

## MAKING DOCILE LAWYERS: AN ESSAY ON THE PACIFICATION OF LAW STUDENTS

Harvard Law School (HLS) occupies a privileged place in the American cultural imagination. Notwithstanding its persistent second-place showing in the annual *U.S. News and World Report* law school rankings,<sup>1</sup> Harvard Law School continues to represent, for many people both inside and outside the legal community, the pinnacle of legal education, the breeding ground for the nation's leaders. Given this status, one would expect to find HLS full of confident, enthusiastic, optimistic students who are thoroughly comfortable with themselves and fully prepared upon graduation to take on the world.

In fact, one finds quite the opposite. Far from brimming over with personal and intellectual self-confidence, by the second (2L) year, a surprising number of Harvard Law students come to resemble what one professor has called "the walking wounded":<sup>2</sup> demoralized, dispirited, and profoundly disengaged from the law school experience. What's more, by third (3L) year, a disturbingly high number of students come to convey a strong sense of impotence and little inclination or enthusiasm for meeting the world's challenges head on.

How are we to explain this "pacification of law students"?<sup>3</sup> Arguably, many students arrive at HLS already partially pacified.<sup>4</sup> But another substantial portion of students arrives feeling confident, entitled to be here, and equal to any challenge. And although Harvard is a place one would expect to confer a sense of confidence, poise, and agency on even the most self-effacing students, members of both these groups become subdued, withdrawn, and uncertain of their own self-worth over the course of their legal education. If Harvard Law School routinely generates students who feel insecure, disengaged, and fatalistic about the world and their future in it, one must look to the institution itself for an explanation. In this Note, I do exactly that.

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<sup>1</sup> See *Schools of Law*, U.S. NEWS & WORLD REPORT, Mar. 2, 1998, at 78 (reporting that Harvard and Stanford share second place after Yale Law School in the magazine's law school rankings); *Top Schools*, U.S. NEWS & WORLD REPORT, Mar. 10, 1997, at 76 (ranking HLS second after Yale); *The Top 25 Law Schools*, U.S. NEWS & WORLD REPORT, Mar. 18, 1996, at 82 (same).

<sup>2</sup> Luke Cole & Jeff Selbin, *Swimming* 23 (June 1, 1987) (unpublished manuscript, on file with Harvard Law School Library) (quoting Professor Morton J. Horwitz).

<sup>3</sup> Sharon Dolovich, Book Note, *Leaving the Law Behind*, 20 HARV. WOMEN'S L.J. 313, 329 (1997) (reviewing PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE* (1995)).

<sup>4</sup> Possible explanations for the partial pacification of entering students include: they are intimidated by the reputation of the school and by their classmates; are certain that they were admitted by mistake; are older than they were in college, and thus less idealistic; no longer feel the need, having been admitted to Harvard, to drive themselves the way they did to get to HLS; and have already, in choosing law school, sacrificed other interests and passions for the security of an HLS degree.

The methodology I deploy is a variation of that used by sociologist Robert Granfield in *Making Elite Lawyers*, his study of Harvard Law School<sup>5</sup> — that of “symbolic interactionism.”<sup>6</sup> This approach views identity development as an interactive process, one that cannot be fully appreciated without examining the self-understanding of the individual involved and the “micro-politics” of his or her environment.<sup>7</sup> A danger exists, however, that individual testimonials, taken at face value, will fail to capture crucial aspects of the experience being described. The first (1L) year in particular demands that students put aside what they used to know and make sense of a whole new vocabulary in an environment with unfamiliar and complex norms. Time for reflection is minimal. What people tell themselves (and others) about their experience will therefore reveal only part of the story. The parts that remain obscure are often the most painful and, perhaps for this reason, the most trenchant.

In what follows, I seek to excavate those aspects of the HLS experience that, although conspicuously unacknowledged by the individuals affected, reveal the most about what happens to transform students so consistently and so profoundly over the course of their three years at HLS. My thesis is that the pacification of Harvard Law students is a direct consequence of the psychological distress that so often accompanies a Harvard Law School education.<sup>8</sup>

Although in developing this thesis this Note paints the HLS community with an extremely broad brush, it in no way claims to offer a definitive account of the HLS experience. Many students no doubt remain entirely unaffected by the forces here described. Still, my sense is that many Harvard students and graduates *will* recognize something of themselves in this account — as may students at other law schools. If that is so, and if those individuals in a position to effect change are moved to respond, this Note may achieve its purpose: to spark a debate on the phenomenon of pacification with the aim of reversing its effects.<sup>9</sup>

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<sup>5</sup> See ROBERT GRANFIELD, *MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND* (1992).

<sup>6</sup> *Id.* at 13.

<sup>7</sup> *Id.* at 14. Thus, Granfield’s research methodology included meeting and getting to know Harvard students, attending their classes, and conducting in-depth interviews to discover how they made sense of their experience. See *id.* at app.

<sup>8</sup> In developing this thesis I focus solely on Harvard. My hunch, however, is that at least some of what I describe below will strike a chord with law students elsewhere.

<sup>9</sup> Two other caveats are in order. First, this Note is not intended as a causal explanation for why so many Harvard Law students choose corporate practice. If it makes any claim regarding the actual choice of the corporate option, it relates to the general mental disposition of the chooser. Second, there is a danger that any effort to explore the sources of serious discontent among Harvard Law students will be received outside the HLS community (and even inside it) as self-indulgent whining by people who should be more grateful for their privileged position. This Note does not deny the advantages that accompany a Harvard legal education. One can, however,

Part I of this Note briefly outlines Granfield's account of the "making [of] elite lawyers" and assesses the purchase his concept of "collective eminence" has on the psychological dimension of the Harvard Law School experience.<sup>10</sup> Part II develops the idea of pacification as an alternative explanation for the "special sadness" of Harvard Law students.<sup>11</sup> Part III proposes institutional changes and individual strategies that might minimize, if not entirely negate, this pacification process.

## I. MAKING ELITE LAWYERS: GRANFIELD'S STORY

### A. *The Politics of the Classroom*

In *Making Elite Lawyers*, Granfield seeks to explain how so many Harvard Law students come to be separated from their initial commitment to use the law to help people and to further a social justice agenda.<sup>12</sup> The process of separation he describes has two central aspects. First, instead of accessing a series of rules designed to effectuate just resolutions to social conflicts, students quickly learn that the law is infinitely malleable, a collection of indeterminate rules and guidelines, the meaning of which is never fixed. Being a good lawyer, students discover, means being able to make arguments on any side of any issue.<sup>13</sup> As Granfield describes, this discovery can lead to cynicism regarding the prospect of using the law to effect social change.<sup>14</sup> Second, students become alienated from their prior commitments through a process of professionalization that requires them to adopt an "objective," "neutral" perspective on the cases they encounter. Some students get the message on their own and begin to read cases through the "professional" standards conveyed in the classroom. Others must be admonished that the "partial" and "ideological" standards they might have brought to issues prior to law school no longer apply.<sup>15</sup> Ei-

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both be aware of one's relative privilege and also experience psychological distress as a result of one's circumstances. This Note argues that many students incur a considerable psychological cost to access these advantages and explores the form in which this cost is exacted.

<sup>10</sup> GRANFIELD, *supra* note 5, at 125.

<sup>11</sup> *Id.* at 40 (borrowing from *The Special Sadness of Liberal Law Students*, REPTILE, Mar. 18, 1987, at 1).

<sup>12</sup> *See id.* at 38 tbl. 3.1, 48.

<sup>13</sup> *See id.* at 58-61.

<sup>14</sup> As one first-year student in Granfield's sample explained: "The law is not guided by fundamental principles of right or wrong, but rather the ability to twist the law as much as possible to make a coherent argument. What we are taught here is how to construct 'good' but not necessarily moral arguments." *Id.* at 55-56.

<sup>15</sup> As Granfield describes, this admonition may come from professors, *see id.* at 75-76, or from fellow students who mock and otherwise intimidate the "hold-outs" into adopting the appropriate "detached" and "objective" perspective. *Id.* at 79; *see also* Tae-hui Kim, *A Lesson in Free Speech*, HARV. L. REC., Apr. 18, 1997, at 13 (describing an incident in which a classmate left an anonymous note on her seat during a break that attacked her personally for views she had expressed

ther way, by the end of the first year, law students have learned to maintain a detached attitude toward the law, and consequently become alienated from their former ideals.

### B. *Learning Collective Eminence*

To explain the next step in Granfield's argument — why these students opt in such overwhelming numbers to work for large corporate law firms — he draws on a concept, developed in conjunction with Tom Koenig, known as "collective eminence."<sup>16</sup> Granfield and Koenig define collective eminence as a shared sense among a particular population that "they are members of a distinct group and occupy a privileged position within society."<sup>17</sup> This sense underscores Granfield's account of the HLS experience, which goes, roughly speaking, as follows. Students come in ready to compete. All high achievers in their respective undergraduate institutions, they arrive both exhilarated at the thought of studying law at Harvard and terrified that they will not measure up.<sup>18</sup> Quickly, however, they learn that there is no *need* to compete, that their mere presence at Harvard will guarantee them success, and that "they should not worry about being average within such a talented group."<sup>19</sup> Students soon become cynical about law school for the reasons described above. They lose their drive to distinguish themselves, start to share study aids, stop stressing about grades (everyone gets B's, so why worry about exams?), and lose patience for the few "gunners" who have not seemed to learn that everybody is on the same team.<sup>20</sup> The end result is a shared sense of eminence — we're all Harvard here and are thus all assured of success. Once corporate recruiting begins, HLS students are well-prepared to be feted and sought after by America's wealthiest and most prestigious law firms. They take as their due the binge of receptions, fancy meals, and all-expenses-paid trips around the country. "Recruitment," so Granfield's story goes, "offers dramatic confirmation that everything the students have been told about their superior status is true."<sup>21</sup> Let stu-

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during class). That fellow students are willing, even enthusiastic vehicles for disciplining hold-outs is disappointing but not ultimately surprising. As described in more detail below, *see infra* pp. 2031–33, everyone in 1L sections is wrestling with new demands, feeling cut adrift from their previous moral moorings, and likely feeling ambivalent about the identity shift they are experiencing. For those members of the section who succumbed earlier to the "professional perspective," hold-outs serve as a reproach, a reminder of what was lost, and raise the uncomfortable possibility that those who have already crossed the line might have done so too easily.

<sup>16</sup> GRANFIELD, *supra* note 5, at 133.

<sup>17</sup> *Id.* at 125.

<sup>18</sup> *See id.* at 125–26.

<sup>19</sup> *Id.* at 127.

<sup>20</sup> *See id.* at 131–33. "Gunners" are people who aggravate their fellow classmates through repeated remarks in class aimed at impressing the professor, or who otherwise display an intense desire to distinguish themselves at law school.

<sup>21</sup> *Id.* at 136.

dents at less eminent law schools take the lower-status positions. Harvard students come to learn that they are made for better things.

Although appealing and familiar, this story is no more than official myth. It is both what the institution wants people to believe about the way things work at HLS and the sanitized account students tell themselves and others about their experience. It is, however, too seamless and upbeat to capture how students experience Harvard Law School. For by the time Harvard Law students make the decision to take a job with the high-powered firm they "summered at" the previous year (or another just like it), it is not eminence they feel, but rather resignation, confusion, and a loss of their capacity to chart their own futures or make things happen. By graduation, HLS students feel anything but eminent<sup>22</sup> — the question is why.

## II. THE PACIFICATION OF LAW STUDENTS

### A. *Welcome to Harvard, the "Total" Law School*<sup>23</sup>

The initial 1L experience is reminiscent of the first year of high school. On arrival, first-year students are handed a schedule of required classes with teachers not of their choosing. They have classes with the same people every day. They have assigned seats, receive nightly homework assignments, and are expected to be prepared to participate in class each day. They even get their own lockers. The year holds so many demands, new concepts, and possibilities that there is little time for reflection. For many students, this regimentation can create a feeling of destabilization and alienation from the people they were prior to their 1L year.

Although the first year of law school is far from equivalent to life in the asylums and prisons that inspired Erving Goffman's theory of the "total institution," this concept sheds light on the 1L experience.<sup>24</sup>

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<sup>22</sup> When Koenig presented the "collective eminence" theory to an HLS Legal Profession class in May of 1996, student after student attested to how little they felt, after three years of law school, "collectively eminent." One student explained how insecure he felt when compared with a fellow summer associate at his firm who was first in his class at the University of Vermont Law School. Many others murmured their assent. Another told of the way she had been singled out among the summer associates at her firm the summer before and wined and dined by the partners in a transparent bid to ensure that at least one Harvard student would join the firm on graduation. This student spoke of how little she felt she deserved the attention. Others talked of their distress at graduating in the bottom half of the class or of having failed to make the *Law Review* two years before. Still others attested to having "checked out" of law school by the middle of their second year and from that time forward seeking nothing more from the school than "a transcript full of B's and [their] sheepskin." The message was unmistakable: this collection of 60 graduating Harvard Law students felt remarkably inadequate, insecure, and thoroughly undeserving of the respect and attention they anticipated receiving from their future colleagues.

<sup>23</sup> See ERVING GOFFMAN, *On the Characteristics of Total Institutions*, in *ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES* 1-124 (1961).

<sup>24</sup> *Id.* at 6. Goffman identifies four characteristics of the total institution:

Total institutions are designed to “detach entering ‘inmates’ from their previous or ‘presenting culture,’” to “strip away past individual loyalties, and in their place, [to] construct a set of legitimate and homogeneous values, identities, and practices that are consistent with the institutional image.”<sup>25</sup> Similarly, the 1L year can be understood as a process of identity homogenization in which students are broken down and “detached” from their connections to the lives they lived before. This process can be a painful one. People come to law school with commitments to ideals and causes, but even more significantly, they come with a sense of self — of being a unique person with a particular history, rhythm of life, perspective on the world, and style of interacting with others. First-year students arrive imagining that they will draw upon these particular features of personal identity through the course of this new challenge. Instead, the lesson learned in the first term of life in the total institution of Harvard Law School is that personal identity is largely irrelevant to their legal education and careers.

As Goffman suggests, this detachment promotes an alternate identity,<sup>26</sup> which at Harvard can be roughly described as future highly-paid lawyer in a fancy corporate firm. The cultivation of this identity begins early and persists noticeably until graduation, but the most potent aspects surface in the first term of 1L year, when students are most at sea.<sup>27</sup> As a consequence, by the end of the first semester, it can

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First, all aspects of life are conducted in the same place and under the same single authority. Second, each phase of the member's daily activity is carried on in the immediate company of a large batch of others, all of whom are treated alike and required to do the same thing together. Third, all phases of the day's activities are tightly scheduled, with one activity leading at a prearranged time into the next, the whole sequence of activities being imposed from above by a system of explicit formal rulings and a body of officials. Finally, the various enforced activities are brought together into a single rational plan purportedly designed to fulfill the official aims of the institution.

*Id.*

<sup>25</sup> GRANFIELD, *supra* note 5, at 56 (quoting GOFFMAN, *supra* note 23, at 12).

<sup>26</sup> See GOFFMAN, *supra* note 23, at 5–6.

<sup>27</sup> A few instances of the promotion of the corporate-lawyer identity observable to the class of '98 in their first term included: HLS Dean Robert Clark, during his welcome speech at orientation, acknowledging the public interest orientation of many members of the incoming class but encouraging them not to rule out private practice, opining that public interest law is not practiced only in the public sector; Sally Donahue, Director of Financial Aid, reassuring those concerned about future debt that the average starting salary of an HLS graduate, *not including those who choose public interest law*, was upwards of \$70,000 a year; professors persisting in speaking to their classes as if the students were all destined to become rich big-firm lawyers; and 2Ls and 3Ls parading through the on-campus corporate law firm recruiting process. This last experience is probably most powerful in terms of structuring expectations among 1Ls. For four weeks in October and November, hundreds of upper-year students circulate visibly around campus, wearing suits, discussing options, and comparing notes. The sense is that everyone does this firm interview thing, and more importantly, that the 1Ls will too, next year at this time. The on-campus interview season is a rite of passage that gets the full support and assistance of the law school administration. The Office of Career Services coordinates the extremely complex on-campus interviewing process for hundreds of firms and cancels classes for upper-year students for one week (designated “fly-out” week) in the fall, during which time students are expected to visit firms for

be difficult for students to remember why law school had seemed to be such a great way to keep their options open. The seeds are planted early so that later, when students start down the corporate track, the journey, although a path not actively chosen, seems natural and even inevitable.

### *B. Grades: The Great Unmentionable*

Undoubtedly, grades are the dominant source of anxiety and preoccupation among the first-year class. From the first day, there is a sense of performance anxiety among the students, a combined function of Harvard's reputation as a competitive environment and a fear of the unknown — What if I get called on? How much should I prepare for each class? What is this stuff they're teaching us anyway? Soon, however, most of these sources of anxiety fade, with anxiety about grades being the notable exception. Students realize that everyone is feeling his or her way through the unfamiliar maze, that for the most part the dreaded Socratic method is fairly tame, and that it is possible to get by without briefing the cases or studying the assigned material too assiduously. This welcome realization is helped along by an awareness that one's performance on the final exam is the sole determinant of one's grade in each class.<sup>28</sup>

Although throughout the first term 1Ls are constantly reminded that only a small fraction (around ten percent, according to the going wisdom) will get A's, and that the vast majority of the class will get B's or B+'s, most students — despite what they may claim — are not really prepared for the shock of not coming out on top. At the same time, no one wants to be seen as too strong of a "gunner." This bind makes it difficult to voice any anxiety one feels about exams and grades. Rather, the line students learn to take when this topic arises is to acknowledge the curve — everyone gets B's — and the certainty of employment, and to express relief at the resulting freedom not to have to worry about grades. Although the widespread expression of this view does at one level support Granfield and Koenig's notion of collective eminence, it is important to understand that this rhetoric of acceptance and relief with respect to the grading process is largely an artifice to obscure feelings of anxiety, the mention of which is widely understood to be unseemly. Students may express the view that every student at HLS is equally talented and capable (and they likely believe it), but in the first term, even those students who recognize the reality

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on-site interviews. Students intending to pursue public interest work, positions which typically are not filled until much later, find the law school particularly alienating at this time.

<sup>28</sup> At HLS, first-year classes, as well as the vast majority of upper-year classes, are evaluated on the basis of a single exam, worth 100% of one's final grade.

of the curve are not psychologically prepared for anything other than the academic success to which they are accustomed.<sup>29</sup>

When the first-term grades eventually come out in February, it is an extremely traumatic experience for many first-year students. As any law professor will tell you, every year there is a palpable change that comes over the class at this point in the semester. Although some formerly quiet 1Ls gain confidence and the courage to participate in class as a consequence of strong first-term exam results, in the main, the opposite is true. Formerly engaged, enthusiastic students withdraw, becoming what Professor Morton Horwitz calls "the walking wounded."<sup>30</sup> Again, however, no one talks about it. This silence is not experienced, as Granfield and Koenig might argue,<sup>31</sup> as a collective sense of eminence but arises among a group of people who are, for the most part, too shocked and humiliated to go public with the very information that made them feel this way. As one of Granfield's interviewees put it: "People generally don't talk about what law school is doing to them for fear of exposure. I know I feel this way. You have to watch your guard around here."<sup>32</sup>

At this point, when most members of the class find themselves in the middle of the curve, the story told in first term to disguise the fact of caring — isn't it great that everyone gets B's? no need to work, no need to worry — comes to reflect in a complicated way the self-understanding of the person who tells it. The story was originally told as a smokescreen to cloud anxiety about grades, but its repetition once the teller has become one of the many average Harvard Law students to which he or she earlier referred lends the story an element of truth. Recall, however, that the teller is likely someone who entered HLS with confidence in his or her ability and high hopes for success.<sup>33</sup> Note also that the story points in a particular direction for those who tell it and come to view it as representing their own perspective on law school: straight toward corporate law. It does so through the moral that there is no need to worry about getting B's because *everyone is*

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<sup>29</sup> Of the members of the 1L class entering HLS in the fall of 1996, 75% had GPAs of 3.70 or better and LSAT scores of 166 or better. See SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, AMERICAN BAR ASSOCIATION, ABA APPROVED LAW SCHOOLS: STATISTICAL INFORMATION ON AMERICAN BAR ASSOCIATION APPROVED LAW SCHOOLS 1998 EDITION 199 (1997) [hereinafter ABA APPROVED LAW SCHOOLS].

<sup>30</sup> Cole & Selbin, *supra* note 2, at 23 (quoting Professor Morton J. Horwitz); see also RICHARD KAHLENBERG, *BROKEN CONTRACT: A MEMOIR OF HARVARD LAW SCHOOL* 51 (1992) (describing the "devastating" effect of the receipt of first-term grades and explaining that "students who came to law school believing they could do anything they wanted would, for a time, feel as though they were capable of nothing").

<sup>31</sup> See GRANFIELD, *supra* note 5, at 130–33.

<sup>32</sup> *Id.* at 130.

<sup>33</sup> This process would be no less painful or difficult for those who entered their first year feeling insecure about their relative academic ability. For members of this group, the difference may merely be that the story was internalized earlier than it was by their more confident classmates.



going to get a job.<sup>34</sup> But these jobs, the ones everyone is going to get, are not teaching positions at one of the top ten law schools or advisory positions at the Department of Justice.<sup>35</sup> They are jobs with the corporate law firms that swarm over the campus come October, ready to make offers even to those students who get straight B's all the way through.<sup>36</sup> The significance of this point cannot be overemphasized. The story many HLS students tell themselves to relieve the pain of experiencing what was in all probability the first mediocre academic performance of their lives soothes with its promise of a secure, high-paying job at a corporate law firm<sup>37</sup> — an option they may well have shunned in the glowing promise of fall semester.

The sense of trauma experienced by Harvard students who get B's in their first semester confounds many onlookers, who tend to think that, in light of the competition, getting B's at Harvard is a real accomplishment. (And anyway, everyone gets jobs, so what's the big deal?) This response underestimates the extent to which getting average grades can precipitate for many HLS students a painful downward recalibration of their personal expectations, self-confidence, and sense of their own potential. Several aspects of the HLS experience combine to explain why grades can have such a powerful and painful effect. First, to be admitted, Harvard Law students will have traveled through their academic careers at the top of their respective classes, winning scholarships and earning the praise of their professors and the respect and admiration of their peers. After years of constant academic success, receiving average grades for the first time can be extremely destabilizing and an intense blow to their self-esteem.<sup>38</sup>

Second, Harvard Law School's notoriously high student-faculty ratio<sup>39</sup> means that, from the outset, students learn that only a small portion of their classmates will know and be known by any faculty mem-

<sup>34</sup> The employment rate for HLS graduates six months after graduation is 96.9%. See ABA APPROVED LAW SCHOOLS, *supra* note 29, at 199. This statistic does not include those pursuing graduate degrees (0.7%) and those not seeking employment (0.2%). See *id.*

<sup>35</sup> These may not be the jobs to which every 1L without exception aspires, but they *are* the jobs held out to 1Ls as the pinnacle of achievement in the legal community. Even those students who have no intention of seeking a litigation position at the Department of Justice are likely to experience the message that they would not be qualified, even if they were so inclined, as an indication that they have failed in some respect to measure up.

<sup>36</sup> In the fall of 1997, over 600 employers, including 581 law firms from 32 states, came to campus to interview HLS students. See Telephone Interview with Sally Donahue, Director of Career Services, Harvard Law School (Mar. 12, 1998).

<sup>37</sup> The average starting salary for members of the Class of '97 who went to work at private firms was \$78,000. See *id.*

<sup>38</sup> See GRANFIELD, *supra* note 5, at 130 ("I was humiliated the first year by the professors and some of the others students' knowledge of the subject. My perception of myself was challenged. I was an 'A' student at [college] and I was getting 'B's' for the first time in my life. That was hard.") (quoting an unnamed HLS student).

<sup>39</sup> See ABA APPROVED LAW SCHOOLS, *supra* note 29, at 198, 366, 444 (reporting Harvard Law School's student-faculty ratio as 21.1:1, Yale's ratio as 10.9:1, and Stanford's ratio as 16.9:1).

ber. This phenomenon is especially true in the first year, when 145-plus students per class is the standard. The significance of grades thus becomes inflated because without more personalized feedback, grades provide students with the only indication of their performance. After five months spent learning a new language, being made to feel the irrelevance of their prior experience, and having no one take any interest in their views or progress, it is no surprise that students receive their grades as a definitive statement regarding their legal academic ability and their potential as lawyers. Grades, quite literally, put first-year students in their place.

In addition, in a climate in which meaningful access to professors is rare and known to be so, grades can dramatically affect the extent to which students feel entitled to make demands on professors' time. This is especially the case with respect to one's own first-term professors — an A from a professor has a way of validating subsequent overtures, and a B is received as a sign that one should probably stay away. And this feeling also extends to other professors, so that an A student will generally feel a greater confidence in initiating contact with any faculty member than will someone who got B's.

Finally, as 1Ls quickly learn, the legal world invests first-year grades with disproportionate significance.<sup>40</sup> On a practical level, the timing of the 2L job search and the clerkship application process — both of which take place before any other grades are reported — means that first-year grades will materially influence the options one has available immediately after graduation. This timing also means that before students have completed even one year of law school, they have already received what is experienced as a personalized message informing them of their future prospects. For the majority of students, this means a considerable lowering of their expectations, an adjustment that cannot help but be psychologically painful.<sup>41</sup>

This process of recalibrating one's expectations, precipitated by all the forces described above, would be traumatic for anyone. But it takes on a particular poignancy for those students who had planned all

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<sup>40</sup> This phenomenon is longstanding. See Michael H. Levin, *Fear and Loathing at Harvard Law School*, HARV. MAG., Mar.-Apr. 1995, at 44, 46 (recalling how Dean Griswold, during his matriculation address to the class of 1969, informed the new students that their "class standing, law school careers, and professional lives would be determined by June exams").

<sup>41</sup> See GRANFIELD, *supra* note 5, at 130 ("To students who have always excelled, the sense of being simply one of the crowd creates substantial stress."). This feeling was parodied — and also effectively captured — in an editorial entitled *Grades are Random*, appearing in 1987 in a short-lived radical student publication called the *Reptile*. It read, in part: "Mystified? Alienated? Just plain bummed out? You must have received your grades. . . . Don't feel alone, for you've just joined the league of identical students. We're a homogeneous, dehumanized, rather large group, and our only official recognition is our transcripts . . . ." *Grades are Random*, REPTILE, Mar. 18, 1987, at 2. This editorial had its own explanation for the phenomenon: "The saddest part of the tragedy is the self-fulfilling prophecy of the LIE: Students, believing that the process *will* define them, *let* it define them." *Id.*

their lives to go to law school, who were selected among thousands of applicants to study at Harvard Law School,<sup>42</sup> and who are viewed by their friends, family, and communities as high-achievers, certain to be successful. These students are forced to carry with them the knowledge, imposed by the institution, that they have not performed as expected. For many, this is the first instance of what will become a familiar bifurcation of their identities: with their families and friends and in their home communities, they continue to be viewed with admiration as a successful Harvard lawyer; while at school, they must reckon with the fact that they have not distinguished themselves, but are merely average, one of a cast of thousands.<sup>43</sup>

### C. Making Law Review

First-year students at Harvard Law School are not preoccupied only with grades. The *Law Review* is also the source of no small amount of anxiety.<sup>44</sup> The writing competition, which determines who will be invited to become an editor of the *Harvard Law Review*, does not take place until after spring-term final exams, and ultimately, only a little over half of the first-year class will decide to participate.<sup>45</sup> But the clear message 1Ls receive almost immediately on their arrival — that *Law Review* editors are the “sub-elite” of the school<sup>46</sup> — means that at some point during 1L year virtually every student grapples with the question of whether to make the attempt. Of those who take the competition, a great many really want to make it. Yet among the 1Ls, next to no one admits this. Instead, conversation about the *Law*

<sup>42</sup> The most recent ABA statistics report an applicant pool of 6,493, from which HLS extended 841 offers of admission. See ABA APPROVED LAW SCHOOLS, *supra* note 29, at 199.

<sup>43</sup> Although getting A's provides some protection against the crisis of confidence that average grades can precipitate, it would be a mistake to imagine that A students are all somehow exempt from and graduate untouched by the pacifying forces described above. When Harvard Law students get A's, the stakes merely become higher. Subsequent exams — any one of which could yield a B — pose a constant threat that one will be dethroned, one's record sullied, and one's legal potential exposed as, after all, merely average. When a student enjoys an A average, professors are approached with greater assurance and transcripts are attached with confidence to requests for reference letters or research positions. Once you start getting B's, it is feared, professors will be less interested in making your acquaintance, less confident in any prior assessment of you as someone with considerable legal talent and potential. For most people, in other words, a strong performance on first-year exams, although bearing notable rewards, offers no guaranteed escape from the forces of pacification. The fear of exposure and of falling from grace felt by students with A averages may explain the relatively high level of anxiety with which top performers tend to contemplate the prospect of exams.

<sup>44</sup> To become an editor of the *Harvard Law Review*, students must participate in an eight-day (prior to 1998, a nine-day) writing competition, which requires them to edit (“sub-cite”) an article and to write a comment on a Supreme Court or federal circuit case decided in the previous Term.

<sup>45</sup> In June of 1997, 278 members of the 1L class picked up the competition, as compared with 305 in June of 1996 and 300 in June of 1995. Interview with Eric Columbus, Treasurer, Vol. 112, *Harvard Law Review*, in Cambridge, Mass. (Mar. 6, 1998). The size of the entering class is approximately 555 students. See ABA APPROVED LAW SCHOOLS, *supra* note 29, at 198.

<sup>46</sup> GRANFIELD, *supra* note 5, at 138 (noting the “elevated status” of *Law Review* editors).

*Review* among 1Ls tends to be restricted to “safe” topics that allow people to discuss the *Law Review* without betraying the hope that they will be among those selected for membership.<sup>47</sup>

*Law Review* editors are not immune to the pacification process explored here. *Law Review* membership is only one of several factors in the mix, and its positive effects on one’s self-confidence can be easily undermined by any of the other factors that tend to affect the self-perception of Harvard Law students. However, particularly initially, the positive reinforcement that accrues to members of the *Law Review* deepens — or for those editors whose first-year exam performance was unremarkable, reinstates — the self-confidence that students possessed on their arrival at law school. Making *Law Review* thus plainly serves as an antidote to the pacifying effects of the first year. It also makes the prospect of membership extremely appealing to those students whose egos took a battering during their 1L year.<sup>48</sup>

For those students who try and fail to make the *Law Review*, the experience can reinforce the sense of inadequacy, of being average in a large crowd of students. Obviously, people recover from the pain this experience evokes, but the process changes them. Once content and confident, many students by 2L year find themselves coping in secret with unfamiliar feelings of inadequacy and listlessness.

#### *D. The Stigma of the Discreditable and the Discredited*

Stigma, according to Erving Goffman, is an attribute that makes the possessor different from, and less desirable than, others “in the category of persons available for [one] to be.”<sup>49</sup> Goffman distinguishes between two experiences of stigma by its possessor: the “*discredited*” and the “*discreditable*.”<sup>50</sup> In the case of the discredited, “the stigmatized individual assume[s] his differentness is known about already or is evident on the spot.”<sup>51</sup> Examples of the discredited include the

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<sup>47</sup> The most frequently invoked of these “topics” — that the *Law Review* requires so much time that one effectively has to give up one’s former life to do it, that the work involved is boring, and that *Law Review* membership turns nice people into snobs — continue to structure students’s impressions of the *Law Review* throughout their time at HLS. If, in the first year, such stereotypes provide a framework that allows students to discuss the *Law Review* without betraying either anxiety about the competition or the desire to make it, in later years, the stereotypes provide those students who fail to make it with a ready-made, widely accepted set of reasons for why they are actually relieved that things turned out the way they did. These stereotypes do for anxiety regarding the *Law Review* competition what expressions of gratitude for the curve do for anxiety about grades — they mask the distress the issue inspires, the expression of which is widely considered unseemly.

<sup>48</sup> See KAHLENBERG, *supra* note 30, at 61 (“[W]ith my 1L mentality, my average grades made it even more imperative that I make *Law Review*. Only this honor could save me from mediocrity.”).

<sup>49</sup> ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* 3 (1963).

<sup>50</sup> *Id.* at 4.

<sup>51</sup> *Id.*

physically disabled or disfigured, as well as members of certain visible minorities in contexts of racial discrimination. In the case of discreditable stigma, the stigmatized individual assumes the source of stigma to be "neither known about by those present nor immediately perceivable by them."<sup>52</sup> Having a criminal record or being gay are examples of discreditable stigma, in that there is something about oneself that is not immediately apparent but could diminish oneself in the eyes of others if exposed.

Goffman's taxonomy provides a useful framework for conceptualizing the psychological impact of HLS on its students. Among the two most difficult and potentially traumatizing experiences for Harvard students are the receipt of first-year grades and the announcement of the results of the *Law Review* competition. The former is confidential and remains that way unless individual students choose to share their grades with others. The latter is not formally announced but becomes common knowledge almost immediately upon the return of the 2L class in the fall. Goffman's schema offers a way to understand how each of these events is experienced and how they might combine to deliver a more painful and destructive blow than either could alone.

After the grades come out, many people experience a profound loss of self-esteem and confidence, as well as a significant shift in their self-perception — but no one talks about it. For these people, the information about their grades becomes a discreditable stigma, one that they do their best to hide. This process takes its toll. Those possessing a discreditable stigma must learn to manage their information. They must decide whom to tell and when, with the aim of "passing" among those who are, or are perceived by the stigmatized to be, "normal."<sup>53</sup> All the time, they cope alone and in silence with the knowledge that their identity has been "spoiled."

This experience is painful and stressful, but at least it can be borne in secret. The institutional structure does not, however, allow students to continue to suffer privately. Instead, the results of the *Law Review* competition spread like wildfire as soon as classes reconvene in the fall. Those students who "made it" experience a palpable change in status,<sup>54</sup> a result of the significance attached to law review membership in the legal community. Those students who do not make it, although not obviously penalized or treated with overt disrespect, must now reckon with the fact that they are not among those classmates to receive the positive reinforcement from professors and classmates that

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<sup>52</sup> *Id.*

<sup>53</sup> *See id.* at 42.

<sup>54</sup> That *Law Review* members are perceived to enjoy a status apart from the rest of the class was made clear during the 1997 Drama Society parody, a student-written and student-produced musical comedy take on life at HLS. The 1997 parody represented those members of the class who made the *Law Review* as beauty queens, walking in slow motion off-stage wearing crowns, waving good-bye to their classmates and smiling in victory.

accompanies *Law Review* membership — and in public, no less.<sup>55</sup> Not only is this failure experienced publicly as a stigma of the discredited,<sup>56</sup> but for many students it follows several months of silently carrying the knowledge of a discreditable stigma and fearing its exposure. The determination of *Law Review* membership takes on such significance precisely because of this timing — the publicizing of who made it is experienced as the “outing” of the feelings of inadequacy that those with an unremarkable exam performance had kept quiet for so long.

### *E. Enter the Corporate Recruiters*

The comments of a second-year student in Granfield’s study make clear how the corporate recruiters who heavily court 2Ls each fall play an ego-reinforcing role for students:

I was incredibly nervous the first year in class. I just didn’t talk. Although students are really supportive of each other there’s still a lot of uncertainty. That’s where the job recruiters play a big role because they really want you to work for them and unless you’ve done really well in class you don’t know if the law school really wants you. There’s not a lot of ego-stroking in class whereas the recruiters really do that. It’s like realizing that you’re still really competent in spite of how the classes made you feel. The recruiters are willing to fly you around the country and put you up in the best hotels. It’s like instant gratification.<sup>57</sup>

This quotation may seem to support Granfield’s and Koenig’s contention that Harvard students forge a sense of collective eminence by being “really supportive of each other.”<sup>58</sup> But a closer look at what this student is saying suggests a significantly different picture — one of a student population whose insecurity makes them vulnerable to ego-stroking by corporate recruiters. This student tells us that the recruiters alleviate the “uncertainty” about self-worth generated by the first-

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<sup>55</sup> It may well be objected that many members of the 1L class choose not to take the competition and therefore are not susceptible to the feelings described here. First, however, some portion of those students who opt out of the competition surely do so because of a lack of confidence in their ability and the desire to preempt rejection. Such students are no less vulnerable to the psychological impact of watching classmates enjoy the positive reinforcement of *Law Review* membership than those students who took the competition and did not make it. Second, given the explicit respect accorded *Law Review* editors both within the institution and by the legal community as a whole, even those students who had no interest in being a *Law Review* editor are still to some degree defined as “not-law review.” Rightly or wrongly, the American legal community divides its members along this fault line in a way that cannot help but affect people.

<sup>56</sup> See GOFFMAN, *supra* note 49, at 4; KAHLENBERG, *supra* note 30, at 64–65. Kahlenberg describes the process as follows:

With the selection of *Law Review* editors, life changed. We had all come in as equals in September, equally afraid of whether we would do well in the law. . . . But now we were on entirely different tracks. The *Law Review* editors would . . . feel the exhilaration of having the world at their doorsteps. For most of us, though, our haunting feelings of inadequacy had simply been validated.

*Id.*

<sup>57</sup> GRANFIELD, *supra* note 5, at 134.

<sup>58</sup> *Id.*

year experience. Recruiters make students feel like “they *really want you*” — a feeling HLS does not produce “*unless you’ve done really well in class.*”

If the above account of the 1L experience is accurate, corporate recruiters appear on campus eager to hire 2Ls at the moment when a significant portion of the class is feeling vulnerable, insecure, and uncertain of their own abilities. During the recruiting season, these students are finally the object of someone’s attention. They are wanted, really wanted. This experience is a powerful balm for bruised egos.<sup>59</sup>

### F. Second Year and Beyond

Law school, of course, does not end when the corporate recruiters leave campus. Between the fall of 2L year and graduation, at least two other experiences can deepen the feelings of inadequacy evoked by the experiences described above.

The first is the clerkship season.<sup>60</sup> Unlike the fall corporate job fest, not everyone who applies for judicial clerkships will get one. Many people who apply discover the hard way how competitive it is, and the experience — particularly when fellow classmates are getting interviews and offers — can be crushing. During this process, the gulf separating the students who performed well on first-year exams or made the *Law Review* and those who did not becomes most evident. Yet again, no one talks about it, or if they do, it is with the hushed tones of conveying a confidence, of admitting a failing, of voicing a source of humiliation. Because a clear hierarchy of judges and courts signals to the student and others exactly where this student fits into the rigid pecking order of the legal community, even those students who do secure clerkships can experience the process as ego-bruising if they found themselves passed over by the most prestigious judges. Failure to secure a clerkship at all can be even worse, providing a substantial blow to an already battered sense of self-confidence.

Working at a firm during the summer after 2L year<sup>61</sup> also reinforces the pacification process. At their firms, students find that their affiliation with Harvard brings them respect and admiration, as well

<sup>59</sup> The firms also make it so *easy*, the importance of which cannot be underestimated among members of a group who for the previous year had been largely made to feel that they would not be up to the competition for the really tough jobs and thus were handily denuded of the sense of initiative, confidence, and enthusiasm that would have seen them through a more arduous and less certain job search. See KAHLENBERG, *supra* note 30, at 95 (describing the 2L corporate job search as a “cakewalk”).

<sup>60</sup> See *id.* at 119 (describing judicial clerkships as “high-powered positions” in which “[y]outhful law school graduates are hired by judges to research (and often write) judicial opinions,” and as “an additional badge, like *Law Review*, that will advance one’s career until retirement”).

<sup>61</sup> Of the 550 members of the Class of ’98, 467 worked at firms during their 2L summer. See Telephone Interview with Sally Donahue, Director of Career Services, Harvard Law School (Mar. 12, 1998).

as the expectation that they will produce high quality work. The students in the middle of the law school pack will likely not have enjoyed such positive reinforcement for some time, and it may lead to a renewed sense of the bifurcation of self along the lines described above:<sup>62</sup> a secret “knowledge” that one is only of average ability in the legal context combined with a public self that seeks to convey self-assurance to match the perception of outsiders regarding how it must feel to be a Harvard student. Because the summer experience fosters and enhances this bifurcation, the prospect of returning to the firm after graduation can come to seem extremely appealing. It can also, however, reinforce the sense that one has become, after all, a “corporate tool[]”<sup>63</sup> who no longer possesses the wherewithal to pursue a career personally tailored to aspirations formerly held.

This is the ultimate effect of the pacification process: any notion that a Harvard Law degree confers limitless possibilities has long since been abandoned. Graduates are by no means broken, but their sense of agency has been sorely undermined. In general, they no longer view themselves as capable of having an impact on the world, much less setting it on fire.<sup>64</sup>

### III. PUTTING A WRENCH IN THE SYSTEM

Contrary to the impression the above discussion may have created, Harvard Law School is not a place where psychologically crippled people, miserable and unmotivated, wander the halls. By and large, students find their niches. They get involved in clinicals, journals, and campus organizations; work part-time; and plan their futures. Those students who came to the school with a clear career purpose or found one while at HLS tend to make especially good use of what Harvard has to offer. Still, by the middle of 2L year, a remarkably high proportion of the class has “checked out,” disengaged from the law school, and is just marking time. And by 3L year, students are, on the whole, much less confident in their own abilities, much more cynical toward their earlier aspirations, and much more circumspect about their prospects and their capacity to control their own futures.

Of course, it is important to acknowledge the powerful systemic forces partly responsible for this pacification. These forces include,

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<sup>62</sup> See *supra* pp. 2036–37.

<sup>63</sup> GRANFIELD, *supra* note 5, at 140.

<sup>64</sup> To this, some might argue that this transformation is the cost of growing up, learning that there will always be people more talented than you, and realizing that building a secure life can be a struggle. This Note does not dispute this interpretation, but at the same time, it argues that the psychological damage effected by this process is real and profound, and that, in addition to preparing law students to assume largely low-level positions in hierarchical work environments, see DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY* 33–34, 71–72 (1983), it also robs them of the very skills and self-confidence that might at one time have inspired them to take risks to achieve their goals.



among others, the organization of the legal profession in which the most highly remunerative and secure positions<sup>65</sup> lie with large corporate firms that demand of their junior associates the kind of time commitment that does not allow for reflection, creative thinking, or initiative; the gradual disappearance in the broader labor market of stable, living wage jobs; and the dual roles of law schools in both serving the law firm market that requires a steady stream of pacified graduates to fill its ranks and participating as a player in the market for law students who are concerned about their own future security.

The phenomenon of pacification is thus the combined product of institutional factors, structural forces, and individual collusion. Still, there *are* steps that the HLS administration can take to mitigate the effects of the process herein explored. These steps include: hiring more faculty and creating many more smaller classes, especially in the first year, to allow more frequent meaningful faculty-student contact; replacing grades with pass/fail in the first term of 1L year;<sup>66</sup> increasing the use of midterms, papers, and class participation to evaluate student performance; downplaying the corporate career option and actively promoting diverse legal careers;<sup>67</sup> and increasing the average age of law students. This last suggestion reflects that the best protection against the pacification process seems to be a strong sense of self and a clear sense of purpose, attributes more likely present among older students.

Granted, even if these changes were implemented, HLS would still evaluate academic performance after the first term of 1L year on the basis of grades and the *Law Review* would still select some portion of each class for membership, thus leaving in place the two main ele-

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<sup>65</sup> Granted, most people hired as junior associates at large corporate firms are not likely to make partner. See David B. Wilkins & G. Mitu Gulati, *Why are There so Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 534-37 (1996). But such positions do open doors to other jobs and represent the most secure (in the sense of assuring continued high-level remuneration) legal career option.

<sup>66</sup> This proposal is frequently dismissed on the ground that it would force students to compete even more strenuously for access to professors to secure letters of recommendation, the importance of which would be heightened by the absence of grades. This objection, however, is only persuasive if one accepts that access to faculty is a precious commodity that requires careful restriction. The larger the faculty and the smaller the classes, the less this ancillary effect poses a problem.

<sup>67</sup> The point here is not to discourage students from taking the corporate route, but to encourage students as much as possible to be the agents of their own choices. Any changes that promote active choice and undermine the feeling of dispirited inevitability that surrounds the decision of many Harvard Law graduates to "go to their firm" would therefore be welcome ones. To this, it will no doubt be objected that the main reason behind the popularity of the firm option is the need to pay off the debt accrued while in law school — what one student calls "collective indebtedness." Given the high cost of law school education (the Financial Aid Office calculates that the annual expenses for Harvard Law School students for the 1997-98 academic year average over \$37,000), the need to pay off debts no doubt plays a large role in this decision. The concern of this Note, however, is not *why* people opt to go to firms, but their mindset when they do so.

ments identified as central to the pacification process. It is, however, precisely because there are currently so few institutionally-validated metrics of achievement that students respond to the few that there are in the ways I describe. With a sincere institutional commitment to honing and encouraging the talent and potential of its students, HLS could dramatically diminish the negative effects of the pacifying forces described herein.

#### CODA: EXPLAINING THE ANGER

All Harvard Law students are forced to some degree in the 1L year to set aside their prior identities, and not all of them are able in their new role as law student to regain the self-confidence and sense of achievement that typified their pre-law school lives. As a result, students who have traded in their old achieving sense of self for the identity of an average performer at HLS can experience a sense of loss, anger, and impotence. The bargain has been made, the change of role has occurred, and there is no turning back. My feeling is that a disturbing number of HLS students feel this inchoate sense of having made a bad bargain, of having lost something precious, or even of having had this precious something stolen by a law school that gave nothing in return.

If the story told above has at all captured the heart of the HLS experience, it suggests that the hostility and resentment felt toward HLS by so many current students and recent graduates will tend to subside the farther away from the school people get. The longer one is away from HLS, the less one needs to confront the way the school made one feel about oneself, and the more one will have experienced the external affirmation that accrues solely from having gone to Harvard. If this is in fact the case, it supports the hypothesis animating this Note, that it is the effect the school has on its students at some deeper psychological level, and not simply the lessons they learn about the nature of the law, that accounts for the pacification of Harvard Law students.