

The Law School Crash

What's worse than a decade of financial turmoil? Not learning from it.

Matt Dorfman for The Chronicle

January 3, 2020

By BENJAMIN H. BARTON

When the Great Recession began, in 2008, there was an expectation that law schools would benefit. The October 2009 sitting of the LSAT was the largest on record. And yet the seeds of the field's collapse had already been planted. A harbinger was the rise of law school "scamblogs," which pointed out poor employment results, harped on cost and debt, and highlighted hypocritical and self-serving statements by the Association of American Law Schools (AALS), the American Bar Association (ABA), and various law schools.



The Almanac of Higher Education, 2019

\$29.00

Digital



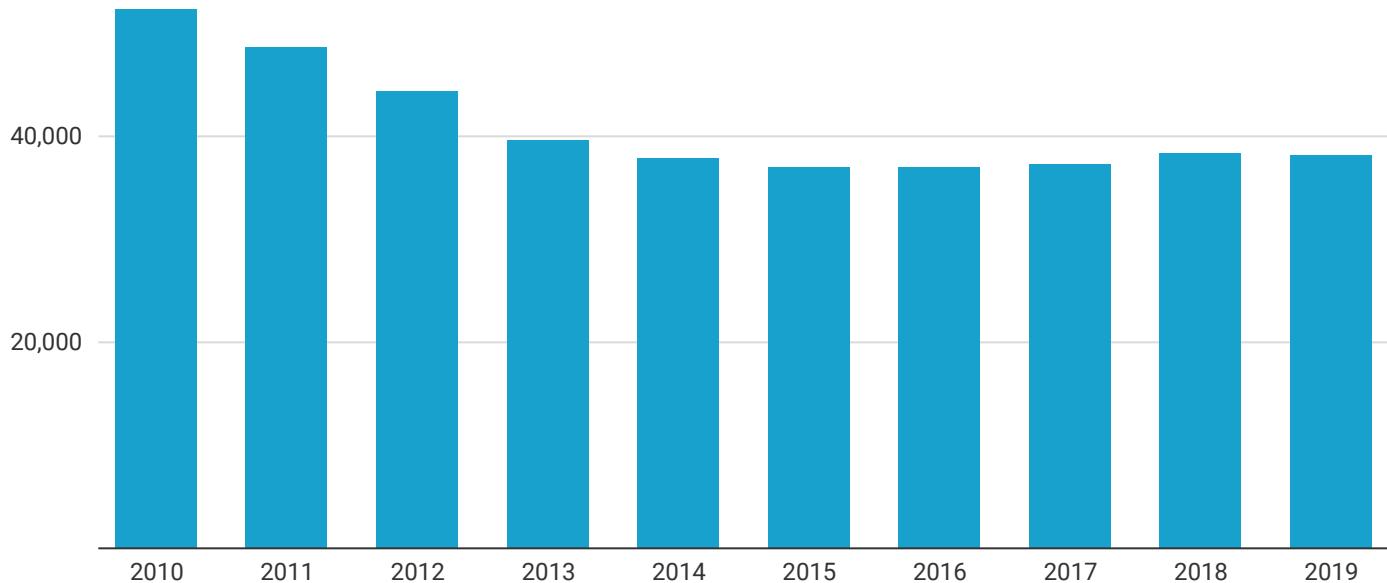
ADD TO CART

Books like Paul Campos's *Don't Go to Law School (Unless)* (2012) and Brian Z. Tamanaha's *Failing Law Schools* (University of Chicago Press, 2012) amplified the attacks, as did a spate of high-profile lawsuits against various law schools for allegedly faking alumni-

employment data. These cases died at summary judgment or at trial, and as of yet no law school has lost. Nevertheless, “winning” these cases came at a significant cost to public relations. Even the courts that granted summary judgment have generally not disputed that the underlying employment information was misleading, but rather held that law-school applicants are savvy customers who should have known better. *New York Magazine* ran a particularly unflattering piece (<https://nymag.com/news/features/law-schools-2012-3/>) about the lawsuits featuring a picture of a birdcage lined with a New York Law School diploma covered in bird droppings.

With the bad news came a change in the market. 2009-10 was the high point for LSAT administrations, at 171,514. That figure fell to 101,689 just five years later.

Declining First-Year Enrollment



Source: [The American Bar Association](#) • Get the data • Created with Datawrapper

According to ABA data, the last time that fewer students entered American law schools than in 2017 was 1974, when there were far fewer law schools.

So where have all of these students gone? It seems too glib to say that they’re all going to business school, but ... they’re all going to business school. The growth of the M.B.A. has come at the expense of the J.D. The M.B.A. is now the most popular master’s degree in the

United States. And while business schools have recently seen a dip in enrollment and applications, the M.B.A. has nevertheless maintained its dominance over the J.D.

Fewer applicants and fewer students also mean more competition for the students that remain. This is especially so given that many law schools have attempted to keep the LSAT and GPA averages for their entering class roughly the same, in an effort to maintain the overall quality of their entering classes, or to rise in the *U.S. News* law-school rankings, or both. As a result, the percentage of students paying full freight has plummeted. In 1999-2000 roughly (<https://perma.cc/PSU8-R9Z2>) 58 percent of law students paid full price. In 2018-19 just 29 percent did.

In 2010-11 the top 15 law schools (as ranked by *U.S. News*) were the most generous, granting discounts to 53 percent of their students. Stand-alone law schools, including for-profits, were the least generous, at 47 percent. By 2017-18 the roles had reversed. Top schools offered discounts to 62 percent of their students, and stand-alone law schools to 71 percent. The past six years have been brutal for stand-alone law schools, and harder on private law schools of all stripes. Stand-alone schools saw some relief in 2018-19, with their first decline in discounts since 2012. Yet the trend for every type of law school is the same: Discounts are up and revenue down, from top to bottom.

One study (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3255397) looked at the tuition and discounting data from 2010 to 2016 and concluded that law schools lost roughly \$1.5 billion in annual revenue over that span. \$1.5 billion!

There's an irony lurking behind the crisis of the lost decade. Many law schools have suffered a near-death experience, and the survivors are exhaling gratefully and going back to doing exactly what led them into the crisis in the first place. Law schools have failed to address the root causes of their challenges. Instead of improving their product and lowering their prices, they made deep cuts (largely to faculty) and raised their prices. In short, they have valued their bottom lines over their relationships with students.

At the low end of the market, law schools tend to follow a three-step playbook to survive:

- (1) Cut costs. The largest expense category in a law school is people. So, to cut costs, you must cut people, notably full-time faculty members.
- (2) Increase revenue by loosening — or practically eliminating — admissions standards. If students qualify for federal loans, have taken the LSAT, have completed the necessary undergraduate work, and are willing to borrow money, let them in — regardless of whether they are likely to succeed in law school or pass the bar.
- (3) Raise tuition and squeeze every drop of borrowing from the bodies that are in the building. The government has not yet put a lid on the total amount of federal loans a student can borrow, other than each school's own tuition and cost-of-living estimations. So encourage students to borrow more.

The last time that fewer students entered American law schools than in 2017 was 1974.

Outside of the top 15 law schools or so, every law school in America has cut costs since 2011. These cuts have been especially hard on struggling schools, because they had fewer easy places to cut. For example, many middle-tier law schools have been able to cut costs without layoffs by shrinking their faculty through retirements, buyouts, freezes on hiring, shrinking or eliminating summer research grants, cutting faculty or staff salaries, limiting faculty travel, or starving the law library. Many lower-ranked schools cannot follow this playbook, because they've never offered much in the way of travel, research grants, or library funds. And a bunch of the hardest-hit schools are relatively new, so waiting for faculty members to retire will not help.

Thus, more aggressive layoffs have ensued. Law-school faculties grew substantially from the 1970s through 2010. In 2010, on the verge of the collapse, the *National Jurist* ran an (unintentionally ironic) article (<http://www.nationaljurist.com/content/law-school-faculties-40-larger-10-years-ago>) trumpeting the fact that faculties had grown 40 percent from 1998 to 2008, drastically decreasing the student-to-faculty ratio.

Then the cuts began. Matt Leichter has gathered data on the size of law-school faculties from 1999 to 2016. From 2010 to 2016, ABA-accredited law schools lost
(<https://lawschooltuitionbubble.wordpress.com/2017/01/17/which-law-schools-are->

[shedding-full-time-faculty-2016-edition/](#) 1,460 full-time positions, a 16.1-percent decline.

Over the same period, the number of [part-time law professors](#) (<https://excessofdemocracy.com/blog/2016/1/as-full-time-law-faculty-numbers-shrink-law-school-administrator-numbers-grow>) has remained steady, and the number of administrators who teach has actually increased. Thus almost all of the burden of layoffs, buyouts, early retirements, and firings has basically come from the ranks of the full-time faculty.

A list of the law schools experiencing the largest shrinkage in faculty size is instructive. The list is dominated by the law schools you would think are in the most trouble: lower-ranked, private, highly tuition-dependent. Free-standing schools with limited endowments were particularly hard hit. In 2016 five law schools operated with fewer than 10 faculty members: La Verne (nine), Lincoln Memorial (eight), Concordia (eight), Appalachian (seven), and the soon-to-close Indiana Tech (five).

Shrinking Faculties

Page 1 of 4 >

Law School	Change in Number of Full-Time Faculty, 2010-16
Western Michigan U.-Thomas M. Cooley Law School	-60
Rutgers U. at Camden	-54
American U.	-52
John Marshall Law School (Ill.)	-48
Florida Coastal School of Law	-45
Rutgers U. at Newark	-40
Pennsylvania State U. Dickinson School of Law	-39
George Washington U.	-37
Hamline U.*	-34
William Mitchell College of Law	-34

* Hamline School of Law merged with William Mitchell College of Law in 2015

Source: [Law School Tuition Bubble](#), The American Bar Association • Get the data • Created with Datawrapper

But the list of most drastically reduced faculties includes surprises. American, Seton Hall, Seattle, and St. Louis are long-standing, top-100-type law schools. The appearance of George Washington, Wisconsin, Texas, and Cal-Berkeley is also pretty stunning. Berkeley and Texas consider themselves to be permanent members of the top 10, and GW and Wisconsin feel the same way about the top 25. While cuts have been deepest at the lower end, faculties have shrunk at every level of the legal academy. Nor is the hemorrhaging finished. Vermont Law School announced another wave of cuts (<https://www.vnews.com/Vermont-Law-School-professors-lose-tenure-18873357>) in 2018, stripping tenure from 14 of 19 law professors and slashing salaries as well.

Struggling law schools sought to raise revenue, in part by accepting and enrolling as many applicants as possible. From 2004 to 2015, applications fell by almost half. Class size (https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf), however, fell by only about a quarter, the result of law schools' becoming a lot less selective.

Law schools also gained revenue by expanding non-J.D. programs, the wild West of the legal world. Non-ABA-accredited Concord Law, for instance, offers a wholly online J.D. (<https://www.buzzfeednews.com/article/venessawong/executive-jd-ejd-concord-law-school>) as well as a dubious new "executive" J.D. program. Online master-of-laws (L.L.M.) programs have expanded as well, popping up at prestigious law programs like NYU, Northwestern, and Washington University in St. Louis.

But the single factor that most explains why few law schools have closed is that despite a collapse in demand, they have raised prices and asked their customers to borrow more than ever to attend. Pause for a second to consider this move, and ask yourself if the Great Recession led to GM's raising the prices of its vehicles, or to underwater homeowners' asking more for their houses.

All is not equal in the market for law schools. Tuition at private law schools rose by almost 30 percent (<https://data.lawschooltransparency.com/costs/tuition/>) from 2008 to 2015.

Debt went up by more than 50 percent

(<https://data.lawschooltransparency.com/costs/debt/>). The continuing rise in tuition and debt is not equal across all law schools, however. Bizarrely, it is concentrated at the high end and the low end. If you want to see a puzzling list, consider the 2016 ranking of the top 20 law schools for student debt. Almost half of the schools are in the bottom quartile of ranked law schools. Another chunk are among the top 14 law schools. Only two mid-tier law schools (American and New York Law School) are on that list.

Law Schools with the Highest Average Student Debt

Page 1 of 2 >

Law School	2016 Avg. Student Debt
Thomas Jefferson U.	\$182,411
Whittier College	\$179,056
U. of San Francisco	\$167,671
New York U.	\$167,646
Georgetown U.	\$166,027
American U.	\$164,194
Golden Gate U.	\$161,809
Columbia U.	\$159,769
John Marshall Law School (III.)	\$158,888
Florida Coastal School of Law	\$158,878

Source: [U.S. News](#), [Paul L. Caron's TaxProf Blog](#) • [Get the data](#) • Created with Datawrapper

How is it possible that lower-ranked law schools, which could even be in danger of closing, are charging more than healthier and higher-ranked schools? In what other industry would both the top and the bottom of the market cost the most?

While these two types of schools predominate in the debt rankings, they do so for different reasons. Top schools can charge what they like and expect students to borrow whatever it takes, based on the promise of a remunerative “BigLaw” career (an assumption that might not make sense outside of Yale, Harvard, and Stanford).

The lowest-ranked schools also assume that they can charge what they like, but they are admitting students with low undergraduate GPAs and LSAT scores, who don’t benefit from the discounting and competition for more-qualified applicants. If they get into law school, they borrow enough to pay what is asked.



Matt Dorfman for The Chronicle

Every law school in America is under stress. Yet if you look at the vast middle tier, you see extreme similarity: in faculty composition, in curricula, in their promises to create “practice ready” graduates. Why has this herd mentality persisted through law schools’ lost decade? Why haven’t more gone out on a limb to reinvent themselves in light of the present challenges?

One illustrative example is Washington and Lee University School of Law, a smallish, private school in Virginia’s Shenandoah Valley. The location is lovely, but it presents a challenge for an aspiring top-25 law school. W & L is three hours from Washington, two hours from Richmond, and an hour from Roanoke.

W & L also finds itself in a crowded market. Virginia has eight law schools. D.C. has another six, many of them direct competition for W & L in terms of applicants and job placement. And yet, W & L has done a good job of holding its own, bouncing around between 22 and 30 in the *U.S. News* rankings from 2005 to 2010.

But in 2008, W & L decided to take a bold risk to raise its profile. It announced a plan to replace the traditional third-year curriculum with a required year of experiential courses (https://www.chapman.edu/law/_files/publications/CLR-17-james-moliterno.pdf). The program was designed to include a mix of “two-week immersions, clinics, externships, practicum courses (elaborate simulations), [and] law-related service.” *The Wall Street Journal* called it “the boldest move” (<https://blogs.wsj.com/law/2009/09/09/the-boldest-move-to-date-in-legal-curriculum-reform/>) to date in legal curriculum reform. The *ABA Journal* included W & L Dean Rodney Smolla in its list of “legal rebels.” (http://www.abajournal.com/legalrebels/article/rodney_smolla_running_a_new_play)

As with any bold move, there was some grumbling. But regardless of the merits of these critiques, here at last was a bold new model for legal education. During a period of relatively negative coverage of law schools, W & L seemed to have hit gold.

The new requirements began in 2011-12, and the early reviews were promising. One of legal academia’s most influential commentators, Bill Henderson, called W & L the “biggest legal education story” (<https://lawprofessors.typepad.com/legalwhiteboard/2013/01/biggest-legal-education->

story-of-2013.html) of 2013,” noting W & L’s gains in application volume and student satisfaction. In 2012, W & L had a good problem: It had too many first-year enrollees and had to offer financially attractive deferments to students.

But soon it faced a bigger problem: A change in the way employment numbers were counted, combined with a weak year of placement and bar passage, resulted in a tumble (<https://fortune.com/2014/03/11/and-the-u-s-news-law-school-ranking-fallout-begins/>) from 26th to 43rd in the *U.S. News* law-school rankings. W & L argued that eventually the focus on practice-ready graduates would help, although it would “take five to 10 years for the benefits of the program to become apparent.”

In 1999-2000 roughly 58 percent of law students paid full price. In 2018-19 just 29 percent did.

In 2015 W & L undertook a “strategic transition plan.” (<https://www.wlu.edu/presidents-office/about-the-presidents-office/past-presidents/kenneth-p-ruscio/messages-to-the-community/message-to-the-law-school-community/strategic-transition-plan>) More in step with the traditional playbook, it included several moves meant to help the rankings and student selectivity, including a permanent shrinkage of the school to 100 students per incoming class and “financial aid, which will continue to be allocated beyond historical norms” but “will gradually return to sustainable levels.” W & L’s incoming class in 2016 was radically smaller than its graduating class of 2015, and the school’s finances deteriorated. The plan allowed the school to dip into its endowment to cover deficits through 2018, with the budget “projected to be back in balance by the 2018-19 academic year.” Budgets were cut by 10 percent, and faculty and staff positions were eliminated.

W & L has seemingly righted the ship, moving gradually back up the rankings. Yet the gain comes at the cost of innovation. W & L has basically abandoned its third-year experiment and replaced it with a more generic requirement of 18 credit hours of experiential classes taken during the second and third years.

This retreat is astounding and a little sad. When the law school voted to reformat its third-year program in 2008, it trumpeted the change as a bold and fundamental shift in the nature of law schools as a whole. Now it has retreated back into the pack.

The W & L story may be taken as a cautionary tale that changes lead to bad results and downsizing. And while the curricular changes, I suspect, had little to do with the fall in the U.S. News rankings, even the impression that they did may be enough to discourage innovation. “Why risk it?” other law schools may ask themselves.

Similar calamities have struck other mid-tier law schools, and a concern for declining rankings are often at their heart. Jennifer Bard was hired as dean at the University of Cincinnati Law School in 2015. In 2011, 1,572 students applied there. By 2015 just 779 did. Under Dean Bard, Cincinnati had also taken a relatively radical recruiting step: It lowered out-of-state tuition from \$41,044 to \$29,010.

Yet it actually increased the percentage of students receiving a discount on their tuition over the period, from 65 percent in 2012 to a jaw-dropping 94 percent by 2017. In 2016, the net average tuition for law students at Cincinnati was just \$15,233, and Dean Bard recommended deep budget cuts. Amid “multimillion-dollar” operating deficits, she argued that she was taking reasonable steps, including folding the law library into the university library, cutting back on faculty travel, increasing teaching loads, and trimming back the use of operating funds to pay the supplemental salaries of senior faculty members holding endowed chairs. She also gradually reduced the size of the full-time faculty and significantly cut that of the part-time faculty.

These painful changes were likely taken for the salutary purpose of maintaining the school’s “quality” (whatever that means), but the decision was probably more a result of fear about the rankings. If more students were admitted and the LSAT scores or GPA went down, the rankings might go down. When the rankings go down, fewer students apply, and those students are of a lower quality. Cincinnati (like most other schools) fears this downward spiral even more than it does faculty and staff layoffs and salary cuts.

In response to Dean Bard’s changes, all hell broke loose. In 2016, faculty members pushed (<https://www.bizjournals.com/cincinnati/news/2017/03/19/university-of-cincinnati-law-dean-under-fire-from.html>) for a vote of no confidence, and she was eventually placed on administrative leave. She would go on to sue for breach of contract and get a \$600,000 settlement from the university. Still, Dean Bard’s ouster will make other deans think twice before bringing the squeeze.

Catholic University of America's Columbus School of Law (CUA Law) faces similar challenges, exacerbated by geography. *U.S. News* ranked it 82nd in 2013, and it has a fine academic reputation. Nevertheless, in order to maintain its ranking in 2013, it shrank its incoming class enough that the *entire university* was required to take a 20-percent operational cut. If you have been wondering whether the floodwaters have reached most law schools, there is the evidence.

The woes continued into 2018, when the provost announced an additional 9-percent cut (<https://www.chronicle.com/article/Seeking-to-Lay-Off-Tenured/243366>) in the tenured faculty at the university, as well as increased teaching loads. CUA Law itself shed more than half of its faculty from 2010 to 2016, confirming the magnitude of its budget problems. The cost to the rankings? A slide to 110th in 2019.

The story at CUA Law is in part one of geographic competition. Including CUA, three of Washington's best private law schools have shed faculty members at alarming rates since 2010: American appears to have let go of half of its faculty, and George Washington roughly a third.

Minneapolis is another regional market that has been particularly hard hit. *U.S. News* rankings place the University of Minnesota Law School 20th. But applications have fallen by more than half since 2010, and the law school had to cut enrollment by a third from 2010 to 2015. From 2012 through 2018, the university gave its law school \$39.9 million to cover budget shortfalls. That's right: A top-25 law school ran at an almost-\$40-million deficit following the crash. It cut faculty and staff and hopes to be out of the woods by 2021. As of 2019, the school was running a smaller deficit and on track to make the 2021 deadline for self-sufficiency.

Even mighty Northwestern University's law school announced (<https://patch.com/illinois/evanston/northwestern-law-school-cuts-faculty-staff-amid-budget-deficit>) plans in 2018 to cut staff and teaching positions — although not tenured faculty members — in light of challenging financial circumstances. The addition of Northwestern and Minnesota to the list of financially troubled law schools suggests that even the very top American law schools are struggling.

These case studies are different versions of the same story. It begins with radical moves to maintain "quality" despite a collapse in applications: Cut the size of the incoming classes and offer more and larger scholarships to try to maintain rankings and class quality. Lose

money. Hope that the university will carry you for a while (or permanently; one never knows). When the university grows weary, cut costs where you can. When the bill comes due, shrink the faculty through attrition, raise teaching loads, cut costs in the library and elsewhere, and hope to balance the books without destroying the law school's reputation.

In an ideal world, financial pressures would change law schools for the better. What would this look like? I'll offer three proposals.

They should lower the price and debt levels.

A 2018 Gallup poll (https://news.gallup.com/poll/227039/few-mba-law-grads-say-degree-prepared.aspx?g_source=link_NEWSV9&g_medium=NEWSFEED&g_campaign=item_&g_content=Few%20MBA,%20Law%20Grads%20Say%20Their%20Degree%20Prepared%20Them%20Well) found that only 23 percent of law-school graduates thought their education was worth the cost, and only 20 percent thought law school had prepared them well for life after graduation. (Both figures were the lowest among all types of graduate schools surveyed.) This is a matter of political, logistical, and moral urgency. Law schools have taken advantage of the hopefulness of their students and the generosity of federal loans. As it becomes clear that law school is not always a ladder to the middle class — that, thanks to the venality of some law schools, it is sometimes an anchor — a lifetime of debt will increasingly be seen as a bad deal for a J.D.

They should find smart ways to teach tech.

The British futurist Richard Susskind has predicted (<http://www.susskind.com/>) that most small-firm and solo-practitioner employment for lawyers will disappear as soon as the next decade, thanks to artificial intelligence's encroaching on legal work. Tomorrow's lawyers need to understand how to use technology to streamline their work, how to spot where humans will compete with computers, and how to use technology to expand access to justice for poor and middle-class Americans.

They should embrace new programs — but not be evil.

Too many non-J.D. programs are simply the predatory selling of expensive, dubious degrees. At their best, new programs can offer a valuable experimental space as labs for teaching, learning, and using new computer-based methods.

But while such radical change would be a good idea, for the near future I predict two flavors of “not much change.” There has been some recent good news for the field: LSAT test taking grew (<https://www.lsac.org/data-research/data/lsat-trends-total-lsats-administered-admin-year>) 18 percent in 2017-18 and then another 7 percent the following year. The boom has been attributed to a Trump bump — news stories of heroic lawyers rushing to airports to battle the travel ban and other tales from the “resistance” seemed to make law school cool again. (This uptick has not yet come with a corresponding increase in enrollment.)

Will law-school applications increase? If 2018-19 marks the beginning of a rally, you can expect little change from law schools — merely less cost-cutting and more attempts to increase selectivity with an eye on rates of bar passage and job placement, and (sadly) the *U.S. News* rankings. Schools will probably maintain their current skinny profile in terms of smaller class sizes and faculties for a few years to see if the bounce continues, but then expect a lot of happy exhaling.

If the recent increase is a dead-cat bounce or flattens out, we will see a slightly different status quo. Law schools will continue to shrink budgets and class sizes and increase non-J.D. programs. In that case, Minnesota, Washington and Lee, and Cincinnati show what’s to come.

But regardless, the status quo is likely to hold. American law schools have largely been run by and for law professors, and not surprisingly, law deans are finding their faculties uninterested in any sweeping changes that will make their jobs harder. Schools facing closure will obviously have a mandate for a change. Those that face struggles, but not extinction, will very likely stay the course as long as they can.

Law schools, state supreme courts, and the ABA are small-c conservative institutions by nature. In the common-law system, every successful lawyer is at heart a traditionalist because of the centrality of precedent to legal reasoning. Change happens incrementally, and the answer to many questions is, “Let’s see what we’ve done in the past.” This mode of thought has powerful effects on both lawyers and law schools. Especially in a time of crisis, the instinct is to ride out the storm, even if a few captains go down with their ships.

Benjamin H. Barton is a professor of law at the University of Tennessee. This essay is adapted from his new book (<https://nyupress.org/9781479866557/fixing-law-schools/>), Fixing Law Schools: From Collapse to Trump Bump and Beyond (New York University Press).

© 2020 The Chronicle of Higher Education | [About](#) | [Subscribe](#)