

“Majors” in Law? A Dissenting View

*Michael A. Olivas**

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 Brownsville, Texas or Garden City, Kansas 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.

The increasing specialization and complexity of legal practice has led many observers to suggest that law school itself should become more specialized, offer J.D. “majors,” or provide various certification programs that would carve out specialties.¹

But I do not accept the premise that increasing specialization, particularly the rise of J.D. “majors” and specialty certification programs, is a good or necessary development, for three reasons. First, such “majors” are generally poorly organized and shallow. Second, some of the motivation behind the push for specialization is unconnected to actual pedagogical goals. Finally, such specialization could lead to an increasingly stratified system, one even more hierarchical than the present system.

Even those schools that allow their graduates to hold themselves out as “specialists” in a given field only package a small number of the total required courses, not allowing for much depth or specialization. A careful reading of websites and catalogs reveals that almost all such specializations constitute only a small smattering of seminars, beyond basic core courses available and taken by many students. For example, one certificate program at a major institution requires only two introductory courses in that specialty over and above other courses often taken towards students’ overall degree requirements. Another certificate program at the same institution requires eighteen credit hours, fifteen hours of basic courses and three hours of enrichment courses. In addition to the distribution requirements, most of which

* William B. Bates Distinguished Chair in Law, University of Houston Law Center.

¹ Even the Clinical Legal Education Association, in a 2007 report, recognized that “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,” although it acknowledged that most law schools, especially state schools, had a mission to prepare students for “a wide variety of practice options.” ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 41-42 (2007).

would be taken by a majority of students, only one course is needed to constitute this “major.” Very few specialty certificate programs combine coursework (beyond a seminar) with clinical work. 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.

My own institution offers an in-depth immigration law program. 1L 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 (as well as externships in immigration courts and agencies), where they are given the opportunity to represent clients in formal proceedings. These students still only have a vague understanding of the complexity of the law in this 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 eight students each semester. Moreover, they are more deeply steeped in the subject matter than virtually any other specialization regime that I have seen to date in the many schools that I have visited or examined. I would, however, draw the line in the sand with my colleagues if they ever tried to label even this broad and deep exposure a “major” or “certificate.”

In the law schools that do offer such specializations, these courses appear to derive from student interest in the marketability of their degrees, faculty interest in increasing their own importance within the school environment, and the institution’s interest in improving their attractiveness to applicants. Pressures from the competitiveness of job entry, local placement niches, and real or imagined employer preference can convince students that specializations are good for them, at least in their immediate futures after graduation. Faculty members or academic administrators are also likely to create programs for similar reasons and because academic advantages may arise from them. Faculty whose teaching and scholarly interests fit within these niches may have enhanced status within a school or within various legal education tribes. Law schools themselves may be motivated to institute these programs if their overall quality is not clearly evident in comprehensive ranking regimes. It is hard to win (and slightly less hard to lose) academic reputation, 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, international law, tax law, intellectual property, clinical programs, or from another of the many dimensions from which one can slice the pie.²

² 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. For a good sense of just how pervasive these programs are, see <http://www.llm-guide.com> (listing LLM programs worldwide). Indeed, attracting such students can be a valuable and useful leavening for law schools with the possibility of niche marketing and

There is another concern: stratification. As Professor Deborah Rhode notes:

It makes little 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.³

Yet as I read Professor Rhode, I could not help but think that her take on this issue would lead to earthworms and bluebirds, along the lines of high school magnet programs. In the Houston Independent School District, the country's fourth largest public school system, magnet schools such as the Barbara Jordan High School for Careers and the DeBakey High School for Health Professions serve entirely different functions and populations. Barbara Jordan High School for Careers provides students with "hands-on" training to prepare them for work in such fields as electronics, auto mechanics, cosmetology and child care services.⁴ The DeBakey High School for Health Professions, in contrast, prepares students for college and offers advanced science and mathematics, biomedical sciences, and "hands-on" experience at the Texas Medical Center.⁵ Most of the students who attend Barbara Jordan High School are black or Hispanic. Most of the students who attend the DeBakey High School are white. Both schools are in the same governance structure, but they differ significantly. At the extremes, establishing law school majors for "Wall Street securities specialists" and "small town matrimonial lawyers," would be this earthworm/bluebird principle writ large.

No law school would willingly enter a caste system and offer the legal equivalent of cosmetology. Nevertheless, the halo effects of institutional hierarchies already convey substantial privilege, and I fear that offering alternative vehicles for legal instruction will exacerbate this differentiation. 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 around occupational niches, or creating shorter-term programs, as was urged by the Clinical Legal Education Association, would lead to a weakened version of law school

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.

³ DEBORAH RHODE, *IN THE INTERESTS OF JUSTICE* 190 (2000).

⁴ Houston Independent School Magnet Department, Careers, <http://www.hisd.org/portal/site/MagnetEnglish> (follow "High School-Magnet Programs" hyperlink; then follow "careers" hyperlink) (last visited Mar. 8, 2008).

⁵ Houston Independent School Magnet Department, Health Professions, <http://www.hisd.org/portal/site/MagnetEnglish> (follow "High School-Magnet Programs" hyperlink; then follow "health professions" hyperlink) (last visited Mar. 8, 2008).

and an undesirable, paraprofessional alternative. Proponents of such radical changes should bear a very large burden of persuasion. To the extent that law schools are heading down this ill-advised path towards specialization, I urge that they reverse the trend.