (May 21, 2011), http://www.nytimes.com/2011/05/21/us/politics/21court.html?pagewanted=all&_r=0); *see also* Harry Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

[40] *See* TAMANAHA, *supra* note 1, at 56.

[41] *See id.* at 56–57.

[42] *See id.* at 57–59.

[43] *Id.* at 61.

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In summing up his exposé on inconvenient truths for the US legal academy, Tamanaha details the additional costs—which are born to a great extent by students—inherent in the "less teaching, higher salaries" model law schools have embraced.[44] He concludes, "While Harvard has the financial heft to pull it off, most law schools do not."[45]

III. The US News *Ranking Effect*

In the third part of *Failing Law Schools*, Tamanaha turns his attention to the American law school ratings published annually by *US News & World Report* magazine:[46] "Despite many criticisms from legal academics that the rankings are misleading and counterproductive, it is undeniable that the *US News* rankings now play a substantial role in shaping the way American law schools are evaluated by students, alumni, employers, and even many faculty."[47] This central fact of life for law schools in the US has had myriad consequences. Tamanaha focuses in on the most disturbing consequence: To improve their position in the *US News* rankings, many American law schools have played "fast and loose" with figures relating to graduate employment and salaries; others have outright lied.[48]

Tamanaha does not shy away from naming those law schools whose behavior has been ethically questionable. For instance, Villanova University Law School was forced to admit it submitted inflated Law School Aptitude Test (LSAT) scores on several occasions.[49] The University of Illinois College of Law admitted students with high grade point averages (GPA) without requiring an LSAT score.[50] At least one elite institution, Northwestern University Law School, hired its unemployed graduates to improve statistical showings.[51] When reporting the numbers of employed graduates, a huge percentage of law schools boost figures by including paid employment—whether their jobs require a law degree or involve law at all.[52] This behavior prompted lawsuits from students, and a number of blogs,

[44] *See id.* at 62–68.

[45] *Id.* at 68.

[46] *See id.* at 71 (stating that rankings have been published on an annual basis since 1987).

[47] Robert Jones, *A Longitudinal Analysis of the U.S. News Law School Academic Reputation Scores Between 1998 and 2013*, 40 FLA. ST. U. L. REV. 721, 722–23 (2013).

[48] *See* TAMANAHA, *supra* note 1, at 71–84.

[49] *See id.* at 74.

[50] *See id.* at 82–83.

[51] *See id.* at 73.

[52] *See id.* at 71–72.

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such as *Third Tier Reality* and *Inside the Law School Scam*, which law professors, students, and other anonymous stakeholders contribute to.[53]

As Tamanaha concludes:

> [S]ince students rely heavily on the *US News* rankings in their decision, schools are forced to maximize their rank to succeed in the competition. Law schools are helpless to do otherwise as long as these conditions hold. . . . A conscientious dean who refused to engage in questionable number reporting or any of the other dubious practices risked not just her continued tenure as dean but the standing of her institution, which would pay the price for her scruples by looking worse than competitor institutions that were being less forthright.[54]

Perhaps the most tangible consequence of the *US News* rankings has been its perpetuation of elite law school dominance and the career prospects of students from wealthy backgrounds, who don't require financial assistance to access these institutions, and the myriad gilded doors their *imprimatur* ultimately opens.[55]

IV. The Broken Economic Model[56]

Tamanaha focuses on the recent explosion of costs for legal education. Elite law schools have led this disturbing trend. For instance, Yale Law School's yearly tuition was $12,500 in 1987; $26,950 in 1999; and $50,750 in 2010.[57] By any measure, this extraordinary—and many would say outrageous—increase in less than twenty-five years vastly outpaces the rate of inflation. All law schools have taken a similar pattern.[58] The median tuition rates for

[53] *See id.* at 75–78.

[54] *Id.* at 83–84.

[55] *See id.* at 96–103. (detailing the rise in the number of scholarships being offered to many law schools aspirants with high GPAs and LSAT scores. Of course, the top law schools only offer scholarships to a tiny sliver of outstanding students. Those students who are "next best" will be offered admission, but little financial assistance that they will not need to pay back. Consequently, "next best" students who are not financially well off are more likely to attend less highly-ranked law schools which offer them scholarships).

[56] Running to nearly eighty pages, this is, by far, the lengthiest section of *Failing Law Schools*. It is dealt with in relatively short shrift here because the situation in the U.S. is different to what prevails in Europe.

[57] *See id*. at 109.

[58] *See id*. at 108.

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US private law schools were $15,438 in 1985; $24,988 in 1995; $33,021 in 2005; and $39,496 in 2011.[59] Average tuition at public law schools rose by $15,000 between 2002 and 2012.[60] Again, the rate and extent of increase are staggering.[61]

Why the increase? Tamanaha attributes the rapid rise in law school tuitions to seven factors.[62] The first two are probably the most significant. First, "[l]aw faculties have grown owing to reduced teaching loads to facilitate research and the expansion of clinical programs and legal writing staff."[63] This stems from the drive to produce scholarship, which is emphasized by the *US News* rankings, and from complaints a series of reports indicating graduates were not prepared for law practice.[64] The second factor is the surge in law professor pay, prompted by competition for the most productive legal scholars.[65]

The remaining five factors are: The jump in pay at corporate law firms, which increased the number of law school applicants and helped law professors argue for higher salaries; the broader introduction of large grants to support research output; merit, partial, and full scholarships to attract a stronger caliber of students; the siphoning off of law school revenues by the larger universities of which they are a constituent part; and funding reductions by state legislatures who control the budgets of public law schools.[66]

What have been the effects of the increase? The primary, and most dramatic, impact on law graduates has been the amount of debt they must service.[67] The average educational debt—including both undergraduate study and law school—was $15,676 in the mid-1980s, and $47,000 in 1999.[68] It was $87,538 in 2010.[69] The last figure is astonishing. At the same time, as law schools have produced more and more graduates, the number of high paying, entry level jobs has diminished. These jobs are usually available only to graduates of the

[59] *See* Campos, *supra* note 25, at 177, 182.

[60] *See* TAMANAHA, *supra* note 1, at 108.

[61] The author has witnessed this firsthand. Tuition at my alma mater, Suffolk University Law School in Boston, was $19,500 in my final year, 1998–99. Tuition for academic year 2014–2015 was $45,900.

[62] *See* TAMANAHA, *supra* note 1, at 126–27. The reasons Tamanaha offers are unassailable.

[63] *Id.* at 126.

[64] *See id.*

[65] *See id.*

[66] *See id.* at 126–27.

[67] *See id.* at 107–108.

[68] *See id.* at 109.

[69] *See id*.

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highest ranked law schools or, to a lesser extent, to those who finish at the top of their class at law schools held in lower esteem.[70] Those who do not obtain law jobs starting in the six figures find themselves in lower paid legal employment or, increasingly and alarmingly, in jobs which do not require a law degree, and inevitably find themselves struggling with huge debt.[71] Some even default. Income-based repayment plans and progressive legislation facilitating student loan forgiveness after debt have been serviced for a requisite time period and have made things more bearable for people in difficulty.[72] Tamanaha argues this less than desirable option was intended only as a last resort.[73] Yet it will be availed by a substantial percentage of law school graduates in the future to the detriment of U.S. taxpayers.[74]

What does Tamanaha offer by way of solution? First and foremost, Tamanaha believes law school applicants should perform a financial cost-benefit analysis before taking the plunge. For a significant number, this will likely lead to the conclusion that law school, in the present climate, is not worth it.[75] As the declining numbers of students entering law schools now manifest, together with the climate of alarm and uncertainty prevalent at so many U.S. law schools, Tamanaha proffers that the economic foundations of the entire enterprise are collapsing, and change is necessary. He moots a number of reforms: Allowing differentiation in legal education—for instance, by allowing law schools to offer two-year degrees; cutting costs further by limiting or outsourcing clinical legal educations programs, requiring professors to teach more classes, cutting the number of

[70] *See id.* at 112–88; *see also* Campos, *supra* note 25, at 177, 206–15.

[71] *See* TAMANAHA, *supra* note 1, at 118–25.

[72] *See id.* at 119–25. Income-based repayments are discussed in more detail in Part III.

[73] *See id.* at 123–25.

[74] *See id.* at 124–25. Tamanaha writes:

> Predictably, legal educators have now incorporated IBR (income-based repayments) into their sales pitches. A law professor asserted in a national law magazine in 2011 that owing to the benefits of IBR law school debt Is not that bad. "After 25 years, any remaining loan balance is forgiven . . . . Moreover, the loan forgiveness aspects of these plans are basically back-end scholarships." This is a cavalier way to speak about the lives of graduates who will spend the bulk of their professional careers in a program designed to help people in financial hardship. What law schools portray as a "back-end" scholarship the graduates will experience as a life-crimping financial ball and chain. From the standpoint of the national fisc, it is worrisome when law schools try to introduce naïve students to enter law school by telling them that they won't really have to pay back the scary loan amounts if things don't work out.

[75] *See id.* at 135–44.

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administrators, and eliminating or downsizing law libraries; removing the American Bar Association from the accreditation process, and make unaccredited, less expensive law schools a more viable option; and capping federal student loan totals by school.[76]

As Tamanaha himself admits in a later article written in response to the critics of *Failing Law Schools*, however, "[F]rankly, I don't like my own proposals. . . . I would happily abandon my proposals for better ones. But I have yet to see any suggestions from critics that solve the fundamental problems that plague legal education."[77] Perhaps there are no good solutions for the large problems identified by Tamanaha, or for the underlying "crisis" he argues the problems are emblematic of. Not all agree the situation is as dire.

C. The US Legal Academy Responds

In that same article, Tamanaha observes that he has been criticized

> for being against scholarship, against clinics, and against libraries, for being elitist and self-serving, for imperilling academic freedom, promoting a race to the bottom, ignoring the underserved population in society, trying to destroy the world's greatest legal education system, threatening to undermine the rule of law, and for advocating a terribly retrogressive system.[78]

Given the inherently incendiary nature of a book called *Failing Law Schools*, Tamanaha should not be surprised by serious criticism. The following displays an examination of compelling critiques of Tamanaha's views offered by American legal academics.

Professor Philip Schrag of Georgetown University Law Center rebuts Tamanaha's arguments concerning the surging debts of American law graduates; he considers the effects of the income-based repayment (IBR) option, which was created by the Congress in 2007.[79] Schrag posits Tamanaha overstates how burdensome law school debts will be in the long-term and understates how flexible the terms of repayment can be. He argues Tamanaha fails to recognize that, even if IBR is aptly characterized as a subsidy for higher

[76] *See id.* at 172–81.

[77] Brian Tamanaha, *The Problems with Income Based Repayment, and the Charge of Elitism: Responses to Schrag and Chambliss*, 26 GEO. J. LEGAL ETHICS 521, 539 (2013).

[78] *Id.* at 538–39.

[79] *See* Schrag *supra* note 5, at 387.

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education, nearly every aspect of American life is subsidized.[80] Schrag's "nuts and bolts" fiscal points about IBR are only bolstered by President Barack Obama's recent executive action to allow IBR for all federal student loan borrowers, regardless of when borrowed.[81] The executive action will cap monthly student loan payments at ten percent of discretionary income, and will forgive any remaining loan debt after twenty years.[82] Notwithstanding legitimate concerns about holding the government accountable for the remaining debt, the actions of Congress and President Obama poke holes in Tamanaha's arguments about overwhelming law graduate debt.

Ohio State University Moritz College of Law Professor Deborah Jones Merritt and Daniel Merritt, while largely agreeing with Tamanaha's findings in *Failing Law Schools*, propose a radical, free market solution:[83] To "deregulate the legal profession by abolishing prohibitions against the unauthorized practice of law."[84] In the Merritts' model, prospective clients could require specific levels of skill and expertise, depending on the nature of the work, when hiring individuals or organizations.[85] Acknowledging that some might scoff at this notion, the Merritts opine that clients, now better equipped than ever to research service providers in the "information age," would retain the benefit of consumer protection and anti-fraud legislation.[86] Furthermore, they claim that attempts to regulate lawyers to prevent harm to clients have failed, and the Meritts' model would not have net impact on the inadequate provision of legal services to those without means.[87] They argue law schools would still be involved in education and training, but the methodologies would change, and the number of law schools would inevitably decrease.[88] Albeit unsettling, the Merritts claim these developments are likely to occur anyway.[89] Undeniably, most involved in legal education and practice cannot imagine the Merritts' vision, which lies well beyond the realm of *Failing Law Schools*. It is also undeniable that

[80] *See id.* at 394–405.

[81] Michael Stratford, *Obama Expands IBR, Pushes Refinancing*, INSIDEHIGHERED (June 10, 2014), http://www.insidehighered.com/news/2014/06/10/obama-expands-income-based-repayment-older-borrowers-pushes-democrats%E2%80%99-student-loan.

[82] *See id.*

[83] Deborah Jones Merritt & Daniel Merritt, *Unleashing Market Forces in Legal Education and the Legal Profession*, 26 GEO. J. LEGAL ETHICS 367 (2013).

[84] *Id.* at 380.

[85] *See id.* at 381.

[86] *See id.* at 381–82.

[87] *See id.* at 383–84.

[88] *See id.* at 382–85.

[89] *See id.*

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the future will likely resemble the Merritts' description more than the status quo, and there are glimpses of the Merritts' vision in various reforms already initiated internationally.[90]

Stanford Law School's Professor Deborah Rhode writes that "[t]he recent chorus of 'crisis' rhetoric should remind us of our obligation to do better."[91] Although Rhode is not sure legal education is in such dire straits, she proposes several reforms.[92] First, she argues law schools still do not offer sufficient opportunities for students to acquire practical skills; current clinical and related offerings, she maintains, are at the fringes of U.S. legal education, and are taken up by a small percentage of students.[93] Furthermore, she claims this gap is not impossible to fill because it is resource intensive.[94] Instead, a lot "can be accomplished with existing resources through case histories, problems, simulations, cooperative projects, and interdisciplinary collaboration."[95] Next, she submits that values—broader than merely professional rules and including: Morality and ethics, *pro bono* service, and the duty of the legal profession and diversity—must become a core, rather than a peripheral, component of legal education.[96] Lastly, similar to Tamanaha, she advocates differentiated law degrees.[97] Specifically, Rhode explains that law schools could provide one or two year programs, which would allow graduates to provide basic legal services; that they could accept students who have not yet completed an undergraduate degree; and that they could develop niche areas of specialization with heightened reliance on adjunct teachers and online course delivery.[98]

Professor Michael Hoeflich of the University of Kansas School of Law has a relatively straightforward solution to the "scathing indictment" in *Failing Law Schools*:

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[90] In another thoughtful article written in response to Tamanaha, one commentator provides a similarly futurist, though not as far-reaching and detailed, prescription, noting both that the challenges facing law schools are not altogether different from the challenges facing universities in general and that the only way for law schools to react is to embrace things like online education. *See* Ray Worthy Campbell, *Law School Disruption*, 26 GEO. J. LEGAL ETHICS 341 (2013).

[91] Deborah Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437, 459 (2013) (original quotation marks omitted).

[92] *See id.* at 438–59.

[93] *See id.* at 448–49.

[94] *See id.* at 449.

[95] *Id*.

[96] *See id.* at 450–53.

[97] *See id.* at 455–56.

[98] *See id*.

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"[R]einstituting a version of the traditional method of legal education: apprenticeship."[99] Hoeflich writes that the standard outmoded model of American legal education lasted so long because it was de facto differentiated—graduates of the elite law schools went into large firms or high-ranking positions in the federal government; graduates of other law schools went into small firms, state government, or careers outside the law.[100] Law schools, in their respective practices, reflected that difference because a greater premium was placed on scholarship, and higher tuitions were charged at the former.[101] This distinction has slowly blurred.[102] Students at public and lower ranked law schools are forced to pay exorbitant tuitions to embark upon potentially unsustainable career paths. To counter this reality, Hoeflich argues his state of Kansas should adopt another path to qualify lawyers:[103] Three semesters of law school and an apprenticeship of eighteen months.[104] To prevent the concerns inherent in the "outsourcing" of legal education, Hoeflich asserts: (1) There must be a system for accrediting law offices where law students could serve as apprentices; (2) the bar exam must be carefully crafted to ensure those who sit for it are fully prepared to do so; and (3) there must be clearly delineated and closely monitored guidelines about who may supervise apprentices.[105]

Of the legal academics who posed trenchant objections to *Failing Law Schools*, the most convincing is Professor Michael Olivas of the University of Houston Law Center.[106] Olivas opens with fighting words:

> The real Cassandra, however, is Professor Brian Z. Tamanaha, whose apocalyptic book *Failing Law Schools* is a shrill call to arms, a substantial work of powerful charges and dire solutions, well-written and arriving at a crucial time in legal education, in the United States and worldwide. I believe he holds powerful diagnostic skills and has a storyteller's narrative, but I believe his solutions are substantially wide of the mark, and would

[99] Michael Hoeflich, *Rediscovering Apprenticeship*, 61 U. KAN. L. REV. 547, 547–48 (2012).

[100] *See id.* at 551.

[101] *See id.* at 552.

[102] *See id.*

[103] *See id.* at 553.

[104] *See id.*

[105] *See id.* at 556.

[106] *See* Olivas, *supra* note 4, at 101.

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> violate the code that remedial actions should, at the least, do no harm.[107]

Notwithstanding the diminishing number of LSAT takers in recent years, Olivas claims the decline is relatively small, and the talent pool from which US law schools can choose continues to expand, with more international students seeking American legal education.[108] Moreover, he states Tamanaha glosses over the role students, by living beyond their means as law students, play in exacerbating debt burdens upon graduation.[109] Olivas also points out that, even though Tamanaha is highly critical of the role of the ABA in legal education, the reality is students at ABA-accredited law schools receive a superior education, manifested by far better bar passage rates than those who attend unaccredited schools.[110] Furthermore, Olivas refuses to accept statistics showing more law graduates working in non-legal fields as evidence of declining competence—rather, they show the transferrable analytical value of the skills inculcated in law school.[111] While conceding *Failing Law Schools* is a "needed wake up call," Olivas opines Tamanaha's "solutions" would only exacerbate undeniable problems.[112]

Olivas alleges first that, if the powers that be acted upon Tamanaha's attack on the existing student loan system, it would further stratify legal education and the profession, and ensure that substantially fewer putative law students would be able to access the financial support they need.[113] Additionally, Olivas refuses to accept the criticisms Tamanaha levels at the American legal academy.[114] The purported selfishness and indolence Tamanaha instances in *Failing Law Schools* belie Olivas' experience of scholars committed to their students, their institutions, and the law and legal system.[115] Olivas states that the overinflated salaries Tamanaha cites are not reflective of the situation in many U.S. law schools, where junior faculty sometimes make as much, or more, than colleagues who have been at the same institution for considerably longer.[116] Lastly, Olivas forcefully argues

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[107] *Id.* at 101–02.

[108] *See id.* at 109–10.

[109] *See id.* at 111.

[110] *See id.* at 111–12.

[111] *See id.* at 126–27.

[112] *See id.* at 115–18.

[113] *See id.* at 118–20.

[114] *See id.* at 119–30.

[115] *See id.* at 120–22.

[116] *See id.* at 121.

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"increasing the number and percentage of contingent and transitory faculty will diminish the overall quality of the enterprise, and should be resisted vigorously, rather than regressing to the churning mean of a part-time faculty, serving as independent contractors."[117]

D. (Ir)Relevance of Tamanaha's Critique on this Side of the Atlantic?

There is much to digest in Professor Brian Tamanaha's *Failing Law Schools* and the American legal academy's multi-faceted ongoing response. But what relevance, if any, does the burgeoning body of so-called "crisis literature" and subsequent debate have for those of us working on the other side of the Atlantic? It is to a consideration of this and consequentially related questions that this article now turns. Five areas, each of which features prominently in the "crisis" literature, and which are points of transatlantic convergence and divergence, are examined. This examination realizes there are common yet wholly dissimilar challenges confronting legal academics in the U.S. and Western Europe. It also leads the author to a conclusion, however tentative and generalized, that—whether one calls it a "crisis" or not—the current situation in the U.S. is slightly more daunting than it is here.

I. Costs/Tuition

The second most significant point of transatlantic divergence in legal education is the matter of costs or tuition.[118] The costs of attending American law schools, both public and private, rest comfortably beyond the imagination of most Europeans. Unlike the U.S., higher education in Europe is heavily government-subsidized. For example, the annual cost of studying for a full-time, three, or four year law degree in Ireland in 2014–2015 will be €2,750—a tiny fraction of the average annual tuition at American law schools.[119] Even allowing for a considerable rise in fees to study law in the UK in recent years, much of the American literature on this point is inapposite to the European experience.[120]As a result, legal educators operate in parallel universes. By way of examples, the most senior professors in Ireland, the UK, and elsewhere typically earn less than half of what similarly

[117] *Id.* at 126.

[118] By some distance, the most significant difference is that law is taught at the undergraduate level in Western Europe and at the postgraduate, doctoral level in the U.S.

[119] The figures on annual fees for third-level students in Ireland, termed registration fees are available on the Citizens Information Service of Ireland website. *Third-Level Student Fees and Charges*, CITIZENS INFORMATION, http://www.citizensinformation.ie/en/education/third_level_education/fees_and_supports_for_third_level_education/fees.html (last visited Aug. 7, 2015).

[120] Rowena Mason, *Universities Minister Refuses to Rule Out an Increase in Fees,* THE GUARDIAN (Mar. 23, 2014), http://www.theguardian.com/education/2014/mar/23/tuition-fees-catastrophe-lib-dems-labour (noting that UK university fees have already tripled to up to £9,000 in 2012).

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placed colleagues are paid in the U.S., and are not bestowed institutional research grants as generous; administrative and other support for legal academics in Europe do not approximates what is available in the US; and clinical legal education and other experiential learning programs are not, nor can they ever be, as well-staffed, resource-laden, and personalized in Europe as they are in the U.S. Leaving aside all of the positive and negative consequences of the differing financial models, Tamanaha's economic analysis, fundamental as it is to his view that American legal education is in "crisis," is, at most, an outlying concern in Europe.

II. Structures

Commentators have explained that law school autonomy in the U.S. has eroded in recent years by virtue of being a part of a broader university. This gradual erosion has led to an increasing "emphasis on scholarship rather than professional training described by Tamanaha" and, despite the role of accreditation bodies as co-arbiters of law degree content, "in the long run the same sociological structures pushing university faculty toward valuing research and the same economic pressure pushing other departments toward more efficient models will be felt in law schools."[121] Others claim the universities which law schools are a part of treat them as "cash cows" and deliberately inflate tuition to fund other ventures and programs.[122]

In recent years, there has been a more rapid erosion of law school autonomy in universities in Ireland and elsewhere. The diminution was accomplished more quickly here because of law's standing as one of a multitude of undergraduate academic disciplines that is not vocational in the same way it is in the U.S., given that law graduates must subsequently attend professional schools, combining both further study and structured apprenticeship, before qualifying as lawyers.[123] Once free standing entities, most law schools in Ireland are now part of larger colleges, which pair them with business schools or wide-ranging humanities disciplines. These changes, and the centralization initiatives that have typically accompanied them, show that a growing number of law schools do not have the independence they once did. It has been argued that this has had several detrimental effects. Namely, there are echoes of the "cash cow" factor cited above; ill-suited research metrics, and hiring and promotional criteria have been implemented and applied; and law students now lack the same identity and sense of purpose had in the past.[124]

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[121] Ray Worthy Campbell, *Law School Disruption*, 26 GEO. J. LEGAL ETHICS 341, 348, 353 (2013).

[122] *See* Richard Bourne, *The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*, 45 CREIGHTON L. REV. 651, 686 (2012).

[123] *See* Paris & Donnelly, *supra* note 21, at 1070–78.

[124] For a more detailed discussion on this point, see Lawrence Donnelly, *Clinical Legal Education in Ireland: Some Transatlantic Musings*, 4 PHX. L. REV. 7, 12–14 (2010).

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In contrast, with respect to the issue of structures, a common theme in the "crisis" literature is the notion that variation should be allowed in what is taught in a law degree and how it is taught. As these advocates observe, there are structural and institutional obstacles to doing so.[125] One advantage of not being responsible, explicitly or implicitly, for professional, in addition to academic, training in the law is that law schools in such jurisdictions can offer the courses they like. This has led to a proliferation at law schools in Ireland and throughout Europe of multi-disciplinary degrees and law degrees including a foreign language component with a year spent abroad.[126] In order to place problem-based learning at the core of its students' educational experience, York Law School in the UK has recently done away with traditional classroom or lecture theatre instruction altogether. The curriculum centers on problem-based teaching with a heavy emphasis on clinical and experiential legal education.[127] This is a dramatic shift in university legal education in a still rather traditional setting. It will be interesting to evaluate the results of the "York experiment" in years to come.

III. Pedagogical Innovation: Clinical Legal Education and Experiential Learning

At the close of a reform-minded article drawing on historical debates about legal education and taking due account of more recent criticisms leveled in various reports and by members of the bar, Professor A. Benjamin Spencer, then of Washington & Lee University School of Law, writes it is time for legal academics in the U.S. to abandon the old ways of doing things and move "toward a truly twenty-first century program of professional legal education that prepares graduates for practice."[128] University legal academics in jurisdictions where graduates must attend professional schools prior to being admitted to practice might justifiably bristle at this notion. That said, there can be no questioning the growth of clinical legal education programs and endeavors to promote experiential learning in Western Europe, once referred to as the "last holdout" in this sphere, in recent years.[129] These efforts, the purpose which does not aim to only produce "practice-ready" graduates, are nonetheless a departure from the old way of doing things on this side of the Atlantic. Those of us who have worked to introduce, expand, and enhance clinical legal education programs in Western Europe have always regarded the programs at U.S. law schools—which focus on "live client" interaction and student representation of actual

[125] *See* Rhode, *supra* note 91, at 437, 446–56.

[126] *See* Paris & Donnelly, *supra* note 21, at 1088.

[127] *See* UNIVERSITY OF YORK, YORK LAW SCHOOL (Aug. 7, 2014), http://www.york.ac.uk/law/undergraduate/ (providing more information on the undergraduate curriculum at York Law School).

[128] A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2063 (2012).

[129] Richard Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823 (2009).

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clients in real cases, providing students with practical experience and a cognizance of the law's capacity for promoting social justice in the process—as the "Rolls Royce" model to aspire to.[130] At the same time, it is intriguing and disheartening to read in "crisis" literature that there are sustainability issues for clinical legal education in the U.S. Tamanaha claims the objective of integrating skills training throughout the curriculum and ensuring that a majority of law school students take part in a clinic is "infeasible financially under the current model, which allocates such large amounts of time to faculty scholarship."[131] The point is made elsewhere that "expenses associated with clinical legal education can be reduced through greater use of well-designed externship programs, which allow students to obtain many of the same benefits at a radically reduced cost."[132]

Could clinical legal education really be in decline in the U.S.?[133] Although the rhetoric emanating from certain quarters seems overly pessimistic, there is almost no doubt that clinics would be devastated if more American law schools move to a two year Juris Doctor degree. Students would surely take doctrinal courses to prepare for the bar exam, and obtain practical experience outside of their studies.[134] Moreover, if law schools are forced to cut spending, it is difficult to envisage an easier target for defunding than clinics. If those making the direst of predictions for U.S. law schools are ultimately proven correct, it could be that those of us in Europe whose clinics and/or experiential learning programs are externship or simulation-based are much better off relatively than had previously been thought. The birth of the European Network of Clinical Legal Education (ENCLE), focused on sharing experiences and resources internationally, and national organizations, like the Irish Clinical Legal Education Association (ICLEA), together with clinic-centric law schools, like Northumbria University Law School in the UK, might allow for this transformative pedagogical innovation to flourish and narrow the gulf between ourselves and the rest of the world.[135]

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[130] *See* Donnelly, *supra* note 124, at 9–11.

[131] TAMANAHA, *supra* note 1, at 59.

[132] Campos, *supra* note 25, at 177, 217.

[133] As someone passionately committed to clinical legal education, I pose this question and scenario with a heavy and disbelieving heart.

[134] Although it is not dispositive, the fact that the vast majority of law students who take part in clinical courses do so in their third year is indicative that clinical programs would become much smaller at many law schools and disappear entirely if the JD degree were shortened to two years. *See* Carole Silver, *Getting Real about Globalization and Legal Education: Potential and Perspectives for the US*, 24 STAN. L. & POL'Y REV. 457, 476 (2013).

[135] For more information on ENCLE, see ENCLE (Aug. 7, 2014), http://encle.org/; for more information on ICLEA, see *Recent Developments in Clinical Legal Education*, PILA (Dec. 12, 2012), http://www.pila.ie/bulletin/2013/january-2013/16-january-2013/recent-developments-in-irish-clinical-legal-education/; for more information on Northumbria University Law School, see NORTHUMBRIA LAW SCHOOL (Aug. 7, 2014), https://www.northumbria.ac.uk/about-us/academic-departments/northumbria-law-school/.

IV. Research and Scholarship

One of the most lamentable observations made in *Failing Law Schools,* and echoed in the responding articles and reviews, is that legal scholarship in the U.S. is becoming irrelevant. As Tamanaha notes, despite the growth—both in overall numerical terms and in individual length—of American law review articles, they are seldom referred to by the courts, of little or no use to practitioners, and are often never, or rarely, cited after being written.[136] It could be argued that legal scholarship in the U.S. might have much less impact now than it did in the past.[137] In Ireland, at least, things have not reached this unfortunate stage.[138] Academic writings are often referred to in court judgments and feature prominently in practitioners' work. Comments made by judges and practitioners in Ireland about the scholarship of legal academics are reverential, not dismissive.[139] Nonetheless, a trend outlined by Tamanaha in his examination of the reasons for the increasingly esoteric and practically irrelevant nature of legal scholarship in the U.S. is mirrored here, and may produce a similar outcome in time. In the US, law professors now typically have little or no experience of law practice. Many have Ph.D. degrees either in law or another discipline.[140] As such, they probably have neither the background nor the inclination to produce books and articles that will be useful to the legal profession. In Ireland, a PhD. has become the *sine qua non* of entry into the legal academy; a professional qualification or experience of law practice now means little, if anything.[141] Accordingly, it is an open question as to whether scholarship produced by the new and coming generations of Irish legal academics will remain as valued by lawyers and judges in the future. Still, the strong tradition in that regard, as well as a pronounced emphasis on impactful research and the fact that law review articles are ordinarily shorter and tighter in scope in European outlets than in their American counterparts, militate against an emulation of what has happened in the U.S.

[136] *See* TAMANAHA, *supra* note 1, at 55–58.

[137] David Hricik & Victoria Salzmann, *Why There Should Be Fewer Articles Like This One: Law Professors Should Write More for Decision-Makers and Less for Themselves*, 38 SUFFOLK U. L. REV. 761, 766–87 (2005).

[138] *See, e.g.*, THE IRISH ASSOCIATION OF LAW TEACHERS: 30 YEARS OF LEGAL SCHOLARSHIP (Thomas Mohr & Jennifer Schweppe eds., 2011).

[139] For example, a cursory Westlaw search reveals that my colleague in the School of Law at the National University of Ireland, Galway, Tom O'Malley, is frequently cited and deferred to by judges of the Irish superior courts and by practitioners in the area of criminal law.

[140] *See* TAMANAHA, *supra* note 1, at 57–58.

[141] *See* Donnelly, *supra* note 124, at 14.

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Lastly, Tamanaha refers to what is a largely intractable truism of university life in all disciplines everywhere: Academics producing little or no scholarship.[142] A few academics are prolific scholars; a few are consistently poor underperformers; and the overwhelming majority fall somewhere in between. Other than reallocating tasks within a law school along the research-teaching-administration continuum to ensure greater equivalence of contribution, it is an extremely tough nut to crack.

V. Graduate Career Prospects

In asking whether an American law degree is a worthwhile investment in the early twenty-first century, Tamanaha and others decry the tough job market facing today's law graduates.[143] They also fret that American law graduates are no longer assured a career as a practicing lawyer, or even in employment requiring a law degree.[144] Again, these have long been facts of life in Europe, where historically, a significant percentage of people who studied law have gone on to related, or even wholly unrelated, careers.[145] Of course, the major difference is that American postgraduate legal education has a greater vocational dimension than undergraduate study in Europe. That distinction notwithstanding, it is in many respects advantageous and definitely less morally vexing to welcome and teach new law students who do not, and should not, have the same expectations of what path their law degrees will necessarily put them on. Informal polls taken at my own law school during the past academic year indicate that only about half of our students wish to qualify as lawyers in Ireland; the others desire either to use their law degrees to pursue other career options or to qualify as lawyers in other European countries or elsewhere around the globe. That they are younger and largely unencumbered by the same potentially crippling financial debt as U.S. law graduates allows them greater freedom to consider a panoply of career options.

Notwithstanding the foregoing points, law graduates in Ireland and the UK, in particular, who want traditional legal careers as solicitors and barristers, are in an unenviable position.[146] As the number of law graduates, and those who come from non-law

[142] *See* TAMANAHA, *supra* note 1, at 2; *see also* David Gregory, *The Assault on Scholarship*, 32 WM. & MARY L. REV. 993, 996–97 (1991).

[143] *See* TAMANAHA, *supra* note 1, at 107–25.

[144] *See id.* at 114–18.

[145] Law schools in Europe do not deny that this is the case. My own law school, as do others, describes the diversity of previous graduates' career paths as a strength and indicative of the versatility of a law degree. *See Alternative Careers in Law*, NUI GALWAY, http://www.nuigalway.ie/media/nuigalwayie/content/files/collegesschools/businesspublicpolicylaw/documentsforms/Alternative-Careers-in-Law.pdf (last visited Aug. 8 2014).

[146] *See* Alex Aldridge, *Law Graduates Face a Bleak Future at the Bar*, THE GUARDIAN (Nov. 25, 2011), http://www.theguardian.com/law/2011/nov/25/law-graduates-bleak-future-bar.

backgrounds, has risen or stayed approximately the same, the number of opportunities for a viable start in law practice has decreased.[147] The unflagging popularity of law, and expanded access to law study, coincided with a period of global economic calamity.[148] Moreover, a variety of mooted, and already implemented, reforms to the legal profession could dramatically change the nature of law practice and ultimately mean that there will not be the need for as many lawyers.[149] Without delving into the specific circumstances of individual European countries, it suffices to say that law graduates in Europe intending to practice as lawyers will have to overcome different, but equally complex, obstacles as those in the U.S. if they are to succeed. It is not unduly pessimistic to state that their prospects are more uncertain and bleaker than those of previous generations. This new reality is inextricably intertwined with the inexorable march onward of technology and globalization.[150]

VI. The Future: Overarching Thoughts

This thorough review and analysis of the "crisis" literature in the U.S. and some considered reflection, undertaken concurrently with continuing dialogue with fellow legal academics in Europe, has led not to despair or panic, but to unease. That is healthy. Complacency must be the common enemy of all educators. Tamanaha and his critics have started a conversation that rages on in the American legal academy, but would be considered as other-worldly by many in Western Europe. The majority of the threats that must be overcome in the U.S. vary in nature, source, and extent from those in Europe. Some similar threats are on the horizon here, and there are also uniquely European matters that need to be addressed. It is this author's view, however, that the threats in the U.S. are more imminent and will prove harder to overcome, at least in the short term. Money, as ever, is the central element in this calculus. The gulf between the expectations of American and European law graduates is another key factor. Whether Tamanaha's rather apocalyptic end scenario comes to pass or not, some pain and restructuring lies ahead. On the bright side, that will create opportunities for reinvention and reinvigoration.

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[147] *See id.*; *see also* Shannon Sweeney*, Law Graduates Face Difficulty Obtaining Employment*, THE GLOBAL LEGAL POST (July 1, 2014), http://www.globallegalpost.com/big-stories/law-graduates-face-difficulty-obtaining-employment-51323138/.

[148] *See* Aldridge, *supra* note 146.

[149] The Legal Services (Regulation) Bill 2011 in Ireland contains such far-reaching reforms, though the Bill has not made its way through the parliament. *See Legal Services Regulation Bill 2011 Law Society Annual Conference*, DEP'T OF JUSTICE AND EQUAL., http://www.justice.ie/en/JELR/Pages/SP12000102 (last visited Aug. 8, 2014).

[150] Adam Cohen, *Just How Bad Off Are Law Graduates*, TIME (Mar. 11, 2013), http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates/ (noting that globalization allows law firms to outsource work to India and other places where legal services are less expensive and that technological advances mean that software programs can perform previously labor intensive document review projects. Neither of these developments is good for recent law graduates—in the U.S. or in Europe).

Finally, it is folly to seek to characterize the "crisis"—or whatever term one uses for it—as a strictly American phenomenon. Two incredibly powerful tidal waves—technology and globalization—touch upon all aspects of human life, legal education included, and affect us all. They are the prime movers behind the challenges legal educators currently encounter. The boundless quagmires engendered by technology and globalization range from the unique nuances of teaching the millennial generation to building law school curricula that reflect the world's interconnectedness.[151] These may lie well beyond this article and the "crisis" that prompted its writing. Nonetheless, we must turn our collective attention and energies to such broader matters urgently.

E. Conclusion

It is hoped that this article, by shining a light from quite a different place on Tamanaha's instantly seminal *Failing Law Schools* and its American progeny, and then measuring the import of that discourse comparatively in the context of European legal education, will stimulate further discourse among legal academics around the world in an era of unprecedented change and ever-mounting uncertainty. What is certain in 2015 is that interesting times—inevitably, they will be exciting and devastating at various junctures—lie ahead for all of us who are involved in, and committed to, the ambitious enterprise of legal education. For myriad reasons, now more than ever, we are all in this together.

[151] For more probing treatments of just these two examples, see Emily Benfer & Colleen Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLINICAL L. REV. 1 (2013); *see also* Anita Bernstein, *On Nourishing the Curriculum with a Transnational Law Lagniappe*, 56 J. LEGAL EDUC. 578 (2006).

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