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William H. Simon
Columbia Law School, wsimon@law.columbia.edu

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Clerkships have become increasingly prominent in the culture of elite law schools in recent years. More students are seeking clerkships; the application process starts earlier and lasts longer; and the quest seems to generate more anxiety and absorb more energy than in the past.

For example, at Stanford, where I teach, a fourth of 1984 graduates went off to clerkships, and perhaps a third had applied for them. These fractions have increased steadily over the past several years. The most apparent reason for the increase is the large expansion of federal court clerkships, which with a few exceptions are generally regarded as the most prestigious.[1]

The application process, which used to get underway after the applying student's second year, now begins in the winter of the second year and becomes most intense in the spring. This acceleration has occurred largely at the initiative of the selecting judges, despite efforts by the law schools and the Judicial Conference of the United States to prevent it. A rule adopted by the Judicial Conference in 1983 precluding consideration of applications until after the second year was abandoned when it proved unenforceable. Many judges were so anxious to recruit the more desirable clerks that, rule or no rule, they continued to race to make offers 18 months or more in advance of the clerkships.[2]

Years ago, the application process tended to be informal and summary. Judges frequently delegated selection of clerks to particular faculty members at the elite schools (often ex-clerks), and the faculty members often simply chose the students who had most impressed them without inviting applications. Trying to make the process more rational or more democratic, the judges and the schools have tended to make it more formal and time consuming. It now involves written applications, letters of reference, and interviews.

Competition for clerkships has added to the occasions on which the law school culture encourages students to rank themselves. Most students are

William H. Simon is Associate Professor of Law, Stanford University.

1. Since 1960 both the number of federal judges and the number of clerks per judge each has more than doubled. Richard Posner, The Federal Courts: Crisis and Reform ix, 102–03, 357 (Cambridge, Mass., 1985).

2. See David Lauter, Students Scrambling for Positions as Clerkship Race Opens Up, Nat. L.J., April 1, 1985, at 1; David Lauter & David Kaplan, Federal Judges End Experiment to Limit Clerk Selection Process, Nat. L.J., March 25, 1981, at 4.

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obsessively pre-occupied with grades throughout the first year. The pre-occupation continues afterward, but it diminishes, especially in the third year, when most students have post-graduation jobs set and feel, in any event, that third year performance is unlikely to dramatically alter the academic rank at which they have been pegged in the preceding years. In the first semester of the second year, and often also of the third, students spend much of their time preparing for or engaging in interviews with employers and considering employment offers. The development in recent years of a summer job market for first year students has extended this process backward into the spring of the first year. The advent of the clerkship application process as a focus of the second year spring has extended the struggle for place to one of the only two semesters in which it had previously been relaxed.

The schools actively encourage clerkship applications through faculty clerkship committees and through the efforts of individual faculty members. However, many faculty members acknowledge a negative side to the clerkship phenomenon. At the least, it represents an addition to the already long list of distractions from the school's educational concerns. At worst, it intensifies the anxiety and alienation associated with the pervasive fetishism of rank in law school culture.

To the extent that these objections imply that law schools could or should insulate their students from concerns about vocational and worldly success, they are of course naive. Few students would be willing to pay the tuitions that help maintain law teachers in the style to which they are accustomed if law school did not produce credentials negotiable for wealth and status in the outside world. And the link of academic study with real world practice is one of the things that makes professional schools stimulating places.

Nevertheless, I have come to doubt that clerkships serve even the most worldly goals of many students who seek them. I suspect that elite law school culture leads students systematically to overestimate the value of clerkships.[3] In the remarks that follow, I try to explain, first, why clerkships are unlikely to serve the goals most students assert in explaining why they seek them, and second, why elite professional culture tends to overvalue clerkships. I should disclose that I never clerked myself. You will have to decide whether this fact should be taken as evidence of bias arising from envy and ignorance or as a safeguard of neutrality arising from the lack of any prior personal commitment to the institution.

The Case Against Clerkships

Students typically give three reasons for seeking clerkships: that they are a good learning experience; that they provide a marketable credential; and

3. In focusing on elite schools, I do not mean to imply that the clerkship phenomenon is confined to them (though I suspect that it is more prominent among them). However, my analysis is based on impressions formed at elite schools, especially Stanford, and I am unclear to what extent it applies to non-elite schools. Perhaps clerkships more often have tangible career advantages for non-elite students, given their more limited job opportunities. Perhaps, because of their lower position in it, non-elite students have different attitudes toward hierarchy. And perhaps non-elite students have different attitudes toward long-term responsibilities than those I impute below to elite students.

that they afford an opportunity to postpone long term career decisions. There are some students for whom these are valid reasons, but for most, available alternative jobs would better serve these goals.

Learning. Law students are right to focus on learning opportunities in considering jobs. It is tragic but true that, after spending the first seven years of her adult life in higher education, the typical law graduate is unprepared to perform almost any skilled job in the society, including most law jobs. The only skills in which she has anything approaching entry-level proficiency are doctrinal research and analysis and appellate argument. There are few law jobs for which these skills are adequate. The typical graduate has little or no training in interviewing, counseling, negotiation, structuring transactions or institutions, mediation, trial practice, or any of the non-doctrinal institutional knowledge that is critical to law practice.

Thus, she has to learn on the job most of what she needs know to be a lawyer. The problem with clerkships from this point of view is that few law jobs have less to offer her in terms of the kinds of things she really needs to learn. Clerkships offer mainly an opportunity to exercise research and analytical writing skills, but it seems crazy for her to focus on perfecting the few skills she already has in a job that offers little opportunity to remedy her alarming ignorance in so many important areas.

Some people believe that clerkships give systematic insight into something called the "inner workings of the court." Tacit, unwritten knowledge about concrete patterns of institutional practice is, in fact, critical to law practice. But there are few institutions in American society whose inner workings are less important than the courts. A lawyer whose practice involves the Food and Drug Administration, the Senate Finance Committee, or the District Attorney's office needs to know a lot about the inner workings of these institutions to be effective. This is so because important decisions these institutions make occur in low visibility settings relatively ungoverned by rules (which tend either to leave officials lots of discretion or to be unenforced) but structured by systemic pressures and practices. By contrast, the critical influences on judicial decision-making tend to be relatively rule-governed and public on the one hand or relatively idiosyncratic and personal on the other. Aside from legal argument and doctrine, clerks pick up the kind of gossip recorded in *The Brethren* and perhaps some of the deeper personal insights in the better judicial biographies. But while such information may be helpful in understanding some aspects of the judicial system, it is of relatively minor practical value to lawyers.

The educational value of clerkships seems to vary inversely with the prestige of the clerkship. Appellate clerkships approximate a superfluous fourth year of law school. Trial court clerkships are a little better. Most of the work is still memo and opinion writing, but at least the clerk is exposed to trial practice, and the legal issues tend to be less the broad policy-flavored ones familiar from law school and more matters of procedural detail that raise the type of strategic considerations that law school slights. Still, the learning potential of trial court clerkships looks good mainly in comparison to appellate clerkships. A trial court clerk may end up seeing 10

or 12 trials in a year, but as an assistant district attorney, she could *do* 10 or 12 trials in that time.

Credentials. The problem with trying to improve a resume with a clerkship is that most students get clerkships at the levels of prestige that their resumes already peg them. If a student is in the middle of her class at Stanford, her major extra-curricular distinction is being a semi-finalist in the moot court competition, her first-year small section teacher writes her a lukewarm recommendation letter, and she succeeds in getting a clerkship with a new mid-Western federal trial judge appointed because of political connections, her resume is probably not going to be any better for the clerkship.

Now it is possible to be propelled to a higher status in the clerkship competition. A few clerkships, notably those in the United States Supreme Court, are so spectacularly prestigious that they give off a more luminous signal of hot shot status than almost anything else that a 25-year old could put on her resume. Moreover, sometimes judges choose from an array of resumes that in terms of the conventional criteria are of equal rank, and sometimes judges consciously defy the conventional criteria to engage in affirmative action for relatively low status people. From the point of view of the conventional criteria, these choices are basically arbitrary, but a student lucky enough to be chosen can in fact move up a notch as a result of her selection. Moreover, if you get a clerkship with an influential judge and really impress her, you can improve your status by becoming, not just a former clerk to Judge Shmoo, but one of the four best clerks Judge Shmoo ever had. Nevertheless, my impression is that these forms of advance are quite rare.

Even if a student could enhance her credentials with a clerkship, the question would remain, what good would the enhanced credentials do her? Most students at schools like Stanford are planning long term careers in private business practice. Nearly all of them can get jobs with good firms on graduation, and hardly any can get jobs after clerkships that they could not have gotten without them. (There are a few firms that consider clerkship an obligatory *rite de passage* for candidates of undoubted qualifications, but their number is few and declining.) Of course, if the student screws up or is disappointed on her first job, she will be back on the job market, but if she's looking for another private firm job, her recent experience is likely to count far more heavily than any clerkship.

Many students believe that a clerkship is especially important for people interested in teaching jobs. For reasons I'll speculate on below, the clerkship credential was once close to a pre-requisite for teaching jobs at the elite schools and was helpful at the non-elite schools that imitated the elite schools. While this practice has not died out, it is in decline. For example, about a third of recent appointments at Stanford have never clerked, and most of the others would have been appointed without clerking. The reasons for the decline are apparent. The pre-eminence of the clerkship credential is a function of the model of legal education that focusses almost exclusively on doctrinal analysis and appellate court decisions. As legal education has become more interdisciplinary on the one hand and more

clinical on the other, the appeal of people whose only certified skill is doctrinal manipulation has declined. There are some necessarily court-centered subjects, such as constitutional law, civil procedure, and federal jurisdiction, for which clerkships provide helpful background, but for most other subjects, an additional year of practice (or a published article) will stand an applicant in better stead at most schools, including nearly all the more interesting ones.

Temporizing. Students often say that the appeal of clerkships is that they provide a way of deferring long-term career commitments. Typically, the student is ambivalent about what she sees as the presumptive career choice, the large firm, but can't see any clearly plausible alternative (or sometimes, she feels unable to choose *among* firms). Of course, few job choices require explicit commitments for any longer term than the one or two years clerkships involve, but the advantage of the clerkship is that it does not jeopardize mobility. Since it's explicitly a limited commitment, there's no need to explain why it ended, and although it may not improve credentials, it won't devalue them either. Many students understand that a job on Capitol Hill, or with the Public Utilities Commission, or at the U.S. Attorney's office would be more interesting, but they fear that it would be more difficult to move from such jobs to a firm. Because such jobs are of relatively low or ambiguous prestige, they threaten to push them down a notch, and they may be taken as indicating interests or motivations that the firms may find eccentric or dubious. Thus, the clerkship seems particularly well suited to enable the student to postpone the necessity of taking risks or making commitments.

Temporizing is generally the best reason that students give for seeking clerkships, but I still have doubts about it. It seems unlikely that the student will be in a better position to make choices at the end of the clerkship than before. Clerks see only a narrow spectrum of the bar at work, and they see practicing lawyers only in peculiar exceptional situations—court appearances—which provide no reliable information about the general nature of their practices. Most often the problem is not one of information anyway. It's a deeply ingrained anxiety about making choices and taking risks, an anxiety cultivated throughout a privileged but interminable adolescence that teaches people to regard themselves as having limitless opportunities but shelters them from serious responsibility. There is probably no cure for this anxiety except the experience of actually making choices and taking risks and, hopefully, surviving them. Clerkships are a way of prolonging what is already the world's longest adolescence, and while there is a privileged and satisfying aspect to this adolescence, there is also an anxious and stultifying aspect that most people would do best to put an end to.

Cultural Foundations of Clerkship Fetishism

The main function of clerkships is to reproduce certain aspects of elite professional culture. Clerkships serve both as part of a ritual enactment of important culture themes and as a training ground that prepares the clerks for later performances. A student committed to this culture might do well to accept a clerkship as a way of contributing to it and of perfecting his

performance. But I think most students find this culture, or at least aspects of it most prominently implicated in the clerkship phenomenon, unattractive. They often seem to pursue clerkships under the unreflective, compulsive influence of the culture, rather than out of a conscious commitment to it.

The themes of elite professional culture that are most prominently reproduced in clerkships are, first, hierarchical status order; second, the modeling of elite roles, and third, perpetual adolescence.

Ranking. Every clerkship applicant is intensely aware that there is a hierarchy among courts and, within courts, among judges. In the quest for clerkships, rank almost always takes precedence over other considerations. Most students know that a trial court clerkship is more interesting than an appellate one, but hardly anyone ever turns down a federal Court of Appeals clerkship for a District Court clerkship. Some high prestige judges (e.g., McReynolds, Douglas) have notoriously treated many of their clerks like degraded lackeys, but hardly anyone has turned down such judges for lower prestige but less abusive ones. And students often accept clerkships with high prestige judges for whose views they have little respect over jobs with lower prestige judges whom they respect more.

For their part, the judges are intensely aware that there is a hierarchy among law schools and, within law schools, among students. The skills required of the law clerk are those taught in the first semester of law school and cultivated to the point of hypertrophy in the succeeding two and a half years. There are thus thousands of graduates from dozens of schools each year capable of ably performing the job. Nevertheless, judges tend to seek law review editors at the most prestigious schools. The intensity of this preference varies. Some judges, out of regional loyalty or democratic principle, try to limit the influence of the conventional status criteria. But many others are exclusively and obsessively committed to them. Federal appellate judges, many of whom went to low status schools, have been known to flirt with hysteria over the prospect of not getting a law review president from a school like Harvard. The recent outbreak of self-seeking lawlessness in response to a reasonable application schedule promulgated by the Judicial Conference shows the depths to which status craving can drive people normally committed to deference to legitimate authority.

The clerkship institution is a medium through which two hierarchies pay homage to each other. It helps to smooth out certain minor discrepancies in parallel status orders. While the academic hierarchy is justified exclusively in terms of meritocratic norms, the judicial appointments process has explicit political elements that sometimes result in appointments to high prestige office that defy the norms of the academy. The clerkship process helps repair this rift. The judge pays homage to the elite schools by choosing in accordance with their criteria. The elite schools return the compliment by reassuring their constituency that any deficiencies in the judges' meritocratic qualifications are remedied by the schools' envoys.[4]

4. Cf. Karl Llewellyn, The Common Law Tradition: Deciding Appeals 322 (Boston, 1960) (praising clerkships as, *inter alia,* a conduit for the ideas of law faculties to the judiciary).

Role Modeling.[5] Although it seems paradoxical, given its high status, the clerkship role involves a kind of subordination that resembles that of the valet. The clerk's role is defined largely in terms of the judge's personal inclinations. Some judges make demands on their clerks in total disregard for the clerks' own time and needs; even clerks with more sympathetic judges usually end up working extremely long hours that leave them little time for themselves and their families. The clerk's work varies, but whatever it is, it is the work that the judge does not want to do herself. Since the clerk has no legitimate authority, her work is not really supposed to involve responsibility or creativity. And the clerk's work is anonymous to the outside world. Even where the clerk does assume responsibility or do something creative, the judge is supposed to take the credit for it. Like the valet's, the clerk's job involves a kind of enforced intimacy with the master. The job is not just research, writing, and consulting, it is turning yourself into the kind of person the judge likes to have working for her. When things go poorly, the role can seem monstrously oppressive. When things go well, a relation of respect and affection can develop. Even when things go well, however, the relation remains an intensely subordinate one.

What redeems the subordination, of course, is the fact that, unlike the situation with the valet, the judge is both master and role model. The relatively unstructured and intimate aspects of the role seem important to the modeling process. Part of what the clerk learns is a useful but ineffable quality known as "judgment," the capacity to sense the tacit limits of propriety and plausibility that govern ostensibly discretionary decisions. (Nothing in the rules or in abstract legal logic will tell you whether you should assent to an adversary's request for a continuance moderately disadvantageous to you because of a death in the adversary's family or whether you should ask a client if she cares if her trust's assets are invested in companies that do business with South Africa.) And part of what she learns is simply a matter of personal style—manners, dress, habits, and vocabulary that signal confidence and competence in elite positions. (Students express an acute awareness of such facts when they joke about wearing "power ties" or "success suits.")

Just as they do for the status ranking system, clerkships mediate a tension in the meritocratic ideal of elite professionalism. On the one hand, elite professional culture aspires to formalize meritocratic norms and to certify them impersonally. On the other hand, success in professional roles often depends on intensely personal qualities, on the ability to elicit trust and admiration in colleagues, clients, and officials. Although the kind of abstract analytical ability measured in the formal credentialing process may be relevant to this more personal quality, the personal quality depends much more on sensitivity to tacit concrete social and psychological factors that is not easily learned academically. The clerkship is a sheltered laboratory in which the clerk can work on this quality through observation and experiment.

5. On the "modeling of hierarchical relations," see Duncan Kennedy, Legal Education and the Reproduction of Hierarchy 58–72 (Cambridge, Mass., 1983).

Nevertheless, to suggest that the clerkship performs this function is not to suggest that it performs it well. The role is becoming increasingly superfluous and anachronistic. It seems unnecessarily duplicative of similar opportunities available to students. Students now have usually spent two summers in non-judicial clerkships before graduation, and those who go into firms spend what seems to be an increasingly long period as associates. Both roles provide similar opportunities for the acquisition of personal skills (although the judicial clerkship has the advantage of allowing the student to try out her skills before incurring the risks of inept performance with a long term employer).

Moreover, the establishment of a single set of norms of personal style and a single language of competence and authority has depended in part on a cultural homogeneity cemented by the dominance of white upper class males on the bench, in the firms, and in high government positions. The socialization process is likely to be more difficult and painful for women and minority group members. And to the extent that elite workplaces become more integrated, their cultures may become more diverse, and the possibility of assuring success through mastery of a single repertoire of manners and signals will become more tenuous.

Perpetual adolescence. Finally, the clerkship institution offers an opportunity to prolong the style of adolescence to which privileged Americans tend to become compulsively habituated. The critical characteristics of this style are a sense of boundless possibility coupled with shelter from all but the most short-term and artificial forms of commitment and responsibility. The educational counterpart of this cultural style is the endless recertification by a parade of authority figures of a purely abstract aptitude, competence, or merit. By abstract, I mean not tied to any particular set of jobs or goals. Adolescent education celebrates the generalist and the "well-rounded" person. It has a distaste for the concrete, the practical, the utilitarian, and the politically contingent.

The clerkship is perfectly attuned to this culture. It presents yet another occasion for the adolescent to prove himself to an authority figure. And since the judge is the generalist *par excellence,* the skills for which the clerk is called on are the abstract analytical ones that he has been demonstrating almost from birth. There is no danger that she will have to compromise her aspiration for universality by commitment to particular goals or subject matter.

To the extent that the culture of perpetual adolescence represents a triumph over Gradgrind-like vocationalism, it should be counted as a liberating achievement. Yet, there are reasons to suspect that it may be too much of a good thing. For one thing, this type of education has failed strikingly to bridge the gap between the academy and the world of work. In immunizing the academy from the utilitarian focus of vocational concerns, it has disabled it from influencing the world of work. This education tends more to protect people from work than to prepare them for it. For all its celebration of generalism and dilettantism, adolescent education leaves the student defenseless against the demands of specialization and technocracy that she encounters when she finally gets out in the world. Moreover,

adolescent education sometimes produces a kind of debilitating fear and impotence. People who have been endlessly certified as abstractly competent but have never experienced failure or success on a major concrete practical task sometimes become paralyzed by insecurity about whether they can achieve success or survive failure. The strange careers of many of the most highly credentialed people who devote most of their lives to low risk ceremonial or mundanely administrative tasks seems to be a manifestation of this disability of the culture of perpetual adolescence.

Conclusion

Law teachers are in a weak position practically and morally to challenge their students' ambitions for material success. They are in a considerably better position to challenge unreflective student conduct that fails to serve any of the avowed goals of those who engage in it. To an important extent, the increasingly frenzied quest for clerkships involves just such conduct.