

# THE ROOSEVELT-CARDOZO WAY: THE CASE FOR BAR ELIGIBILITY AFTER TWO YEARS OF LAW SCHOOL

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## INTRODUCTION

This paper argues for a revision of the rules of the New York Court of Appeals to allow students to sit for the bar after two years of law school classes whether or not the law school requires three years to obtain a degree. This revision—reflecting what the rule had been when both President Franklin Delano Roosevelt<sup>1</sup> and Associate Justice

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1. See FRANK FREIDEL, *FRANKLIN D. ROOSEVELT: THE APPRENTICESHIP* 76 (1952) (“Two years behind was Stanley Reed, whom Roosevelt appointed to the Supreme Court in 1938. Reed, like Roosevelt, did not take his law degree.”). FDR passed the New York Bar examination in the spring of his third year and did not finish his law courses. *Id.* FDR’s cousin Theodore Roosevelt also left Columbia Law School after his second year. See Robert B. Charles, *Legal Education in the Late Nineteenth Cen-*

Benjamin Cardozo<sup>2</sup> attended Columbia Law School—would cut the costs of legal education for students who pursue this option by a third. This rule change would address in part the concern that the burden of law school debt drives young lawyers to bypass lower-paying public service opportunities in favor of private legal employment. Moreover, such a move would increase the pressure on law schools to deliver educational services to third-year students that enhance their ability to make an immediate contribution as practicing lawyers upon graduation. This is a matter of considerable importance at a time when many law schools place fewer than half of their graduates in full-time positions requiring legal training.

## I.

### EVOLUTION OF THE THREE-YEAR LAW STUDY REQUIREMENT

Until the American Bar Association (ABA) (formed in 1878) and local bar associations began pressing states to require law school instruction as a prerequisite to admission to the bar, Americans became lawyers—as did Abraham Lincoln—by engaging in a period of legal study, or “reading the law,” under the supervision of an experienced attorney.<sup>3</sup> The practice continued into the twentieth century. For a more recent prominent example, Supreme Court Justice Robert H. Jackson—who served as FDR’s Attorney General and Chief Prosecutor at the Nuremberg trials—spent only one year at Albany Law School after an apprenticeship before being admitted to the New York Bar in 1913.<sup>4</sup> Only California allows students to sit for the bar without any law school study;<sup>5</sup> others, like New York, require one year of law school to supplement a law office internship.<sup>6</sup> Even in these jurisdictions—in part because of the difficulty in securing an apprenticeship

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*tury, Through the Eyes of Theodore Roosevelt*, 37 AM. J. LEGAL HIST. 233, 244 (1993).

2. See ANDREW L. KAUFMAN, *CARDOZO* 49 (1998). Even though Columbia had moved in 1890 to a three-year course of study for a degree, Cardozo, along with over two-thirds of his class, left school to take the bar. *Id.* (“Leaving without a degree was not a disaster because the degree was not a requirement for admission to the bar.”).

3. See Mark E. Steiner, *Abraham Lincoln and the Rule of Law Books*, 93 MARQ. L. REV. 1283, 1295–96 (2010).

4. See Victoria A. Graffeo, *Robert H. Jackson: His Years as a Public Servant “Learned in the Law”*, 68 ALB. L. REV. 539, 540 (2005).

5. See CAL. BUS. & PROF. CODE § 6060(e)(2)(B) (West 2012).

6. New York currently permits candidates to sit for the bar without a degree after one year of study at an approved law school (twenty-eight credit hours) plus three years of an internship at a law office working under the supervision of an attorney. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.4 (2012). Data are not systemically kept but it appears very few lawyers are admitted to practice under this alternative.

with an experienced lawyer willing to train the novice for the requisite period, as well as the improving quality of law schools—three years of law school at an ABA-approved institution has become the practically exclusive path for admission to the legal profession.

It may be instructive to chart the evolution of the New York rule on eligibility to take the bar examination. Initially, New York required a demanding law office clerkship for eligibility, but by the latter part of the nineteenth century had moved progressively toward allowing law school study to substitute for an increasingly greater part of the clerkship requirement.<sup>7</sup> In 1871, bar eligibility required three years of clerkship but law school study could substitute for one of those years. Four years later, college graduates who studied jurisprudence and legal history needed only to clerk for one year and study in law school for one year. By 1877, the rule for *all* college graduates became one year of law office work and one year of law school. Alongside these rules, until 1882 New York also recognized a “diploma privilege” for graduates of the law schools of Albany, Columbia College, Hamilton College, and New York University; these graduates needed to complete only two years of law school and could avoid taking the bar examination altogether.<sup>8</sup>

From 1882 until 1911—the period during which FDR and Benjamin Cardozo sat for the New York bar—college graduates needed to complete only two years of law school to sit for the New York bar examination; non-graduates had to complete three years of law school. Some schools like Columbia began requiring a third year of study to receive a law degree,<sup>9</sup> but the third year was not required by the state.

In 1911, the New York Court of Appeals changed the rules of admission to require, in the case of college graduates, three years of law school study but no law office internship.<sup>10</sup>

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7. For a listing of changes in law study requirements for the New York Bar, see *infra* Appendix A.

8. This history is usefully recounted in JULIUS GOEBEL, JR., FOUNDATION FOR RESEARCH IN LEGAL HISTORY, A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY 104–08 (1955), and ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 26–28 (1983). Harvard Law School was not included among the recipients of New York’s diploma privilege. See STEVENS, *supra*, at 26.

9. See KAUFMAN, *supra* note 2. Harvard was the first law school to require three years in 1879. See HERBERT L. PACKER & THOMAS EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION 79 (1972).

10. See RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELLORS-AT-LAW Rule III (effective July 1, 1911), in FRANKLIN M. DANAHER, BAR EXAMINATIONS (NEW YORK) AND COURSES OF LAW STUDY 436, 437–38 (5th ed. 1911). In the case of non-graduates of a college or university, the rules required four years of legal study and at least one year in a clerkship. *Id.*

This author could find no official statement of the reasons for the 1911 change. A member of the State Board of Law Examiners and compiler of the rules noted in his private capacity that “[t]he changes in the rules are for the betterment of conditions at the Bar and are intended to raise the standards of intelligence and morals thereat so as to enable it to retain its historic status as the first of the learned professions.”<sup>11</sup> The move to a three-year course of study requirement may also have been a reflection of the fact that every law school in New York by then required three years of study for a diploma,<sup>12</sup> and the Association of American Law Schools (AALS) required all member schools throughout the United States to adopt a three-year curriculum by 1905.<sup>13</sup> Writing in 1901, former Cornell Law School Dean Francis Finch also offered a partially pedagogic justification for insisting on three years of law school:

A course of study of two years can cover only the technical subjects of study . . . Much has to be omitted which is very useful and beneficial, to allow what is imperatively needed. . . . And the things omitted under the compulsion of the narrowing time are precisely those which ought to be added to turn out something more than a cheap lawyer.<sup>14</sup>

The current rule tracks fairly closely the 1911 version. Under Rule 520.3 of the Rules for Admission of Attorneys and Counselors at Law, an applicant seeking eligibility to sit for the examination based on study of the law in law school must show he or she has graduated from “an approved law school,” defined as a U.S.-based school requiring eighty-three credit hours for degree, no more than thirty of which may be granted for law school clinical courses, field placements, and

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11. DANAHER, *supra* note 10, at v.

12. See Francis M. Finch, President’s Address Before the New York State Bar Association: Legal Education 6 (Jan. 15, 1901) (transcript on file with author).

13. Harry First, *Competition in the Legal Education Industry (I)*, 53 N.Y.U. L. REV. 311, 336 (1978). Indeed, the Association decided in 1907 that the three-year course of study had to be taken in three years, not two. See *id.* at 337. Essentially, two-year law schools were denied membership. See STEVENS, *supra* note 8, at 97. Professor First notes, “The AALS’s original decision to require three years, rather than the then prevailing two years, was rooted in financial considerations: only by compelling students to purchase three years of legal education could the elite-model law school meet its revenue constraints.” Harry First, *Competition in the Legal Education Industry (II): An Antitrust Analysis*, 54 N.Y.U. L. REV. 1049, 1077 (1979). Further pressure to adopt a three-year curriculum came from the 1921 report of the American Bar Association’s Section on Legal Education and Admissions authored by Elihu Root, a former Secretary of State and president of the American Bar Association. See PACKER & EHRLICH, *supra* note 9, at 27.

14. Finch, *supra* note 12, at 8.

externships.<sup>15</sup> By contrast, the law office clerkship alternative requires completion of the first year of full-time study at an approved law school and three years of law office study.<sup>16</sup>

## II.

### CHALLENGES TO THE THREE-YEAR LAW SCHOOL REQUIREMENT IN THE EARLY 1970S

The required third year of law school, often the subject of lament,<sup>17</sup> was subject to a series of substantial challenges in the early 1970s when several prominent legal educators urged law schools to adopt a two-year professional degree program:

- President Derek C. Bok, Harvard University: “[W]e could probably graduate students after two years if the bar associations were willing to join in accepting a two-year degree for students who can pass the bar exam.”<sup>18</sup>
- Professor Robert A. Gorman, University of Pennsylvania School of Law: “I believe we can turn out lawyers with two years of professional training substantially as well qualified as they are now after three.”<sup>19</sup>
- President Edward H. Levi, University of Chicago: “We ought to try to have a period where there will be a suspension of the cartelized rules of association and accreditation, so that we can see the benefits which might come from a variety of different forms. The two-year law school at the professional level, as an alternative, is surely a possibility.”<sup>20</sup>
- Dean Bayless A. Manning, Stanford Law School: “[T]he usual period of a student’s study in the academic environment

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15. See N.Y. COMP. CODES R. & REGS. tit. 22, § 520.3 (2012). Sixty-four of the eighty-three credit hours must be earned by attendance in regularly scheduled classroom courses at the law school, including at least two credit hours in professional responsibility coursework. *Id.*

16. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.4 (2012). Study in a law office may be offset by additional law school study at a rate of two weeks per credit hour. *Id.* Completion of a second year of twenty-eight credit hours of law school study would therefore require just under two years of apprenticeship for an applicant to be eligible for bar admission.

17. For an especially informative study, see Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001).

18. Derek C. Bok, *A Different Way of Looking at the World*, 20 HARV. L. SCH. BULL., Mar.–Apr. 1969, at 2, 5.

19. Robert A. Gorman, *Proposals for Reform of Legal Education*, 119 U. PA. L. REV. 845, 849 (1971).

20. Edward H. Levi, *The Place of Professional Education in the Life of the University*, 32 OHIO ST. L.J. 229, 238 (1971).

of a university law school should be reduced to two years, with those graduates who wish to become legal practitioners then devoting a third year to practical training and specialty training in the lawyer schools administered by the bar."<sup>21</sup>

- Professor Charles J. Myers, Stanford Law School; Chair, AALS Curriculum Committee: "'There should be substantial variations in the course of study and the requirements for graduation, depending on the career aims of the student. A student who wants to enter the general practice as soon as possible, should be permitted to graduate after two years of study.'"<sup>22</sup>

Two widely circulated reports during this period supported the option of a two-year standard curriculum for law schools—a 1971 report authored by Michigan Law Professor Paul D. Carrington<sup>23</sup> and a 1972 report for the Carnegie Commission on Higher Education authored by Stanford Law Professor Herbert L. Packer and Stanford Law School Dean Thomas Ehrlich.<sup>24</sup>

This nascent movement came to an abrupt end on February 4, 1972, however, when a proposal to revise the ABA standards for accreditation to "permit a full-time student to qualify for the first professional law degree" after sixty hours of instruction over two years "met a nearly unanimous chorus of opposition, including representatives from some of the most prestigious schools."<sup>25</sup> Despite support from Chief Justice Warren E. Burger<sup>26</sup> and ABA president Justin Stanley<sup>27</sup>

21. Bayless Manning, *Law Schools and Lawyer Schools—Two-Tier Legal Education*, 26 J. LEGAL EDUC. 379, 382 (1973–1974).

22. Christopher T. Cunniffe, *The Case of the Alternative Third-Year Program*, 61 ALB. L. REV. 85, 90 (1997–1998) (quoting Charles J. Meyers, *Report of Charles J. Meyers*, 1968 ASS'N AM. L. SCH. PROC. pt. I, § 2, at 11). Although Meyers was then serving as the Chairman of the Committee on Curriculum, his report was published separately, and the committee declined to file an "agreed report." *Id.* at 90 n.26.

23. See Preble Stolz, *The Two-Year Law School: The Day the Music Died*, 25 J. LEGAL EDUC. 37, 39 (1972–1973) (citing Report, *Training for the Public Professions of the Law: 1971*, 1971 ASS'N AM. L. SCH. PROC. pt. I, § 2). Stolz was a member of the drafting committee tasked with updating the ABA's accreditation standards. Cunniffe, *supra* note 22, at 92.

24. See PACKER & EHRLICH, *supra* note 9.

25. Reasons given for defeating the proposal are discussed in Stolz, *supra* note 23, at 40. In Professor Stolz's view, the proposal "was killed for very bad reasons that have more to do with institutional tranquility than the public welfare." *Id.*

26. See Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 232 (1973).

27. See Justin Stanley, *Two Years +: The Third Year of Schooling Should Cater to the Special Demands of State Law*, 3 LEARNING & L., Winter 1977, at 18, 20–21, cited in Cunniffe, *supra* note 22, at 94 n.57.

for a mix of two years of law school followed by a year or more of law office practical training, the two-year law school proposal was not renewed,<sup>28</sup> although it did spur experiments in clinical legal education.

### III.

#### RECENT CALLS FOR CHANGE

In recent years, there has been some renewed interest in reducing the law school curriculum to two years. Judge Richard A. Posner suggested a two-year law school in a 1999 book.<sup>29</sup> Both the ABA and AALS now permit the content of a standard three-year course of study to be squeezed into two years.<sup>30</sup> One prominent law school, Northwestern, provides an “Accelerated J.D.” program whereby students complete eighty-six credit semester hours over two calendar years.<sup>31</sup> The Northwestern experiment—which had thirty-two admittees in 2012—does not reduce the cost of legal education, but it does permit students to start practicing law, earning money, and paying their debt sooner.

In addition, and very much to the point, addressing the AALS annual luncheon on January 6, 2012, U.S. Court of Appeals Judge Jose A. Cabranes offered a three-pronged recommendation for reform of legal education:

[1.] Lawyers planning to practice anywhere near the courts need a solid command, first and foremost, of their own law—of Civil and Criminal Procedure, Statutory Interpretation, Jurisdiction, Administrative Law, Property, Evidence, and Business Associations. While it is possible for lawyers to learn these subjects later in their careers, they start off at a distinct disadvantage if they leave law school without some exposure to them.

[2.] Beyond a renewed emphasis on black-letter courses, my second suggestion is that law schools should consider offering an optional two-year curriculum—consisting primarily of the foundational topics I have just named—followed by a one-year apprenticeship in law practice . . . .

[3.] Firms could hire apprentices at lower salaries than first-year associates, train them in practice, and bill them out at rates clients would be willing to pay. Enhanced, invigorated clinical programs

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28. See Cunniffe, *supra* note 22, at 93–94.

29. See RICHARD A. POSNER, *THE PROBLEMATICS OF MORAL AND LEGAL THEORY* 280–95 (1999).

30. ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SChS. Standard 304(c) (2012–2013).

31. See *Accelerated JD*, NORTHWESTERN LAW, <http://www.law.northwestern.edu/academics/ajd/> (last visited Oct. 19, 2012).

could be staffed by full-time apprentices (living on a modest stipend), rather than by distracted first and second-year students struggling to balance their coursework with their clinical obligations. . . . Successfully completing an apprenticeship and passing the bar exam would qualify an individual as a lawyer.<sup>32</sup>

#### IV.

#### THE PROPOSAL

Following the points laid out by Judge Cabranes, I propose that the New York Court of Appeals amend Rule 520.3 of its Rules for Admission of Attorneys and Counselors at Law to allow a student to sit for the bar examination after successful completion of sixty credit hours, all of which must be earned by attendance in regularly scheduled classroom courses at a law school; no apprenticeship would be required.<sup>33</sup>

My proposal resembles Judge Cabranes's but focuses on changing the New York high court's requirements for eligibility for the bar examination rather than on changing the law schools' curriculum or degree requirements.<sup>34</sup> Given the experience of the early 1970s and

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32. The Honorable Jose A. Cabranes, U.S. Court of Appeals for the Second Circuit, Remarks at the Annual Luncheon of the Association of American Law Schools: Legal Education Today and Tomorrow 7–9 (Jan. 6, 2012) (transcript on file with author).

33. As under the current rule, at least two of the credit hours would be devoted to professional responsibility coursework. How many of the sixty credit hours could be satisfied through clinical courses would depend on the resulting makeup of the two-year curriculum. If we use the same ratio as under the current rule, students would be permitted to take no more than twenty-one of the required sixty hours in clinical courses. This may make sense, but that would depend on further consideration of which nonclinical courses would be required courses under a two-year regime.

I do not propose here a standard curriculum for students seeking to sit for the bar after two years of law school. In consultation with the law schools, the New York Court of Appeals could require that students taking this option take certain courses—such as property, contracts, torts, legal writing and research, corporations, individual taxation, trusts and estates, evidence, criminal law, secured transactions, debtor-creditor remedies, and real estate transactions. This would still leave space for over twenty credits for trial practice or clinical offerings.

Furthermore, New York will be requiring applicants for the bar to complete fifty hours of pro bono service in order to be eligible for admission. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (2012). Such a requirement would certainly apply to applicants taking advantage of the two-year option proposed here. In addition, employers of law students taking the two-year option might consider providing pro bono service opportunities as a means of enhancing the skills base of these novice lawyers.

34. Widener University School of Law Professor Ben Barros would allow students to take the bar examination after two years but defer admission to practice for an additional year. Ben Barros, *Barros Guest Post: Allow Students to Take Bar Exam After Two Years*, THE FACULTY LOUNGE (June 25, 2012), <http://www.thefacultyloounge.org/2012/06/barros-guest-post-allow-students-to-take-bar-exam-after-two-years.html>.



the difficulty any existing law school will have convincing its tenured faculty to change curriculum and basic orientation, the best lever for change is the *legal* requirement that keeps the present three-year law study regime in place. Once that constraint is removed, a marketplace would likely emerge in which law schools would offer different approaches based on their position and the needs of their students. If a law school's students were increasingly able to take advantage of the two-year option, one would expect the school to be more open than perhaps it had been in the past to designing a third-year curriculum that provides an educational benefit that aspiring lawyers of substance could not afford to pass up.

The second respect in which this proposal differs from Judge Cabranes's proposal is that I would not require a year of apprenticeship after two years of law school. This is, ultimately, a practical question. Given the experience of New York and other states that offer law office clerkship as an alternative to law school study,<sup>35</sup> is it likely that law firms or other legal employers generally will hire and train students after two years of law school or that most law schools will have the wherewithal to fund a third year? I am skeptical this will occur.

The principal justification for the proposal is that it will reduce the cost of legal education by a third for students able to pass the bar examination after two years of law school.<sup>36</sup> Admittedly, students receiving scholarships face lower costs; such students are likely to continue on the three-year path to a degree. Loan repayment assistance programs (LRAPs) also mitigate the costs for eligible participants. For most students, however, the third year of law school will cost a full year of tuition plus room, board, and books.

The cost of a third year is a large consideration since private law school tuition in New York nears \$50,000 a year, not counting room,

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35. See, e.g., Rene Ciria-Cruz, *The Path Rarely Taken: Through California's Law Office Study Program, Veteran Practitioners Help Aspiring Lawyers Join the Bar*, CAL. LAW., June 2011, at 18, 20 (noting that only thirty-nine law readers took the California bar examination from 1996 to 2011 as compared to 39,313 examinees from California- and ABA-approved law schools).

36. It has been suggested that law schools will simply raise their tuition levels to make up for the lost revenue from students leaving after two years to sit for the bar. It may be that some schools will be able to secure some additional revenue from charging the same tuition for sixty credit hours without a degree that they charge for eighty-three credit hours with a degree. I doubt that there are many schools with that degree of market power—especially if we are in a world where the third year of law school is no longer required for bar eligibility.

board, and books.<sup>37</sup> The problem is exacerbated by the worsening employment prospects of many graduates of New York law schools. Recent ABA data for New York-area law schools, set forth in Appendix B, show that of seventeen schools, only four placed sixty percent or more of their 2011 first-year graduates in full-time positions—i.e., not expressly for a term of one year or less—requiring legal training (which includes solo practice and employment in firms with ten or fewer employed lawyers); only three exceeded seventy percent.<sup>38</sup>

From another vantage point, there is more to take into account than merely private gain for those students able to pass the bar examination after two years of law school. As reflected in the LRAP programs themselves, there is also a social benefit in lightening up a financial burden from students who go into public interest or small firm work that serves the needs of the relatively disadvantaged, lower-income, or even average-income Americans.

All other things being equal, a third year of education is nearly always beneficial. But all things are not equal. What is lost by allowing students to sit for the bar after only two years of law school? The available data suggest that student attendance in and preparation for third-year classes drops precipitously as compared to prior years of study.<sup>39</sup> Given present trends toward emphasizing legal theory and multidisciplinary offerings, and the limited capacity of clinical courses (other than at a few richly endowed schools) to serve more than a small fraction of the graduating class, it may be questioned whether much will be lost in terms of the lawyering skills of students able to pass the bar examination after two years of law school.<sup>40</sup>

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37. The savings may be even greater if the novice lawyer is able to obtain paid legal employment during his third year, even if we assume he or she will command a lower salary than a law school graduate who has passed the bar.

38. See *infra* Appendix B. The table was obtained from Professor William D. Henderson, who directs the Center on the Global Legal Profession at Indiana University Maurer School of Law, and it is drawn from ABA data for 2011 graduates. See generally Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1 (including summary of data). We do not know whether 2011 is representative of the past; this was the first year that U.S. law schools were required to report the extent to which first-year graduates obtained employment requiring legal training. See *id.*

39. See, e.g., Gulati, Sander & Sockloskie, *supra* note 17.

40. It would be independently desirable to enhance the capacity of the bar examination to test for practical lawyering skills. See generally Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696 (2002); see also Comm. on Legal Educ. & Admission to the Bar, Ass'n of the Bar of the City of N.Y., *Report on Admission to the Bar in New York in the Twenty First Century—A Blueprint for Reform*, 47 REC. ASS'N B. CITY N.Y. 464, 511 (1992); N.Y. STATE BAR ASS'N, REPORT OF THE TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION 7 (2011) (outlining licensing reform recommendations for the State Bar examiners to adopt), available at <http://www.nysba.org/AM/Template.cfm?Section=>

Some may contend that students who are deprived of the third year of law school will be less able to function as “universal generalists,”<sup>41</sup> or as the point was made at the turn of the last century, less able to function as “*men* as well as lawyers, vitalized by the air of historic jurisprudence, fascinated by the absorbing interest of the study, strengthened and lifted by its world-old lessons.”<sup>42</sup> The humanizing effect of liberal arts education may be a sound reason for insisting on a college (vs. graduate) education as a prerequisite for law study—as is now universally the rule—but it does not appear to provide strong support for the state requiring a third year of law school study.

Some may also say that the world in 2012 is a much more complicated place than the world in 1911. Indeed it is. But even today not all students will become lawyers handling global business transactions or opening up new communications pathways for an increasingly interconnected planet. Those that do are likely to be trained by their law firms. For the overwhelming majority of students entering the law, their careers as litigators or advisers with respect to transactions will involve the kinds of skills—careful text-reading, good argument-making, securing testimony from reluctant witnesses—and knowledge base—the laws of taxation, trusts and estates, property transfer, family law, and so on—that a well-designed two-year law school curriculum can impart.

If a significant number of students take advantage of the two-year option, law schools will sustain financial losses that they cannot easily recoup because faculty and buildings represent relatively fixed costs; hence preserving the status quo may serve what Berkeley Law Professor Preble Stolz called the interest in “institutional tranquility.”<sup>43</sup> It is unclear, however, whether this interest should carry much weight when attempting to justify a legal mandate of an additional year of law school. It is also unclear what impact the proposal would have on most law schools in New York. Some schools will adapt by increasing the number of transfer students or foreign law students. Some schools may consolidate with others as a means of reducing costs. Others hopefully will adapt by shaping an educational program that makes

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41. See Stolz, *supra* note 23, at 45 (citing Letter from Abraham Goldstein, Dean, Yale Law Sch., to The Council of Legal Education, Am. Bar Ass’n).

42. Finch, *supra* note 12, at 15.

43. Stolz, *supra* note 23, at 40.

sense for the third-year student.<sup>44</sup> Law schools would be well advised to shape a third-year program that meets the practical needs of students who are likely to practice on their own or in small firms.<sup>45</sup>

Another argument likely to be raised is that the proposal moves in the wrong direction—that at a time when New York has too many law graduates chasing after too few jobs, the proposal will increase the number of young lawyers seeking work.<sup>46</sup> This may be grounds for skepticism about approving another law school in the New York area, allowing lawyers from foreign countries or foreign law schools to sit for the bar, or easing the difficulty of passing the bar examination itself. It does not appear to be a compelling justification for maintaining particular educational requirements for taking the bar exam. Requiring three years of law study for eligibility to sit for the bar merely delays the entrance of lawyers into the market (at a fairly hefty price); it does nothing to address the mismatch of graduates and available jobs. Put differently, the better tack is to limit the supply of lawyers directly and openly, if that is the desired outcome, not indirectly through educational requirements.

#### CONCLUSION

It is hoped that the New York Court of Appeals will be open to considering a change in Rule 520.3 of its Rules of Admission of Attorneys and Counselors at Law to permit students who have completed two years of study (sixty credit hours) at an accredited law school to sit for the bar examination. If they pass the examination and other requirements for admission, they may, as did President Franklin Delano Roosevelt and Justice Cardozo, practice law without a law degree.

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44. Some schools may also adapt by better separating their professional training function (for which the two-year curriculum would apply) from their role as producers of legal scholarship and future law teachers (for which further study leading to a Master's or Ph.D. might be required).

45. Zev Eigen and I are working on a proposal for a third year of skills training based on the "emergency room model" of medical school. In addition to skills instruction, the proposal envisions teaching best practices in how to handle a high volume of matters in a cost-efficient, professionally responsible manner. See Zev Eigen & Samuel Estreicher, *Enhancing the Effectiveness of Law School Clinical Programs in Providing Representation for Working Americans*, in *ACCESS TO CIVIL JUSTICE FOR AMERICANS OF AVERAGE MEANS* (Samuel Estreicher & Joy Radice eds.) (forthcoming 2013).

46. This was a concern raised by Columbia Law Dean Michael I. Sovern with respect to the 1972 proposal to allow two-year law school programs. See Stolz, *supra* note 23, at 43–44 & n.22. In contrast, some have argued that increasing the number of lawyers is a good thing because it will decrease the cost of legal services. See John McGinnis & Russell D. Mangas, *First Thing We Do, Let's Kill All the Law Schools*, WALL ST. J., Jan. 17, 2012, at A15.

This change will reduce the cost of legal education for many and enable them to pursue lower-paying careers in the public service, if they are so inclined or situated. It will also encourage law schools to design a third-year curriculum attuned to the needs of their third-year students.

APPENDIX A: CHANGES IN NON-LL.M. U.S. LAW STUDY  
REQUIREMENTS FOR ADMISSION TO THE NEW YORK BAR

- 1830 Seven years of clerkship in the law office of a practicing lawyer; or four years (or shorter period after age fourteen) of classical study, and three years of clerkship.<sup>47</sup>
- 1855 "Diploma privilege" for Hamilton College law students, granting admission to the bar upon certification of a faculty committee.<sup>48</sup>
- 1859 Diploma privilege for students completing at least three terms of twelve weeks each at the University of Albany's law school.<sup>49</sup>
- 1860 Diploma privilege for students of the New York University School of Law completing at least three terms of twelve weeks each (or two terms of twelve weeks each with "one year's study of the law elsewhere.")<sup>50</sup>  
Diploma privilege extended to graduates of Columbia College law school; requiring attendance for a term of at least eighteen months.<sup>51</sup>
- 1871 Three years of clerkship in a law office, or two years of clerkship plus one year of law school.<sup>52</sup>
- 1875 For college graduates who studied jurisprudence and legal history, one year of law school plus one year of clerkship in a law office.<sup>53</sup>
- 1875 Justices of the Supreme Court of New York adopt a resolution urging abolition of the diploma privilege.<sup>54</sup>
- 1877 For all college graduates, one year of law school plus one year of clerkship in a law office.<sup>55</sup>
- 1882 New York Court of Appeals abolishes the diploma privilege by court rule.<sup>56</sup>

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47. DAVID GRAHAM, *TREATISE ON THE PRACTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK* 11 (1st ed. 1832) (discussing Revised Statutes that went into effect in 1830).

48. ASS'N OF THE BAR OF THE CITY OF N.Y., *REPORT OF THE COMMITTEE ON ADMISSION TO THE BAR* 6 (1876) (discussing "Laws 1855, chap. 310").

49. *Id.* (discussing "Laws 1859, chap. 267").

50. *Id.* (discussing "Laws 1860, chap. 187").

51. *Id.* (discussing "Laws 1860, chap. 202").

52. *Id.* (discussing rules of the Court of Appeals of New York).

53. JULIUS GOEBEL, JR., *FOUND. FOR RESEARCH IN LEGAL HISTORY, A HISTORY OF THE SCHOOL OF LAW, COLUMBIA UNIVERSITY* 104 (1955).

54. *Id.* at 105.

55. *Id.* at 104.

56. *Id.* at 107; ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 27 (1983).

- 1882–1911 For all college graduates, two years of law school to sit for the bar; three years if not college graduates.<sup>57</sup>
- 1911–1927 For college graduates, three years of law school or clerkship in a law office, or any combination thereof; four years of law study, at least one of which must be in clerkship in a law office, if not a college graduate.<sup>58</sup>
- 1918–1927 Examination dispensed with for graduates of registered law schools with a three-year course of study who could not sit for the bar because of military service.<sup>59</sup>

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57. *E.g.*, RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective Jan. 1, 1896); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective Apr. 1, 1899); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (1901); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective July 1, 1907); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (effective June 1, 1908); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule IV (as amended Jan. 1, 1910).

58. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective July 1, 1911), *in* FRANKLIN M. DANAHER, *BAR EXAMINATIONS (NEW YORK) AND COURSES OF LAW STUDY* 436, 437–438 (5th ed. 1911); *see also* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Dec. 1, 1912); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Jan. 1, 1914); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Feb. 15, 1915); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective May 3, 1916); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1917); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1918); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (effective Jan. 15, 1919); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1921); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1923); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1927).

59. *See* RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1918); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (effective Jan. 15, 1919); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1921); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1923); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-A (1927).

- 1920–1927 Military service could be counted as part of the required one-year clerkship for non-college graduates; clerkship requirement did not apply to applicants who completed two years of college and four years of law school.<sup>60</sup>
- 1929 Degree from approved three-year law school or four years of law study, which could be pursued as a clerk in a law office; any successfully completed year of law school could be counted towards the law study requirement; after bar examination, six months of clerkship for all applicants; six additional months of clerkship for non-college graduates, for which a fourth year of law school could substitute; two years of college or equivalent required before law study.<sup>61</sup>
- 1933–1938 Degree from approved three-year law school or proof of four years of law study, which could be pursued as a clerkship in a law office; for non-graduates of approved college or university, mandatory one year of clerkship in a law office or fourth year of attendance in law school; two years of college required before law study.<sup>62</sup>
- 1939 Elimination of mandatory one-year clerkship for non-graduates of college or university.<sup>63</sup>
- 1945–1953 Examination dispensed with for graduates of approved law schools whose law school study was interrupted by active military service of at least a year, or whose military service prevented sitting for the bar.<sup>64</sup>

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60. See RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1921); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1923); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III (1927).

61. RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1929).

62. See RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1933). In 1934, the Court of Appeals amended Rule IV to permit four years of law school classes beginning at 4 p.m. to satisfy the four-year course of study requirement. See RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules IV–V (1933); see also RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1935); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–IV (1937); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1938).

63. See RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule V (as amended Nov. 16, 1939).

64. RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-a (1945); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-a (1950); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rule III-a (1953).



- 1955–1972 Three years of college or equivalent plus degree from approved three-year law school or four years of clerkship in a law office, for which certain periods of completed law school study could be substituted.<sup>65</sup>
- 1972 Same, except that the instructional requirement for law school study was defined at eighty semester hours of credit in professional law subjects, no more than ten hours of which in “other courses related to legal training” taught by law school or other university faculty, and no more than twelve of which in “clinical and like programs.”<sup>66</sup>
- 1974–1988 Same, except that eligibility for the law office alternative required at least one year of attendance as a matriculated student at an approved law school plus three years of clerkship in a law office; with additional periods of law school counting towards the clerkship requirement.<sup>67</sup>
- 1988–2011 Same, except that sixty of the eighty semester hour minimum had to be in “professional law subjects;” clinical and like courses could count for no more than twenty of the required eighty hours.<sup>68</sup>
- 2012 Same, except minimum instruction requirement is raised to eighty-three credit hours, a minimum of sixty-four of which have to be in “regularly scheduled classroom courses at the law school” and two credit hours have to be in courses in professional responsibility; a maximum of thirty hours in clinical courses may be credited towards both credit hour requirements;

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65. RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1955); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1956); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1961); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW Rules III–V (1963); RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW §§ 522–524 (1970).

66. See RULES OF THE COURT OF APPEALS OF NEW YORK FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW §§ 520.3–520.5 (as amended Sept. 1, 1972).

67. See N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.5 (1975); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.5 (1977); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1980); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1983).

68. See N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (effective Oct. 26, 1988); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1993); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1997); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (1999); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (2000); N.Y. COMP. CODES R. & REGS. tit. 22, §§ 520.3–520.4 (2001).

field placements or externships may be credited towards the overall eighty-three credit hour requirement but not the sixty-four classroom hour requirement; a maximum of twelve hours in joint degree or other courses taught outside the law school may be counted towards the eighty-three hour requirement but not the sixty-four classroom hour requirement; up to twelve credit hours for distance education courses may be counted towards both requirements under certain conditions.<sup>69</sup>

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69. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.3 (effective Apr. 1, 2012).

## APPENDIX B: EMPLOYMENT OUTCOMES FOR 2011 GRADUATES

School	NY	USN Rank	Percent FTLT Bar Passage Required*	% Employed Non-Professional	% Unemployed All	% Unknown	% Solo Practitioners	% Funded	Total Number of Graduates	% 2-10 FTLT	% 2-10 All
Touro College (Fuchsberg)	NY	4th Tier	59.3%	0.5%	19.9%	2.7%	1.8%	0.5%	221	25.8%	31.2%
St. John's University	NY	79	47.8%	1.4%	10.9%	1.4%	1.1%	0.4%	276	10.1%	15.2%
New York University	NY	6	90.1%	0%	3%	0.4%	1.1%	12.2%	466	2.4%	2.6%
Yeshiva University (Cardozo)	NY	56	51.8%	1.8%	17.1%	1.6%	1.1%	8.9%	380	6.6%	12.9%
Hofstra University (Deane)	NY	89	40.7%	4%	13.1%	6.4%	1%	3%	297	14.5%	22.9%
City University of New York	NY	113	36.9%	1.8%	21.6%	3.6%	0.9%	12.6%	111	12.6%	16.2%
Pace University	NY	142	36%	5.4%	13.1%	5%	0.5%	7.7%	222	12.6%	15.3%
New York Law School	NY	135	35.5%	3.9%	16.7%	4.5%	0.4%	6%	515	13.0%	18.3%
Brooklyn Law School	NY	65	47.3%	0%	30.1%	2%	0%	2.6%	455	10.1%	12.3%
Columbia University	NY	4	94.1%	0%	0.7%	0.7%	0%	8.3%	456	1.3%	1.8%
Cornell University	NY	14	76.1%	0%	5.5%	2.5%	0%	12.9%	201	3%	3%
Fordham University	NY	29	57.5%	0%	12.9%	1.6%	0%	13.3%	428	6.1%	7.5%
State University of New York at Buffalo	NY	82	51.8%	3.3%	11.8%	8.6%	3.3%	0%	245	18.87%	22%
Rutgers University	NY	82	56.5%	0.8%	9.7%	4%	2.8%	1.2%	248	6%	6%
Seton Hall University	NY	69	62.8%	0.3%	8.5%	5.1%	1.4%	0.3%	293	9.6%	11.6%
Albany Law School	NY	113	50%	2.5%	16.1%	1.7%	1.3%	0.8%	236	21.6%	28.8%
Syracuse University	NY	96	50.3%	4.7%	12.4%	3.6%	0.5%	0%	193	14.5%	17.1%

Source: This table was obtained from Professor William D. Henderson, Director, Center on the Global Legal Profession, Indiana University Maurer School of Law, and is drawn from ABA data for 2011 graduates.<sup>70</sup>

Definitions: \*Full-Time-Long-Term.

70. For a summary of the ABA data, see Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1.

