“Majors” in Law” A Dissenting View

IHELG Monograph

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University of Houston Law Center/Institute for Higher Education Law and Governance (IHELG)

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Houston Roundtable on Higher Education Law

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Publication series

Study opportunities

Conferences

Bibliographical and document service

Networking and commentary

Research projects funded internally or externally
Michael A. Olivas, “Majors” in Law? A Dissenting View


Given its centrality in the United States system of higher education and in the occupational hierarchy, legal education is an important specialization within higher education, especially within postbaccalaureate professional school. Legal education has been an important proxy in legal cases, especially those issues involving civil rights, academic freedom, and affirmative action. While medical education and graduate business schooling, its closest counterparts, have leveled off in enrollment patterns and in growth of programs, law schools continue to be built at an astonishing clip, including those in public and private institutions of higher education, and in the proprietary, for profit sector. In the last dozen years, while only one new medical school has been proposed and begun, dozens of law schools have emerged, joining the more than 200 already producing over 40,000 graduates each year.1

Given these patterns, it is no surprise that legal education itself is a highly contested and increasingly regulated enterprise, in all its complexities, including admissions, financing, accrediting, overseeing lawyer certification, and admitting law graduates to state bars, including the likely involvement of GATT negotiations for goods and legal services. Even small town lawyers with traditional bread and butter general practices are in need of specialized training, international knowledge, and transactional skills. While the need for general legal services has never been greater, virtually all areas of law now require the comprehensive and specialized knowledge previously reserved for detailed transactions or complex litigation. As one example, it is inconceivable that a family law or criminal lawyer in Houston, Texas or New York City could genuinely and competently represent clients without knowledge of basic comparative law or
immigration law; negotiating what used to be a good result for one’s DUI client could be disastrous in today’s practice if she is a non-immigrant or undocumented resident (or is married to one, perhaps with citizen children).

That the practice of law has become increasingly specialized and complex has led many observers to the suggestion that law school itself should become more specialized, manifesting itself in the proliferation of narrowly-focused courses, especially law-and courses; in proposals for segmented legal education, with shorter and longer periods of time, depending upon the proposal; in the hundreds of specialized journals and clinics that have arisen; and in calls for J.D. “majors,” or various certification programs to enable students to carve out specializations. There are also many post-JD opportunities for CLE, advanced degrees, and bar specializations that provide niche-practices.

But when a thoughtful 2007 Report such as that produced by the Clinical Legal Education Association (CLEA) opines about the efficacy of such specialization, citing the estimable Deborah Rhode, I took notice:

Part of the problem with clarifying the goals of legal education is that the world of increased specialization, coupled with the innumerable fields of law that await law school graduates, makes it impossible for three years of law school to prepare students to practice competently in every field of law. The requisite knowledge and skills are simply too diverse. There are several logical responses to the disconnect between law schools’ general education mission and the legal market’s demand for lawyers with very specific and extremely diverse types of competencies. Law schools could either:
• prepare students to provide a limited range of legal services,
• prepare students for very specific areas of practice, or
• help students develop fundamental competencies common to multiple practice areas,
  counting on students to acquire specialized knowledge and skills after graduation.

Law schools in the United States have long asserted that they are achieving the third objective, but in fact we mostly teach basic principles of substantive law and a much too limited range of analytical skills and other competencies, such as legal research and writing.

There is a place in legal education for “niche” law schools that seek to prepare students for very specific areas of practice, or even for specialty tracks in any law school’s curriculum. The creation of more niche schools or specialty tracks would be a particularly appealing development if legal education would become more affordable for some and produce lawyers who are proficient in areas where unmet legal needs are greatest…While specialized programs of instruction may be appropriate for some schools, most law schools, especially state-supported schools, have missions that require them to try to prepare students for a wide range of practice options. Thus, they have little choice than to try to help students develop the fundamental competencies common to most practice areas and the characteristics of effective and responsible lawyers.²
This remarkable statement is being urged by the group most clearly devoted to integrating clinical teaching into the warp and woof of legal education, so it makes a virtue of necessity, in order to inculcate clinical values and emphases into the curriculum, and envisions specialization as one of the several ways to instill this particular “best practice.” It is a goal I largely share, as do many law teachers, and I have benefited in both my major teaching and scholarly fields (Higher Education law and Immigration and Nationality law) from having clinical placements and working clinics in these fields at my institution—programs I worked to establish, for which I devote fundraising and governance time, and with which I tutor and supervise students. But I do not accept the premise that increasing specialization, particularly the rise of JD “majors” and specialty certification programs, is a good or necessary development. As a corollary, I think it is not efficacious, and to the extent that bad initiatives can crowd out good one, it is not good or useful.

Because this Essay is, by definition, short and invitational, I only sketch what I believe to be the important issues here, and list only in necessarily broad strokes the steps law faculties and administrations should consider on the subject of law school majors. The first point I make is my own sense of curriculum, and how poorly organized or shallow most such “majors” are. Second, I believe that some of the pushes for such specialization are proxy fights or struggles for institutional souls, driven largely by ethereal vocational placement concerns. Finally, I believe
that such specialization could lead to an increasingly stratified system, one even more hierarchical than the present system.

My own sense of curriculum is one that tracks my worldview generally—there are many ways to achieve the same result, and diversity is a desideratum in nature and in constructed worlds. Thus, I start with a mix of doctrinal and statutory study across the traditional fields, and which most legal education does well; legal writing, research resources, and document drafting; and applied work in clinical or simulated settings. The real question to me is the institutional mix of these emphases, and the cultural ethos of a school. Our system includes public schools like George Mason’s emphasis upon law and economics, UCLA’s alternative admissions based in part upon life experiences, and New Mexico’s commitment to required clinical experiences. Private schools such as NYU can immerse all its One L’s in a Lawyering experience, and such institutions have many degrees of freedom to organize their curricula programmatically or thematically, or in any reasonable way the faculty sees fit. Even a school that allows its graduates to hold themselves out as “specialists” in a given field only package a small number of courses of the total required of its students, not really allowing all that much depth or specialization. Length limitations prevent me from listing a more detailed table of majors and how comprehensive they are, but any careful reading of websites and catalogs will reveal that almost all such specializations constitute a small smattering of seminars, over and above basic core courses available and taken by many students.

As only one example of many I could point out (but will not identify by name), one Certificate program at a major institution requires only two introductory courses in that specialty
over and above other courses often taken by most students towards their overall degree requirements. Another Certificate program at the same institution requires 18 credit hours: “15 of basic courses, 3 hours from basic or enrichment courses.” In addition to the distribution requirements, most of which would be taken by a majority of students, only one course is needed to constitute this “major.” Very few such programs combine the coursework, however-specialized beyond a seminar, with clinical work or placements in offices or courts. One suspects that such programs are a marketing ploy or placement device as much as anything coherent or meaningful. It could hardly be otherwise in most crowded curricula. At my own institution, where One L students may choose Immigration Law as a first year statutory/regulatory elective; may choose from several advanced courses in the field; may add elective courses in various international, comparative, and human rights coursework; and may participate in two different immigration clinics where they may actually represent clients in formal proceedings (as well as externships in immigration courts and agencies)—they still have little clue as to the complexity of these cases in a very technical and unforgiving area of practice. The supervision of these students is so crucial that we limit enrollment in both of these clinics to 8 students each semester. And they are much more steeped in the subject matter than virtually any other specialization regime I have seen to date in the many schools I have visited or examined closely over the years. I would draw the line in the sand with my colleagues if we ever tried to label even this broad and deep exposure a “major” or “certificate.”

Because my own institutional experience militates against my faculty moving in this direction, or even requiring a core of courses in the second and third years, my deeper understanding of the issues behind these movements towards specialization are derived from
conversations with others who do have such experience. In the schools that do offer such specialization, they appear to derive from one or more driving force: student interest, driven by a vague sense of employer preference, one that flows from the traditional sense of “declaring one’s major” during an undergraduate experience. The competitiveness of job entry, local placement niches, and real or imagined employer preference pressures all can convince students that specializations are good for them, at least in their immediate post-J.D. future. Faculty members or academic administration can create programs for similar reasons, and because academic advantages can arise. Faculty whose teaching and scholarly interests fit within these niches can have enhanced status with a school or within various legal education tribes; the ability to single out a law school in the various rankings is a powerful siren call to institutions whose overall quality may not be as clearly evident in comprehensive ranking regimes. It is hard to win (and slightly less hard to lose) academic reputations, apart from the overall halo effect of the home institution, so there is surely some gaming in holding out specializations to the world, whether in health law, intellectual property, clinical programs, international law, tax law, or the many dimensions from which one can slice the pie. A larger number of institutions channel such focused programs into the LLM level, attracting lawyers who already have J.D. degrees, work experience, and more specific and individualized abilities. Indeed, attracting such students can be a valuable and useful leavening for law schools with the possibility of niche marketing and additional resources. But by definition, these are post-graduate, add-on programs, not J.D. driven, and their value is that, organized properly, they supplement and do not detract from the basic, core law studies.
There is another concern, one that Professor Rhode hints at, stratification. She notes, “It makes no sense to require the same training for the Wall Street securities specialist and the small town matrimonial lawyer. While some students may want a generalist degree, others could benefit from a more specialized advanced curriculum or from shorter, more affordable programs that would prepare graduates for limited practice areas....” As noted above, the CLEA Report held that specialization would be a salutary development: “While specialized programs of instruction may be appropriate for some schools, most law schools, especially state-supported schools, have missions that require them to try to prepare students for a wide range of practice options. Thus, they have little choice than to try to help students develop the fundamental competencies common to most practice areas and the characteristics of effective and responsible lawyers.” However, I do not believe that the axis on which such specialization turns in the public/private distinction, as public institutions like Berkeley, Michigan, Virginia, UCLA, and others are virtually indistinguishable in the comprehensiveness of their offerings and their ethos of producing lawyers from their elite counterparts, while the public George Mason has a distinctive law and economics approach that is similar to the one found at the University of Chicago. Public and private law schools differ from each other on their sources of funding and in-state/out-of state residency tuition practices and some legislative pressures, but not in their decisions to specialize or not to offer such emphases.

But as I read Professor Rhode, I could not help but think that her take on this issue, which she makes in a very provocative book, In the Interests of Justice, would lead to earthworms and bluebirds, along the lines of high school magnet programs. Contrast these two specialized, “Vanguard/Magnet” offerings in the Houston Independent School District, the country’s fourth largest school system, with over 210,000 students: “Barbara Jordan High School for Careers
prepares students to enter the world of work through ‘hands-on’ training. Careers offered include photography, electronics, auto mechanics, cosmetology, office education, graphic arts, drafting, advertising design, child care, welding, and health services.” and that of the DeBakey High School for Health Professions: “Health-careers experiences and college preparation are curriculum highlights. Advanced science and mathematics, biomedical sciences, and ‘hands-on’ experiences at the Texas Medical Center are offered. Testing is required.” One need not even comment upon the inherent racialized character of these two schools (which reminds me of the Chris Rock joke, “I always know that MLK Blvd. is going to be in the worst part of town”). Both are in the same governance structure, but they are worlds apart. Establishing law school majors for “Wall Street securities specialists” and “small town matrimonial lawyers,” at the extremes, would be this earthworm/bluebird principle writ large.

No law school would willingly enter a caste system and offer the legal equivalent of cosmetology, but the halo effects of institutional hierarchies already convey substantial privilege, and I fear that alternatives in signaling specialization or in offering alternative vehicles for legal instruction would exacerbate this differentiation. I place on the record my concerns: that this effort in subtle ways is a wedge to de-regulate legal education from its accreditation requirements, under a false flag. There is, at the undergraduate level, a chasm between collegiate institutions and proprietary schools, one that could become prevalent in legal education between elite, comprehensive law studies and more occupational, short term lawyer trade schools. I fear that shaping law schools by occupational niches, or even, as was urged by CLEA and Professor Rhode, by creating shorter-term programs would not be “a particularly appealing development” but rather a weakened version of law school and an undesirable, paraprofessional alternative.
Proponents of doing anything radically different along these lines should bear a very large burden of persuasion.

http://www.hisd.org/portal/site/MagnetEnglish/