

Proprietary Law Schools and the Marketization of Access to Justice

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Abstract

The rise of for-profit law schools in the United States highlights the interplay of political and moral economy in the reproduction of legal expertise. This article offers ethnographic evidence from one ABA-accredited for-profit law school pseudonymously labeled New Delta School of Law. The article posits New Delta as a case study in market fundamentalism of the kind first theorized by Hungarian economist Karl Polanyi. Polanyi defined global capital as a “double movement” between free marketeerism on the one hand and countervailing social protectionism on the other. Treating this as incomplete, social philosopher Nancy Fraser has since argued that the emancipatory new social movements form a third element in what should more properly be considered a “triple movement.” In this article, I argue that for-profit law schools such as New Delta support Fraser’s revision. Drawing in capital commitments from large institutional investors with promises of high returns on the basis of guaranteed federal student loan dollars, New Delta recruits disproportionately from minority and low-income communities while offering low chances of bar passage and legal employment. By marrying free marketeerism with the discourse of emancipation, the school has successfully evaded scrutiny.

Introduction

New Delta School of Law is one of only six for-profit law programs stamped with American Bar Association (ABA) accreditation, and one of three owned by a corporate entity I will call LawCorp. LawCorp, in turn, is owned by a \$46 billion private equity firm whose 31 other holdings include medication monitoring, senior care, and mortgage-lending firms. As a private equity property, LawCorp is designed to draw in capital commitments from institutional investors—Ivy League university development offices, among them—in exchange for high rates of return. To win over the public, LawCorp at the same time goes to great lengths to publicize its especially liberal mission. “[Our] mission,” its Web site reads, “is to “establish the

benchmark of inclusive excellence in professional education for the 21st Century." This mission is supported by three key pillars: "serving the underserved"; providing an education that is "student-outcome centered"; and graduating students who are "practice-ready." LawCorp, then, might best be described as having two missions—the first, commercial; the second, charitable and public.

In this paper, I suggest that the liberal marriage between marketization and emancipatory politics of "access" have helped persuade the law school regulatory establishment—that is, the ABA—that when it comes to law school oversight, the "market knows best." This triangulation—with markets and emancipatory politics on one side and regulation on the other—resembles less the bilateral dynamic articulated by Karl Polanyi in his 1944 book, *The Great Transformation*, than the trilateral relationship outlined by Nancy Fraser in her 2013 essay, "A Triple Movement?"

"Insufficiently attuned to the rise of free-market forces," Fraser wrote, "the hegemonic currents of emancipatory struggle have formed a 'dangerous liaison' with neoliberalism, supplying a portion of the 'new spirit' or charismatic rationale for a new mode of capital accumulation, touted as 'flexible,' 'difference-friendly,' 'encouraging of creativity from below'" (Fraser 2013). By combining free market reasoning with the rhetoric of inclusion, New Delta School of Law and its parent company have been successful. They have won and sustained regulatory approval, generated millions for private investors, and maintained enrollment despite historic declines in law school applications and graduate job opportunities in the past five years.

This project bridges several contemporary literatures. The first surrounds higher education and finance policy studies. With total U.S. student loan debt now past \$1 trillion, public university tuition up 302% since 1976 (Best and Best 2013:71), and a 40% drop between 1969 and 2009 in the proportion of university faculty on tenure track (Kezar and Maxey 2013), scholars of American higher education accurately describe it as “in crisis.” At the heart of this—much as in the coeval crisis in housing and banking—has been an ideology of “access.” As Best and Best pointed out, faith in higher education as a guarantor of social mobility has created explosive demand for college and graduate education and a highly trafficked secondary market in student loans backed by the U.S. federal government. Seeking to capitalize on this dense flow of “safe credit,” for-profit colleges and trade schools have grown from accounting for 3% of all students in 1999 to 9% in 2009 (Glenn 2011). Under current conditions, 96% of students at such schools are receiving federal student loans (Lee 2013), and many of those will default, leaving the taxpaying public to absorb this cost even as legislators claim to be saving them money by cutting education funding.

Meanwhile, writers such as Stanley Aronowitz (2000) and Henry Giroux (2014) have commented vigorously on the wider context of neoliberalism in higher education. This trend away from public support and state financing of education and toward private credit, charitable contributions, and corporate partnerships marks a sharp departure from U.S. post-war state support of higher education as a public good.

The legal academy, in particular, has been subject to increasing criticism. As Brian Tamanaha has argued, the current structure of law school governance and financing does not support student learning, and weak regulatory oversight has exacerbated the problem. The U.S. Department of Education elects not to oversee law schools and cedes this responsibility to the ABA—a group consisting of members of the bar and legal academics, and thus one that views itself as “self-regulating” (Tamanaha 2012). The most striking feature, in this regard, is the employment of past and present ABA officials as board members and “consultants” on accreditation campaigns waged by the for-profit law programs studied here.

At the same time, others have pointed out that the talk of “crisis” and calls for “innovation” have buttressed the for-profit law sector. The legal scholars Erwin Chemerinsky and Carrie Menkel-Meadow (2014) have, for example, argued recently that there is no real crisis of legal education, only market fluctuations that can in fact filter out weaker programs. Moreover, they suggest that the discourse of crisis invites hasty reforms with long-term negative consequences. In my own writings (2013), I have made similar arguments based upon direct participant-observation of such rushed reforms.

Lastly, I draw heavily on recent work in the anthropology of law, economics, and policy. Beth Mertz’s ethnography of language in legal education (2000) casts valuable light on the socialization process of day-to-day law school practices, including the Socratic method and case briefing, while Eve Darian-Smith’s forthcoming work on education for the global law firm offers pathbreaking insight into the implications of legal education on transnational professional markets and

cosmopolitan elites. Meanwhile, Karen Ho's ethnographic research on Wall Street (2008) offers a model for understanding social constructions of and reactions to market "crisis." Using individual practices and narration as evidence, we get a better picture of the way financial actors, as Ho puts it, "make markets" (2008:5). Through everyday practice, they supplant social concepts such as community, solidarity, sympathy, and protection. "Locating the supposedly abstract market in sites with particular institutional cultures localizes the market, demonstrates its embodiment, and shows how it is infused with ... organizational strategies..."

Cris Shore and Susan Wright (1997) distinguish the anthropology of policy from studies of other expert social fields such as law and medicine. Whereas the latter may entail what Laura Nader (1972) called "studying up," the former more resembles a process of "studying through"—of viewing the unique meanings produced at the interface of norms and publics. The anthropology of regulation, meanwhile, as a study of the presence and absence of state protection, can build on this idea while attending to the important distinctions between policy and regulation among certain key publics. In my own research among lawyers and legal educators, regulation is interestingly both more imposing and more brittle than policy. Because policy remains an "ought," it invites negotiation. Because regulation is a "must," it invites circumvention or, as we shall see, perhaps elimination.

This work is part of a wide academic reflection on the vicissitudes of neoliberalism. Basic to this academic analysis has been the influence of Hungarian economic anthropologist Karl Polanyi. Writing in 1944, Polanyi theorized the spread of global capitalism as a perennial struggle between *marketization*—free

market triumph over government regulation—and *social protection* or movements to preserve social cohesion against the anomic forces of the market. Viewing world capitalism at the end of the New Deal era, Polanyi felt the proponents of social protection had succeeded in holding back the destructive forces of profit and that this success would continue to prevent unfettered markets from fully taking over.

Looking upon the first decade of the twenty-first century, recent commentators (Block 2008; Fraser 2013) have offered mixed reviews of this “double movement.” On one hand, they say, Polanyi was right in viewing markets and social protection as perennial forces in tension. On the other, they point out his 1944 predictions clearly fail to account for the post-1980 period in which world leaders hostile to social welfare and trade unionism gained power in key Western nations, intergovernmental organizations, and the Third World. Moreover, Polanyi’s model failed to predict the worldwide financial collapse of the late 2000s brought about by derivative speculation and ever decreasing regulatory scrutiny. So, despite the great respect afforded Polanyi, why such failure?

According to the social philosopher Nancy Fraser, Polanyi’s double movement fell short because it failed to envision the subsequent new social movements of the latter half of the twentieth century (Fraser 2013). It was these movements—not for traditional welfare protections but for emancipatory identity rights and recognition—that changed everything, Fraser contended. Free from the material entrenchment of traditional movements such as labor or first wave feminism, emancipatory movements seeking full participation could be taken up and aligned smoothly with either free marketeering or social protectionism. After

the 1960s and 1970s, Fraser wrote, it was the market that proved most successful in bridling emancipatory discourse in winning public support. As a result, the individual citizen came to express his or her needs best not through social solidarity with peers but through market transactions. The role of law was no longer to secure group benefits or collective rights but, rather, to hold back government intervention in the name of the so-called “freedom of contract.”

The case study of proprietary legal education in general and LawCorp, in particular, is a study in the deployment of this discourse. As the pages below illustrate, for-profit production of legal expertise has prevailed through the very partnership between market deregulation and the emancipatory politics of access to professional education.

Background

The rise of New Delta must first be understood against the rise of private equity markets and their growing interest in higher education over the last two decades. Private equity is a form of investment that entails acquisition of a majority share in an operating company with the expectation of higher than average returns on investment. This transaction may occur early in the “venture capital” stage of development, or later in the form of a traditional leveraged buyout. Because private equity investment targets companies with high growth potential, it entails greater risk than other investments and therefore commands higher returns and greater control in the purchased property. Equity investors often serve on the boards of the companies they acquire, and become integral in executive decision-making. Their

acquisition of companies such as ailing colleges and universities has a “house cleaning” effect on rank-and-file workers and has been well documented elsewhere (Ho 2009). Because of this high risk and heavy commitment, investors typically place their money with private equity “funds” that specialize in certain industries so to diminish risk and outsource oversight. Funds seek “capital commitment” from wealthy individuals, but they prefer “institutional investors” such as state pension systems or university endowments.

In the mid-2000s, equity fund practices involving state pension systems became the subject of a national scandal. Fund managers had been wining and dining elected officials, such as the New York State comptroller, or offering finder’s fees to their associates, in exchange for vast capital commitments from monies accumulated from state firefighter, police, and teacher pensions. These practices became a target of coordinated multistate litigation by several state attorneys general and the SEC, and many of these resulted in disgorgement settlements in the seven-figure range. The lawsuits briefly slowed the growth of private equity, but the markets quickly rebounded after 2009 (PEGC 2014)

Private equity growth coincided with and contributed to an explosion in for-profit colleges and trade schools during the same period. During the early aughts, funds such as Providence Equity Partners, Quad Ventures, and Sterling Partners (Leventhal and Tang 2014) poured money into the for-profit sector as they sought to match the success of the Apollo Group and its behemoth the University of Phoenix. Whereas in 2001, roughly 770,000 students were enrolled in U.S. for-profit colleges and trade schools, by 2010 that number had swollen to 2.4 million

(Lee 2012). This jump by roughly 225% compares starkly with a rise of only 31% in all higher education programs during roughly the same period.

Overall traffic among for-profit colleges and trade schools increased due to three major developments: the rise of distance education through information technology; increased demand for undergraduate degrees as a pathway to upward mobility; and increased availability of low-interest federal student loans. So strong was faith in education as a guarantor of future wealth, that the federal government continues to bill the roughly \$1 trillion dollars owed to it as an “asset” rather than “liability” for accounting purposes (Best and Best 2013). Standing upon these three legs, for-profit institutions were particularly keen to announce interest in expanding “access” to education. Offering the promise of a professional law career, salary, and cultural capital, New Delta placed itself on the leading edge of this trend.

New Delta School of Law

The school opened its doors in 2005. It was the first developed exclusively by LawCorp and the second in what would become a stable of three law programs. New Delta was housed in the suburbs of a major metropolitan city after significant market research revealed high local demand for a “no frills” juris doctor (J.D.) program. The city had experienced vast growth in the preceding decade, and its housing market was becoming one of the “hottest” in the country. While these likely contributed to local demand for professional education and careers, the only extant law school to meet this demand in the city was the more selective Big State School of Law. Although students entering New Delta would be charged tuition rates roughly

40% higher than their in-state peers at Big State, they were willing to accept this burden on faith that it would lead to higher income, or that they would be able to transfer out after one year.

During my fieldwork, I saw these hopes dim. In 2009, the legal job market, responding to wider collapses in mortgage and banking sectors, contracted severely with large firms hiring 40% fewer entry-level attorneys (NALP 2011) and laying off thousands. Within five years, applications to law schools fell nearly 40% (Neil 2014). Meanwhile, in this period, New Delta appeared to step up promotion of its charitable mission to “serve the underserved.” This resulted in a rise of minority new enrollments from roughly 30% before the crisis to more than 50% in spring 2013. All three LawCorp schools made similar moves backed by the same claims, and in 2012 the company announced that while it alone accounted for less than 2% of students, it accounted for 16% of minorities among ABA schools. The school has since been honored by Law School Admissions Counsel and the *National Jurist* for having exceptionally high diversity rates.

Institutional Policy in a Changing Market

While recruiting from these communities to maintain minimum enrollment levels, New Delta also made several internal policy changes during what its administrators portrayed as a fiscal “state of exception” (Agamben 2005). Although leaders linked policy changes to market conditions, they did so by casting them as innovation.

The first of these was to demand an overhaul of the entire curriculum. In general terms, law school curricula were virtually uniform across all 230 ABA law programs. Almost every first-year student took a series of classes dividing the legal universe into Contracts, Property, Torts, Civil Procedure, Constitutional Law, and Legal Research and Writing. This permitted graduates of any ABA program to sit for any state's bar exam. It also enabled first-year students to apply to transfer from the most obscure "fourth tier" programs to the very best schools in the country provided strong evidence of success.

At New Delta, transfer attrition had become a serious problem from the institutional perspective. While the school was able to attract its largest ever incoming class in 2011 just prior to the nationwide decline, that same year also saw its largest transfer rate, as better schools could easily recruit from the bottom tier without disturbing its national ranking. To stem this attrition and thereby keep federally funded tuition dollars flowing into the school, New Delta administrators mandated faculty alter their curricula in a dramatic fashion: a subcommittee chosen by the dean devised a plan to merge classes such as contracts and property on the one hand and civil procedure and torts on the other into large, integrated courses. Supporting this move was a rationale that such integration would allow students to better learn the practice of law and would be marketable as innovation. But the starkest and most predictable consequence would be to render transfer after the first year nearly impossible. Many faculty opposed the proposal and several senior, tenured professors spoke out critically in meetings about its detriment to students and learning. Asked to finally vote on the curriculum in winter 2012, faculty

rejected it by a margin of two votes. New Delta's dean mandated redrafting and revoting within one month. In the meantime, the most senior faculty critic was called in and fired behind closed doors; two visiting professors were then appointed with voting rights during a holiday break. Finally, after a second defeat and another revote, the proposal passed by a margin of two votes.

After the three curriculum votes and scandalous firing, school administrators made a second decision to reinterpret tenure entirely. In the spring of that same year, they issued a letter to faculty indicating they would no longer receive annual contracts but rather "reappointment letters" that they must sign and resubmit. When the letters were issued, they differed in language from the traditional contract but made reference to the faculty handbook and claimed to incorporate its terms. On this news, two tenured senior faculty in consultation with an employment attorney responded by submitting executed contracts of the previous form. The dean delayed response to this until the reappointment deadline passed, at which time she informed the pair that their contracts constituted "counter offers," that their original offers had expired, and that the school would not be re-extending the same. After serving the school in its initial accreditation bid and in several positions of faculty leadership, these professors were given weeks to clear their offices. In a suit filed in federal district court, the two argued that as tenured faculty, they were entitled to renewal of their standard-form contract annually until they came up for post-tenure review.

For many, these episodes represented a turning point in the brief history of New Delta institutional practice and policy interpretation. Taking into account New

Delta's pressure to withstand the legal ed market downturn and adding to that its unique business model premised on private equity financing and outsized returns, both policy mutations should be understood as the result of marketization.

Whereas other law schools may have been forced to lay off permanent faculty through tenure buy-outs and other incentives, New Delta's response to market pressure was to mechanize its faculty. "They have moved steadily," one professor told me, "from a point before accreditation ... when they praised faculty for the role they would play in 'serving the underserved' to a position that effectively... allows for a 'course in a box' to be handed to any person who could teach that course to any student" (interview with author June 5, 2014).

Replacing faculty prerogative with business office rationale, this incident reflects an inversion of traditional faculty governance. Supplanting security of position with the logic of short-term contracts, the latter reflects distortion of "tenure" and abrogation of the academic freedom on which it is based. Importantly, both these areas are addressed by *ABA Standards and Rules of Procedure for Approval of Law Schools*; each is therefore relevant in the school accreditation process. With New Delta's reaccreditation deadline coming in the next year, many were curious to see how the regulatory body would respond to these shifts.

The Regulatory Environment

Under the Higher Education Act of 1965, colleges and universities are eligible to receive tuition monies from the federal government on behalf of students through a number of statutory programs provided that the schools are accredited by a

recognized body. Because the American Bar Association is the preeminent organization of attorneys in the United States, because the legal profession has cast itself as an expert community inscrutable to the general public, and because most lawmakers themselves are attorneys, the U.S. Education Department has left law school accreditation entirely to the ABA. The ABA, in turn, charges its Section on Legal Education and Admission to the Bar with accreditation decisions. There is a formally intensive process that requires a school to compile a lengthy “self study” that “describes the school in detail, contains a critical evaluation of the school’s strengths and weaknesses, establishes goals for the school’s future progress, and identifies the means of achieving those goals” (ABA 2013). The school is then visited by a site evaluation team, which meets over a three-day period with administrators, faculty, and students and collects prodigious evidence in the form of examinations, papers, faculty research products, and so forth. The law school then completes a site evaluation questionnaire and awaits results. Although each school can apply for “provisional approval” in its first year, it does not become eligible for full accreditation until its fifth year of operation. A new school must then also apply for reaccreditation three years after initial accreditation.

Accreditation has several important implications. First, it permits the school to receive Title IV federal student loan monies. At this most basic level, accreditation has an immediate impact on any school’s business office. And yet, among for-profits, federal loans are an even bigger fraction of the total income stream. Title IV eligibility is thus an even more acute concern. Under the private equity model, where capital agreements specify minimum returns and offer

investors the opportunity to abruptly withdraw or call back capital when minimums go unmet, loss of Title IV eligibility would be catastrophic.

And yet, de-accreditation is not the only way to run afoul of Title IV. A second important rule stipulates that no for-profit entity shall receive more than 90% of its income from public sources. This rule in turn requires that a school generate at least 10% of its income from private funds, and stipulates, more specifically, what kinds of activity can be counted toward this number. Despite the apparent modesty of this number, administrators at New Delta and LawCorp often seemed to struggle with meeting this requirement—particularly after having been exempted from it for the first two years of accreditation. Like the for-profit college sector more generally, LawCorp leadership was not happy that it had to meet this requirement when, it said, non-profit schools did not. Despite an earlier victory in the 1990s that had already reduced the ratio from 85/15 to 90/10, LawCorp now joined other groups launching a new campaign to further reduce this ratio through lobbying and campaign finance. In 2013 it announced to employees it was forming a political action committee (PAC), ostensibly to support election of more sympathetic legislators and judges.

Beyond financing, accreditation bears heavily upon the status of the institution. First, it impacts bar admissions. ABA accreditation renders any graduate eligible to sit for any American bar exam and therefore renders them nationally marketable in employment searches. Whereas unaccredited law programs can still petition state supreme courts for student eligibility to sit for a local state bar examination, regional accreditation is widely looked down upon

among legal educators as a mark of inferior quality. Furthermore, recent cases such as that of non-profit Concordia University School of Law in Boise, Idaho, reveal that some state supreme courts—whose justices are likely not to have been educated outside the ABA “top tier” programs—are not friendly to the idea (Sloan 2014). With so much at stake in accreditation, and with heavy pressure to satisfy capital commitment agreements, proprietary law schools such as New Delta have great incentive to influence regulatory decision-making. Realization of similar risks has been well documented in other sectors such as energy, banking, and telecommunications, but awareness of their significance in the legal services industry is lacking. It is here that ethnography offers valuable help.

I had the opportunity to observe reaccreditation at New Delta in 2013. The moment came only months after the episodes described above: the reorganization of faculty governance through mandated curriculum change and the reinterpretation of tenure as eligibility for short-term contracts. Given these new departures, and given the importance of faculty governance in ABA’s Standards 201(a) and 405, optimistic faculty and staff expected close scrutiny from the site evaluation team on these matters. As Brian Tamanaha has written, the constitution and sympathies of accreditation teams have historically predisposed them to favor faculty in the delicate interest-balancing between administrators and professors. Tamanaha has suggested this asymmetry—privileging faculty governance and security of position, in particular, has made law school governance overly costly and inflexible (2012). And yet, perhaps influenced by Tamanaha’s assertion, these tendencies were not to be found at New Delta in 2013.

Rather, the site evaluation team seemed to spend most of its time behind closed doors with administration and to select administration-friendly faculty for private interviews. When it did meet with professors, it did so as a whole and raised a series of soft questions about material resources and teaching rigor. It did not, despite lengthy opportunity to conduct preliminary investigation, register awareness of the recent shifts in basic policy interpretation that had led to a sudden overhaul of curriculum and dismissal of three tenured senior faculty. In its one show of critical inquiry, the site evaluation committee chair mentioned in passing his team's surprise upon learning that New Delta's admissions office answered to the business office.

Several weeks after the site visit, New Delta's dean offered an informal update to faculty on reaccreditation. The dean said the committee had been generally impressed by the school, and was especially sensitive to its mission to train a different category of law student, one that could better serve marginal communities. The dean quoted from a member of the school's governing board who had heard that the visit went well, and that the ABA was impressed. The board member said the team acknowledged the difficult financial situation of the school and its peer institutions in an environment of contracting legal employment and law school applications. Finally, said the dean, the board member told him/her the committee's approach to re-accreditation—at least in the current climate—would be, in his/her words, to “let the market decide.”

Who was this board member and how did he or she know this? The dean's informant, chair of LawCorp's national policy board, was a former state supreme

court justice, former mayor of a major metropolitan city, and, most importantly, former president of the American Bar Association—the first African-American attorney to have served in this role. In more recent news, this same individual had been appointed chair of the ABA’s Task Force on Financing in Legal Education. Equally important, the LawCorp board at this time included a second former ABA president plus two former chairs of the Section on Legal Education and Admission to the Bar. Their notable presence on the Board served a key symbolic function. It told prospective investors that accreditation of all the three LawCorp schools was but a formality, and that the high returns promised would not be interrupted by regulatory oversight.

A “Triple Movement”: Deregulation, Emancipation and Protectionism

In his 1944 masterwork, Karl Polanyi suggested presciently that the worldwide expansion of capital brought a twofold tendency toward unfettered economic liberalization on the one hand and social protectionism on the other. Tendencies of avarice, individualism, and economic determinism would compel large stakeholders to push back government intervention wherever money was to be made, while the vast population left vulnerable to the whims of an unfettered free market would organize for social protection.

In tracing the limits of this theory, modern-day critical admirers of Polanyi take a “presentist” approach. Though this is arguably unfair given the framework in which he was working, his projections were prescient, and his influence on the social sciences was wide. Yet Polanyi’s forecast of intense protectionist social

movements failed to materialize. To Fred Block, Polanyi's "failure as a prophet" resulted from his failure to foresee the vast expenditures market proponents would make—via think tanks, lobbying, and the like—toward "drowning out" the possibility of non-market alternatives (Block 2008:9).

For Nancy Fraser, the failure goes beyond this. It is not simply that one ideology drowns out the others. The premise of the "double movement," with free-marketeters on the one hand and social protectionists on the other, fails in presentist perspective to account for the emancipatory new social movements of the latter half of the twentieth century. Those movements, to wit, identity-based "power" movements in the U.S. or student-worker protests in 1968 Paris, sought not the protectionist goals of the New Deal era but rather "full participation" of social groups in political and economic life. To the extent that these emancipatory movements sought inclusion or access, they demanded only limited revolution. Indeed, because inclusion required a more or less stable "core," emancipation could be twined with either social protection or deregulation. Like Block, Fraser recognizes ideology's role in tipping the balance and characterizes—properly, I think—emancipation as a kind of "floating signifier." As she puts it, "An emancipatory project coloured by naive faith in contract, meritocracy and individual advancement will easily be twisted to other ends—as has been the case in the present era" (2013: 131)

Meanwhile, at New Delta, some faculty realized their dubious role in this strange coupling:

Most faculty initially thought serving the underserved meant training our students to meet the unmet legal needs of marginalized

communities. We thought it also meant a willingness to work with a student population that was drawn from those communities and would also require us to work harder with them for them to achieve their goals. We did not ever contemplate that it meant that we were committed to admitting students in the bottom 10% of all LSAT takers who had no real chance for completing the course of study and passing the bar. (Interview with author June 5, 2014)

Conclusion

The rise of proprietary legal education, in short, supports Fraser's outlook. In the context of New Delta School of Law, its parent company LawCorp, and the vast private equity empire that backs them, the discourse of emancipation looms large. In marketing materials ranging from Web sites, brochures, and regional recruiting events, the school lauds its mission of "serving the underserved." Such materials also serve as evidence when attracting investor capital, and this message has had its intended effect.

Increased access to the legal profession for minority students may be a good investment, but should it be subjected to private equity capital markets? If so, should this come with greater or lesser regulatory oversight? Because students of color are more likely to depend on non-dischargeable student loans, because capacity to fulfill loan obligations will depend on school guidance and educational quality, and because for-profit law programs like New Delta base their business on service to these students and result in greater indebtedness, one would expect the strictest regulatory oversight. And yet, this is not the case: accreditation is delegated to the ABA, and LawCorp has on its board a strong contingent of former

ABA officials; moreover, the ABA itself has reportedly moved towards an accreditation logic of “let[ting] the market decide.”

Because of this, scrutiny of basic academic policies such as curriculum management and security of position has fallen by the wayside. Unsurprisingly, for a corporation serving investor interests, it is these same policies that become most inconvenient in times of austerity. The paradox then becomes clear. Increasing “access” seems to necessarily mean exposing law students to market forces; but exposing them to market forces seems to require suspension of meaningful oversight. Such logic forms the backbone of an alarming new conception of law whose social value lies more in its absence than its presence.

References:

Agamben, Giorgio. 2005. *State of Exception*. Trans. Kevin Attell. University of Chicago Press.

American Bar Association (ABA). 2013. *The Law School Accreditation Process*, available at: http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_revised_accreditation_brochure_web.authcheckdam.pdf, accessed November 21, 2014.

Aronowitz, Stanley. 2000. *The Knowledge Factory*, Boston: Beacon Press.

Best, Joel and Eric Best. 2013 *The Student Loan Mess*, Berkeley: University of California Press.

Chemerinsky, Erwin and Carrie Menkel Meadow. 2014. “Don’t Skimp on Legal Training,” *New York Times*, April 14.

Darian-Smith, Eve. forthcoming. “Rethinking Legal Education, Reframing Legal Practice: The Limits of the Global Law Firm”.

- Durrance, C., & Smith, M. 2010. FRONTLINE: College Inc. xxx
- Fraser, Nancy. 2013. "A Triple Movement? Parsing the Politics of Crisis after Polanyi", *New Left Review* 81, May/June, 119-132.
- Giroux, Henry. 2013. *Neoliberalism's War on Higher Education*, Chicago: Haymarket Books.
- Glenn, David. 2011 Annual Portrait of Education Documents Swift Rise of For-Profit Colleges, *Chronicle of Higher Education*, May 26.
- Harvey, David. 2007. *A Brief History of Neoliberalism*, Oxford University Press.
- Ho, Karen. 2008. *Liquidated: an Ethnography of Wall Street*, Durham: Duke University Press.
- Lee, Suevon. 2012. "The For-Profit Higher Education Industry, By the Numbers," *Pro Publica*, available at: <http://www.propublica.org/article/the-for-profit-higher-education-industry-by-the-numbers>, accessed November 20, 2014.
- Leventhal, Mitch and Ina Tang. 2014. "A Sector of Interests: Institutions and Schools", *Equity for Education*, October 14, 2013, available at: <https://equityforeducation.wordpress.com/2013/10/14/a-sector-of-interest-institutions-schools/>, accessed November 26, 2014.
- Mertz, Elizabeth. 2000. "Teaching Lawyers The Language Of Law: Legal And Anthropological Translations," *John Marshall Law Review* 34, 91-117.
- Nader, Laura. 1972. "Up the Anthropologist: Perspectives Gained from Studying Up" in Dell Hymes ed. *Reinventing Anthropology*, New York: Pantheon Books.
- National Association of Legal Professionals (NALP), 2011. "Entry-Level and Lateral Hiring -- On the Road to Recovery?" *NALP Bulletin*, March 2011.
- Neil, Martha. 2014. "Law School Applications Down 37 Percent Since 2010; First-Year Class Could Be Smallest In 40 Years", *ABA Journal*, July 22, 2014.
- Ong, Aihwa. 2006. *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty*, Durham: Duke University Press.
- Polanyi, Karl. 1944. *The Great Transformation: the Political and Economic Origins of Our Time*, Boston: Beacon Press.
- Private Equity Growth Council (PEGC). 2014. "US Private Equity Investment,"

- available at: <http://www.pegcc.org/education/pe-by-the-numbers/>, accessed November 20, 2014.
- Sassen, Saskia. 1999. *Globalization and Its Discontents*, New York: The New Press.
- Shore, Cris and Susan Wright eds. 1997. *The Anthropology of Policy: Perspectives on Governance and Power*, London: Taylor and Francis.
- Sloan, Karen. 2014. "Idaho Supreme Court Rejects Waiver for Concordia Law", *The National Jurist*, August 4, 2014.
- Stiglitz, Joseph. 2003. *Globalization and Its Discontents*, New York: W.W. Norton and Company.
- Tamanaha, Brian. 2012 *Failing Law Schools*, Chicago: University of Chicago Press.
- Tejani, Riaz. 2013. "'Beyond San Jose State: Legal Ed Innovation Should be Handled with Care,'" *New Legal Realism Conversations*, May 2013, available at: <http://newlegalrealism.wordpress.com/2013/05/20/tejani-on-legal-ed-reform-be-careful/> accessed November 20, 2014.