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Any number of recent debates, including those in this volume, animate discussions of legal education and its perdition, failures, and confidence-game character. As one of the many prescriptions offered for the wounded enterprise, a number of serious and semi-serious discussions have arisen considering the three-year period required by most law schools.[1] In fact, the minimum of eighty-three semester hour equivalents has been extended to longer periods than three calendar years due to longstanding part-time and evening programs that can stretch within current accreditation standards to as many as eighty-four months in unusual circumstances.[2] Inasmuch as I was debt-averse in my own doctoral and law studies when I enrolled in Georgetown's evening program in 1977, I offer my experience there of class five nights each week and Saturday mornings,

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1. In January and February 2013 alone, there have been literally dozens of articles on the struggles facing legal education and higher education in the U.S. A small portfolio of such readings—mostly apocalyptic—includes: Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 11, 2013, at A11; Andrew Martin, *Debt Collectors Cashing In On Student Loan Roundup*, N.Y. TIMES, Sept. 9, 2012, at A1; Karen Sloan, *Law School Sues Over California's Bar-Passage Mandate*, NAT'L L. J. (Feb. 7, 2013), http://www.law.com/jsp/pa/PubArticlePA.jsp?hubtype=MAIN_PAGE&id=1359956045367&slreturn=20130115142346 (on file with the *McGeorge Law Review*); Karen Sloan, *To Lure Students, Public Law School Drops Out-of-State Tuition*, NAT'L L.J. (Feb. 6, 2013), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202587287831&To_lure_ students_public _law_school_drops_outofstate_tuition (on file with the *McGeorge Law Review*); Paul L. Caron, *Thomson Reuters Sells Foundation Press, West to Eureka Growth Capital*, TAXPROF BLOG (Feb. 4, 2013), http://taxprof. typepad.com/taxprof_blog/2013/02/thomson-reuters.html (on file with the *McGeorge Law Review*); Katherine Mangan, *Law Deans Confront 'New Normal' in Job-Market*, CHRON. HIGHER EDUC., Jan. 18, 2013, at A3; Ethan Bronner, *Law Schools' Applications Fall as Costs Rise & Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1; Arthur C. Brooks, *My Valuable, Cheap College Degree*, N.Y. TIMES, Feb. 1, 2013, at A27; Debra Cassens Weiss, *Law School Grapples with Student Surplus After Switch to 3L Practical Skills Training*, A.B.A. J. (Jan. 31, 2013, 5:30 AM), http://www.abajournal.com/news/article/law_school_grapples_with_student_surplus_after_switch_to_3l_practical_skill/; Debra Cassens Weiss, *'Massive layoffs' predicted in law schools due to big drop in applicants*, A.B.A. J. (Jan. 31, 2013, 6:27 AM), http://www.abajournal.com/news/article/massive_layoffs_predicted_in_law_schools_due_to_big_drop_in_applicants (on file with the *McGeorge Law Review*); Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 599 (2012); Thomas L. Friedman, *Revolution Hits the Universities*, N.Y. TIMES, Jan. 27, 2013, at SR1.

2. As an example, at UHLC, all full time J.D. students must complete their work within two and a half years to four years, and all parttime J.D. students must complete their work in a period between three and a half and 6 years. *See* UNIVERSITY OF HOUSTON, STUDENT HANDBOOK 5, 80 (2013), *available at* http://www.law.uh.edu/student/Handbook.pdf (on file with the *McGeorge Law Review*). The ABA rule is that the course of J.D. study must be completed between two years and eighty-four months. *See* ABA ACCREDITATION STANDARDS, Interpretation 304-1–304-7 (2012), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf (on file with the *McGeorge Law Review*).

spread over four calendar years, including two of the three summers. I collapsed at the finish line of the marathon in 1981. Several schools allow attendees to cut up the traditional six semester hours in several ways, either stretching them in part-time study or compressing them into fuller studies in a shorter period as few as twenty-four months. This procrustean process is still the exception to the usual three-year rule, with summer study or employment punctuating the process.[3]

This Article critiques two of the many program emphases that have arisen, that of J.D. majors for specialization, and the option of eliminating the third year through compression or early bar admissions.[4] While these are obviously not the same issue, they are related and grow from the notion that law studies are professional skills training, that professional specialization requires J.D. training specialization regimes, and that schools should accommodate alternative calendars and occupational branding measures to single themselves out in the large legal marketplace and facilitate placement for their graduates.[5] I address these issues separately.

I. THE SPECIALIZATION CHIMERA AND LAW CHASE

The increasing specialization and complexity of legal practice has led many observers to suggest that law school itself should become more specialized, and should offer J.D. "majors," or provide various certification programs that would carve out specialties.[6] However, 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. This is not a new call, but one with roots that run deep in struggles over curricular reform, pedagogical debate, and larger visions of the proper role of legal education writ large. For example, Myres S. McDougal thoughtfully laid out the needed transformation of the Yale Law School curriculum in 1947:

> The age of specialization for specialization's sake, of atomization, of

3. *E.g.*, Estreicher, *supra* note 1, at 603.

4. *Id.* at 599.

5. *E.g.*, Weiss, *Law School Grapples with Student Surplus, supra* note 1.

6. For this Article, I have adapted some concepts —as well as language—from earlier work, all cited with permission. Michael A. Olivas, *"Majors" in Law?: A Dissenting View*, 43 HARV. C.R.-C.L. L. REV. 625 (2008); Michael A. Olivas, *The Art and Science of Casebooks: Latinos and the Law: Cases and Materials*, 12 HARV. LATIO L. REV. 1 (2009); Michael A. Olivas, *Ask Not For Whom the Law School Bell Tolls: Professor Tamanaha, Failing Law Schools, and (Mis)Diagnosing the Problem*, 41 WASH U. J.L. & POL'Y 100 (2012). I worked hard to convey the ideas in these articles, having thought about the subject matter for some time, and adopt them here, with slight revisions.

> pluralization, of sublime indifference, has gone. With this new appreciation of community and interdependence there is coming also a new appreciation of the role that law can play as a positive instrument of community values—an appreciation of what can be achieved by bringing the important power decisions of the community under real as well as formal community control, and of the rich potentialities that inhere in bringing the best skills and enlightenment of the community to bear on these decisions. People . . . are beginning to show also a necessary willingness to experiment and to give up sentimental attachments to outmoded institutions, practices, and doctrines. Their clear call is for the creation of a law appropriate to the atomic era.[7]

McDougal was most concerned that the developing tools of the social sciences and "scientific knowledge" be deployed to move law schools from the legal realism with which he had become identified to the more modern "policy science":

> It is, therefore, the opportunity, and the obligation, of this law school, as of other schools, to emerge from the destructive phase of legal scholarship—indispensable though the destruction was—and to center its energies upon conscious efforts to create the institutions, doctrines and practices of the future. The time has come for legal realism to yield predominant emphasis to policy science, in the world community and all its constituent communities. It is time for corrosive analysis and inspired destruction to be supplemented by purposeful, unremitting efforts to apply the best existing scientific knowledge to solving the policy problems of all our communities.[8]

Of course, the context was different then, and a post-WWII call to revision of legal education and knowledge diffusion generally is a fundamentally different animal today, when the profound specialization of modern legal education would have been unimaginable to Professor McDougal.[9] This notion of specialization is mirrored in the astonishing rise of casebooks and other instructional materials in today's developing fields, some of which did not even exist as fields of study when I was in law school or in my early teaching years (at least, as measured by the manifest evidence they were fields, or the appearance of casebooks): as several of many examples, consider terrorism and national security law,[10] animal

7. Myres S. McDougal, *The Law School of the Future: From Legal Realism to Policy Science in the World Community*, 56 YALE L. J. 1345, 1349 (1947).

8. *Id.* at 1349–50.

9. *See id.*

10. *See, e.g.*, VICTORIA SUTTON, LAW AND BIOTERRORISM (2003).

rights law,[11] alternative dispute resolution and negotiation/mediation law,[12] food and drug law,[13] the many DNA strands of health law,[14] and intellectual property law.[15] Each of these, as well as many others I could single out for mention, have casebooks (and the resultant law school courses), organized sections of the American Bar Association or other professional organizations,[16] specialized journals and/or treatises,[17] and other formal evidence of their being developing, legitimate fields of inquiry requiring instructional materials.[18] Scholars of knowledge dissemination and organizational networks—themselves the avatars of developing fields of study—note that all new fields go through these same stages of infancy and maturity,[19] and I have considered them healthy signs that the legal academy is evolving and maturing. Not all of these are salutary developments. Observers may believe them to be a sign of the excesses of the liberal state or, alternatively, evidence of a vast right-wing conspiracy, but the academic marketplace will only allow these developments if there is a place for them. In sum, people write casebooks (or instructional books across disciplines) to establish a field, to subdivide a field, and to put their own personal and pedagogical stamp upon a field—or for a variegated mixture of these motivations. Note that I do not include economic gain among the motivations, although that can result once in a blue moon. Carving out a specialized field of legal study can lead to lucrative consulting, litigation, or pro bono opportunities, but I believe that a profit motive is the least likely reason for undertaking such initiatives, and the least likely result.

This production of casebooks and the predicate curricular coursework that supports them as actual specializations has led to law schools allowing their

11. *See, e.g.*, DALE D. GOBLE & ERIC T. FREYFOGLE, WILDLIFE LAW: CASES AND MATERIALS (2002).

12. *See, e.g.*, R. HANSON LAWTON & RUSSELL L. WEAVER, CONTEXTUAL NEGOTIATION: FACILITATED PROCEDURES AS ADVANCED NEGOTIATION (2006).

13. *See, e.g.*, PETER J. COHEN, DRUGS, ADDICTION, AND THE LAW: POLICY, POLITICS, AND PUBLIC HEALTH (2004).

14. *See, e.g.*, WILLIAM E. ADAMS, JR., MARY ANNE BOBINSKI, MICHAEL J. CLOSEN, ROBERT M. JARVIS & ARTHUR S. LEONARD, AIDS: CASES AND MATERIALS (3d ed. 2002).

15. *See, e.g.*, KEITH AOKI, SEED WARS: CONTROVERSIES AND CASES ON PLANT GENETIC RESOURCES AND INTELLECTUAL PROPERTY (2008).

16. As one example in my field of Higher Education Law, the D.C. based National Association of Coll. and University Attorneys (NACUA) provides many organizational tools and resources. *See generally* NAT'L ASS'N OF COLLEGE AND UNIV. ATTORNEYS, http://www.nacua.org (last visited Feb. 9, 2013) (on file with the *McGeorge Law Review*).

17. For example, the Journal of College and University Law is jointly published by the University of Notre Dame Law School and NACUA. *See* J. COLL. AND UNIV. LAW, http://www.nd.edu/~jcul (last visited Jan. 9, 2013) (on file with the *McGeorge Law Review*). It is a hybrid, refereed, and student-edited law review on whose editorial board I serve.

18. *See generally* JOHN C. SMART, KENNETH A. FELDMAN & CORINNA A. ETHINGTON, ACADEMIC DISCIPLINES: HOLLAND'S THEORY AND THE STUDY OF COLLEGE STUDENTS AND FACULTY (2000) (studying academic disciplines and knowledge production theory); *id.* at Ch. 1. Chapter One is entitled "Academic Disciplines and Academic Lives" and contains a discussion of faculty research and discovery. *Id.* at 7–12.

19. *Id.* at 5–7.

graduates to hold themselves out as "specialists" in a given field. A careful reading of websites and catalogs reveals that most such specializations constitute only a small smattering of seminars beyond the basic core courses available and taken by many students.[20] For example, there is a certificate program at a major institution requiring students to take only two introductory courses in that specialty over and above the other courses often taken towards students' overall degree requirements. Another certificate program at the same institution requires eighteen credit hours, including fifteen hours of basic courses and three hours of 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 specialty certificate programs combine coursework (beyond a seminar) with clinical work, or additional substantive work. One suspects that such programs are a marketing ploy as much as anything coherent or meaningful.

In contrast, my own institution offers an in-depth immigration law program.[21] First-year 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 inside the Law Center and the rest of the University (or other institutions); and may participate in a comprehensive immigration clinic (as well as externships in immigration courts and agencies), where they are given the opportunity to represent clients in formal proceedings.[22] Even with all these exceptional opportunities in the country's fourth largest city,[23] these students may still only have a vague understanding of the complexity of the law in this very technical and unforgiving area of practice.[24] Indeed, the *Padilla* case has led to serious discussion about the role of counsel in immigration and nationality representation, given the detailed practice, the shocking condition of many immigration proceedings where the deck is stacked against the noncitizen, and the dire consequences of ineffective counsel.[25] The supervision of these students

20. In preparation for this Article, I reviewed more than twenty law school websites that advertised specialized degrees and minors or specializations. My first draft listed a number of these as examples, but while working on my fourth edition of my higher education law casebook, I carefully read Jake New, *Edwin Mellen Press Sues University Librarian for Libel*, CHRON. HIGHER EDUC. WIRED CAMPUS BLOG (Feb. 8, 2013, 3:00 PM), http://chronicle.com/blogs/wiredcampus/edwin-mellen-press-sues-university-librarian-for-libel/42193. I decided that I would not tempt fate, even though I carry professional insurance. *Id.*

21. *See Immigration Clinc*, UNIV. OF HOUSTON L. CTR., https://www.law.uh.edu/ clinic/immi.asp (last visited June 23, 2013) (on file with the *McGeorge Law Review*).

22. *Id.*; *see also J.D. Program Overview*, UNIV. OF HOUSTON L. CTR., https://www.law.uh.edu/academic/jd.asp (last visited June 23, 2013) (on file with the *McGeorge Law Review*).

23. *JD Brochure*, UNIV. OF HOUSTON L. CTR , https://www.law.uh.edu/about/jd-brochure.pdf (on file with the *McGeorge Law Review*).

24. *See, e.g.*, Padilla v. Kentucky, 130 S. Ct. 1473, 1478–80 (2010).

25. *Id.* This case has drawn a great deal of scholarly attention, but among the most authoritative analyses have been those of César Cuauhtémoc García Hernández. *See* César Cuauhtémoc García Hernández, *Criminal Defense After Padilla v. Kentucky*, 26 GEO. IMMIGR. L.J. (forthcoming 2013); César Cuauhtémoc García

is so crucial that we limit enrollment in these clinics to eight students each semester. Moreover, they are able to be more deeply steeped in the subject matter than in virtually any other specialization regime that I have seen to date in the many schools that I have visited or examined: we offer Immigration and Business, Immigration and Family Law, and Immigration and Criminal Law courses. We even had a recent case that arose in our clinic that went to the US Supreme Court, and it was handled by several of my highly-supervised students.[26] Our client won a 9-0 reversal of the Circuit loss.[27] 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."

By contrast, once a lawyer is a member of the Texas Bar, after three years of a very exacting immigration practice that has specific task requirements set out (most of them actual representation across a number of immigration and nationality tribunals and agencies), a minimum of sixty CLE hours, a day-long exam, and more detailed character and fitness requirements (as attested by immigration specialists), experienced attorneys whose practice is at least one quarter immigration law and who can show substantial involvement and special competence in immigration and nationality law practice can hold themselves out as "specialized" in the field for advertising purposes.[28] In Texas, the State Board of Legal Specialization allows members to carve out deep expertise in a number of fields and receive recognition for the accomplishment.[29] Of course, experienced lawyers will perforce be more specialized than law students, so the two domains are not symmetrical, but it is apparent that a number of states allow such specialization or "majoring" in a field of practice, and do so with serious and exacting experience and comprehensive study, not simply by stringing together some classes.[30]

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 and centrality within the institutional environment, and the institution's interest in improving its apparent attractiveness to applicants and graduates. Pressures from the competitiveness of job entry,

Hernández, *Padilla v. Kentucky's Inapplicability to Undocumented and Non-Immigrant Visitors*, 39 RUTGERS L. REC. 47, 47 (2012).

26. Carachuri-Rosendo v. Holder, 560 U.S. 379 (2010).

27. *See id.* at 2580.

28. *See Get Certified*, TEX. BD. LEGAL SPECIALIZATION, http://www.tbls.org/Cert/AttyGetStarted.aspx (last visited Feb. 11, 2013) (on file with the *McGeorge Law Review*); *Standards for Attorney Certification*, TEX. BD. LEGAL SPECIALIZATION, http://www.tbls.org/cert/AttyStandards.aspx (on file with the *McGeorge Law Review*).

29. *Standards for Attorney Certification*, *supra* note 28.

30. The American Bar Association recognizes a number of specialty bars and state certification programs and maintains a comprehensive website on these programs*: Sources of Certification*, A.B.A., http://www.americanbar.org/groups/professional_responsibility/committees_commissions/specialization/resources/resources_for_lawyers/sources_of_certification.html (last visited Feb. 11, 2013) (on file with the *McGeorge Law Review*).

local placement niches, and real or imagined employer preferences can convince students that specializations are good for them, at least in their immediate futures after graduation. Law schools themselves may be motivated to institute these programs if their overall quality is not clearly evident in external, comprehensive ranking regimes. It is hard to win (and only 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.[31]

Then, there is another concern: stratification. As Professor Deborah Rhode has noted:

> 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.[32]

Yet as I read Professor Rhode, I could not help but think that her take on this issue would lead to earthworms and bluebirds, perhaps along the lines of high school magnet programs.[33] 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 a cosmetology license.

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. Shaping law schools around occupational niches, or creating shorter-term programs, will likely lead to a weakened version of law school 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. Many schools have weighed in on the side of such J.D. specialization, if the marketing and public relations materials widely distributed by law schools are

31. This issue has both old and more recent roots. *See generally, e.g.,* Charles W. Joiner, *Specialization in the Law: Control It or It Will Destroy the Profession*, 41 A.B.A. J. 1105 (1955); Elizabeth Chambliss, *Organizational Alliances by U.S. Schools*, 80 FORDHAM L. REV. 2615 (2012).

32. DEBORAH RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 190 (2000).

33. *Id.*

any indication.[34] For example, the January 2013 issue of *The National Jurist, The Magazine for Law Students* showed J.D. specializations in several programs of study, specialized summer programs in a number of fields, and L.L.M. and other advanced degrees also touting such specialization.[35] In a complex world, post-J.D. specialization can conceivably be an important and substantive signaling device and a differentiation of professional expertise, but most J.D. specializations fall far short of this desiderátum.[36]

II. THE RISE OF PROPOSALS TO SHORTEN THE TIME TO J.D. COMPLETION, ABA STANDARDS, AND LEGAL EDUCATION REFORM

The American Bar Association (ABA) Section on Legal Education and Admissions to the Bar has promulgated comprehensive standards to govern the provisional accreditation and ongoing quality control regime required for permission to offer law degrees in the United States.[37] In addition, this accreditation function is the predicate for access to federal fund eligibility for their students, and in many states, the prerequisite for admission to law practice by the state licensing authority.[38] The ABA accreditation project is the object of derision by many modern critics of law school, most notably in Brian Tamanaha's 2012 comprehensive critique of legal education and stinging rebuke

34. *See generally Specialized Training in the Heart of New York City*, THE NAT'L JURIST, Jan. 2013.

35. *See id*. Among the dozens of specialized programs advertised in the January 2013 National Jurist, *see, e.g.*, *Specialized Training in New York City*, at inside front cover (LLM); *Special Issues in International Environmental Law*, *id.* at 29 (summer study); *International Law in London*, *id.* at 49 (JD/LLM); *Art of Advocacy*, *id.* at 49 (summer study).

36. Elizabeth Chambliss comprehensively categorizes the many specialized linkages and alliances forged by US law schools to control and increase resources, but notes that it is mostly a domain of the elite law schools:

> While the very top law schools have a clear target for market alliance and specialization, and can count on continuing demand for the costly, tailored training they offer, law schools outside this top group face a contracting and increasingly segmented market, and thus a more complex strategic challenge. On the one hand, law schools face growing pressure to deliver 'practical' training, through resource-intensive clinics, skills courses, and other forms of experiential learning. Yet, for most schools, a diverse portfolio of specialized, resource-intensive programs is increasingly unsustainable, and all evidence suggests that cost pressures on law schools will only increase.

Chambliss, *supra* note 31, at 2628 (citations omitted).

37. *2012–2013 ABA Standards and Rules of Procedure for Approval of Law Schools*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_education/resources/standards.html (on file with the *McGeorge Law Review*).

38. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS, GAO-10-20, 2 (2009), *available at* http://www.gao.gov/new. items/d1020.pdf (on file with the *McGeorge Law Review*) ("In order to participate in federal student financial aid programs, law schools must be accredited by an agency recognized by the Department of Education."); David Segal, *For Law Schools, a Price to Play the A.B.A.'s Way*, N.Y. TIMES (Dec. 18, 2011), http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html?pagewanted=all&_r=0 (on file with the *McGeorge Law Review*) (explaining that the majority of states require a J.D. from an ABA accredited school for state certification, and that accreditation is also a requirement of the GI Bill).

of current practices.[39] As one example in *Failing Law Schools*, Professor Tamanaha assigns much of the demonstrable difficulty in today's law schools (higher costs, conformity that has precluded real reform, and unfair consumer practices against law students) to the ABA accreditation process, whose opaque and collusive governance enables legal educators to coerce all law schools into meeting higher (and more expensive) standards: "[S]tudents must pay a premium that attaches to accreditation, not just because it costs more to run an accredited law school but also because the market-based tuition price of an accredited law school is at least $10,000 higher than an unaccredited school."[40] Throughout much of his book, he contrasts the variegated opportunity structures at advantaged and disadvantaged competing institutions, even while thoroughly noting and critiquing these contrasting differences in law schools.[41] While he is scornful of what he considers the flattening results of the ABA standards, at the same time, he develops a major premise that the accreditation process exacts a cookie-cutter accreditation regime, one that is too costly and borne largely by students: proposals to relax some of the important ABA standards "would allow . . . greater flexibility and variation among law schools."[42] These many different institutional response choices (some are market-driven, others are devices "for harvesting additional bodies") and other features have also led to regular fluctuations in enrollment patterns, expanding and contracting accordion-like, as conditions permit.[43]

As I have noted elsewhere in a more direct response to Tamanaha's critique, I leave his work with the clear sense that he has the diagnosis largely correct, but his remedy is quite thin on specifics, is hostile to faculty governance, and is oblivious to the harms many of his proposals would occasion. Rather than understand the parallels to problems that have been identified by critics of undergraduate education, he is incurious about that larger and important political economy. When he does cite relevant literature, he does so selectively and incompletely, as when he notes a single finding from a complex recent Government Accountability Office report, "Higher Education: Issues Related to Law School Cost and Access," that he correctly reports attributes rising costs to "competition over the ranking."[44] However he omits the larger and more extensive findings, directly on point that accord accreditation requirements a

39. BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (2012).

40. *Id.* at 19.

41. *See, e.g.*, *id.* at 26–27.

42. *Id.* at 26–31.

43. *Id.* at 64.

44. U.S. GOVERNMENT ACCOUNTABILITY OFFICE, HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 7 [GAO report number GAO-10-20 October 26, 2009], http://www.gao.gov/assets/300/297210.html, cited in TAMANAHA, *supra* note 39, at 78. *See also* Michael A. Olivas, *Ask Not For Whom the Law School Bell Tolls: Professor Tamanaha, Failing Law Schools, and (Mis)Diagnosing the Problem*, *supra* note 6.

"minor role" in the costs. Indeed, the Report concludes that ABA accreditation is not reportedly a "major driver" of cost.[45]

It stated:

> Officials from most ABA-accredited schools we spoke with reported that ABA accreditation requirements were not a major driver of cost increases in legal education. Officials from more than half of the ABA-accredited schools we spoke with stated they would meet or exceed some ABA accreditation standards even if they were not required. School officials noted that the standards often follow market trends and changing approaches to legal education.[46]

As a former member of the ABA Section Council, the body legally charged with implementing the standards and various accreditation mechanisms,[47] I am not fully an arm's length observer. As most of my colleagues during that period can attest, I was not always a fan of the various prescriptive measures. That said, I came to believe that the deregulation that was occurring led to a number of structural problems, including the lowered barriers to market entry that allowed far too many law schools to spring up like mushrooms on the desert after a rainstorm. The growth of those schools has caused there to be excess capacity and, in my review, too many ill-advised programs of legal study, especially among marginal institutions and for-profit corporations. But this experience convinced me all the more that regulation was a necessary regime, and I have incorporated this worldview into my vantage point.

In *Failing Law Schools*, Professor Tamanaha reviewed the complex history of the three-year J.D. model, which is a thoughtful argument largely resolved nearly a hundred years ago when the forces for legal education's increased academic model prevailed.[48] He summarizes:

> Those who wish to preserve the third year as a standard for all law schools must defend not the third year itself, which can be useful to many, but the model of the *unitary profession*, which requires the third year of everyone. Elite law schools can be free to offer a three-year program to students without every law school being compelled to do so.

45. U.S. GOV'T ACCOUNTABILITY OFFICE, HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 7 (2009), *available at* http://www.gao.gov/new. items/d1020.pdf (on file with the *McGeorge Law Review*).

46. *Id*. at 26.

47. AM. BAR ASS'N, LAW SCHOOL ACCREDITATION PROCESS 3 (2010), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2012_accreditation_brochure_web.authcheckdam.pdf (on file with the *McGeorge Law Review*) (citing CFR Title 34, Ch. VI, Sec. 602 and setting out federal requirements).

48. TAMANAHA, *supra* note 39, at 20–25.

> The legal profession has never been unitary in the nature of work done by lawyers or in their compensation.[49]

There is a circular argument here that three-year programs need not be three years because the profession is variegated and not all members of the profession need the three years.[50] Tamanaha is aware that his critique may be seen as regressive or inimical to people of color or lower socioeconomic class students, because he writes:

> Liberal egalitarians will likely protest that the no frills law school argued for in the previous chapter and the two-year law school advocated here would be dumping grounds for the middle class and the poor. This is true. Few children of the rich will end up in these law schools, if they are allowed to exist. But a more apt description than "dumping ground" would be "affordable access to becoming an attorney." As things now stand, the "dirty, not so hidden secret in all this is that 'the heaviest debt burdens the lawyers least able to pay.'" The real enemy of the middle class and poor is the expensive academic model that discourages many from going to law school at all and imposes a crushing debt on all those who do attend.[51]

This assertion is breathtaking in its simplicity, its cynicism, and its hidden assumptions disguised as candor.[52] If his proposal for a stripped-down two-year model were adopted, he concedes that its class-based provenance would have inevitable social consequences: ("This is true. Few children of the rich will end up in these law schools, if they are allowed to exist.").[53] This is a reason they should not be constructed and allowed to exist. He then conjures up an impoverished "strawman"[54] ("But a more apt description than 'dumping ground' would be 'affordable access to becoming an attorney'") and lets his readers in on a secret (a "dirty, not so hidden secret")—existing law schools are a bad bargain.[55] Rather, a truly bad bargain would be a lesser-by-design law program disguised as being beneficial to those who cannot afford the authentic three-year program of study. While he posits this as an accreditation issue, faulting the ABA for this longstanding requirement, no state bar authority (whether it be a state bar,

49. *Id.* at 27. (emphasis in original).
50. *Id.*
51. *Id.* at 27.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*

a licensing agency, or a state supreme court) will admit any member to practice with such a degree.[56]

Just to be clear, no school is prohibited from compressing the time-in-study requirement, or from extending it beyond the traditional three-year requirement. And no law school would be interested in reconstituting its three-year law degree into a two-year advanced paralegal degree.[57] The actual J.D. requirement is a clock-hour/minute minimum, operationalized by the conventional eighty-three semester-hour format (or the equivalent 129 quarter-hour convention).

Law schools may find the following examples useful. Law schools on a conventional semester system typically require 700 minutes of instruction time per "credit," exclusive of time for an examination. A quarter hour of credit requires 450 minutes of instruction time, exclusive of time for an examination. To achieve the required total of 58,000 minutes of instruction time, a law school must require at least eighty-three semester hours of credit, or 129 quarter hours of credit.[58]

With these clock contact hour requirements, law schools can, and do offer variants that arrange the required minimum 58,000 instructional minutes in different ways. For example, Northwestern University Law School has a compressed program of study that saves the Accelerated J.D. (AJD) students money largely by sheltering them from inflation charges over a shorter time and by taking into account the reduced living expenses over the shorter period of time:

> [They] are billed a total of 5 semesters (summer, fall, spring, fall, spring). The amount each semester is equal to 6/5th of the per-semester JD amount so that the total amount paid for both programs is the same. During their initial summer semester, the [AJD students] get [a] slight break relative to the Fall JD entrants because their summer semester tuition is still at the previous fiscal year's rate. That's why the amount is $30,971 rather than $31,900. Setting that and annual tuition increases

56. *Id.* at 21. However, Washington State has created a niche for limited-license legal technicians. *Limited License Legal Technicians*, WASH. STATE BAR ASS'N, http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Limited-Licenses-and-Special-Programs/Non-Lawyers-and-Students/Legal-Technicians (last visited Feb. 15, 2013) (on file with the *McGeorge Law Review*).

57. NYU Law professor Samuel Estreicher has actively advocated for New York State to experiment with a two-year training program, with a substantially changed bar admissions. *See* Estreicher, *supra* note 1, at 599–600.

58. A.B.A. Section of Legal Educ. & Admissions to the Bar, *Program of Legal Education*, *in* 2012–2013 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2317–28 (2012), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/chapter_3_2012_2013_aba_standards_and_rules.authcheckdam.pdf (on file with the *McGeorge Law Review*).

> aside, the JDs pay 3 years of the $53,168 amount and the [AJD students] essentially pay 2.5 years of the $63,800 amount.[59]

In other words, the Northwestern students pay the equivalent of a semester less by compressing the required time by an according amount.[60] By manipulating a yearlong calendar and removing any downtime, it is conceivable that any ABA-accredited law school could compress the time to degree acquisition even further, and still require the minimum 58,000 minutes. But there are only so many arithmetic ways to shrink or extend the calendar.

Northwestern Dean Daniel Rodriguez and N.Y.U. law professor Samuel Estreicher made another proposal that would require state bar authorities to grant J.D. degrees even after two years of work:

> The 2-year proposal supposes that there is considerably less curricular work. This justifies the opt-out of the third year. . . .[This] 2-year option does not give you a degree after 2 years. Law schools, yours, mine, others, will likely require all three years in order to grant the JD. The ABA will require that also. The focused issue is whether the state bar authorities will permit students to sit for the bar before they receive a law degree, thus decoupling the bar exam requirements from ABA accreditation.[61]

Even if a state were to adopt such a standard and become the *de facto* minimal leader in this important dimension, which is under consideration in Washington State[62] and New York,[63] it is not clear that the ABA would "decouple" the 58,000 minutes requirement accordingly.[64] Were a state to do so, it would immediately render it an outlier, and no other state without the two-thirds standard would have reciprocity with that state's bar, making it difficult for

59. E-mail from Don Rebstock , Northwestern Law Associate Dean for Enrollment, Career Strategy, and Marketing, to author (Jan. 22, 2013, 15:55) (on file with the *McGeorge Law Review*).

60. *Id.*

61. E-mail from Daniel B. Rodriguez, Northwestern Law Dean, to author (Jan. 22, 2013) (on file with the *McGeorge Law Review*).

62. Since 2012, there is a provision under Washington State law to allow non-attorney Limited License Legal Technicians (LLLT) "to advise and assist clients in approved practice areas of law." *See Limited License Legal Technicians,* WSBA (2013), http://www.wsba.org/Licensing-and-Lawyer-Conduct/Admissions/Limited-Licenses-and-Special-Programs/Non-Lawyers-and-Students/Legal-Technicians (on file with the *McGeorge Law Review*).

63. Daniel B. Rodriguez & Samuel Estreicher, *Make Law Schools Earn a Third Year*, N.Y. TIMES, Jan. 18, 2013, at A27. A small number of medical schools have adjusted the time-in-training, with reduced tuition. Anemona Hartcollis, *N.Y.U. and Other Medical Schools Offer Shorter Course in Training, for Less Tuition*, N.Y. TIMES, Dec. 24, 2012, at A16.

64. *See* A.B.A. Section of Legal Educ. & Admissions to the Bar, *supra* note 58.

lawyers to move across state lines, receive *pro hac vice* privileges, or sit for multiple bars.[65]

The University of Houston was involved in a mini-natural experiment on precisely this issue with its 84 Club, which was an attempt to close a gap in Texas State Bar admissions standards.[66] When I served a stint as Associate Dean for Student Life in 2003, I received a number of queries from alumni of approximately twenty years earlier about a bar admissions practice that had allowed law students enrolled in their last semester to take the state bar examination and be sworn in with eighty-four hours instead of the eighty-eight hours required for admission, on the theory that they were nearly completed with the credit hour obligations.[67] However, the rule was written in a way that they did not need to complete the final semester, and many did not do so. Instead, they passed the bar and were admitted to practice without the total hours required for those who actually did graduate, but took the bar after their degree completion. This gap was a drafting problem, but no Texas bar members were punished for their technical reading of the requirement, and as long as they practiced in Texas, there were no adverse consequences to their singular situation.

However, not having a law degree and having too few hours to be admitted into other jurisdictions began to cause a problem, one that could not be remedied at most schools after the law students left their enrolled status: returning to law school was impossible either because they had not maintained continuous enrollment, a requirement on the books in most Texas state institutions (to prohibit intermittent and overly-long enrollments), or because they now exceeded the maximum enrollment time-to-degree.[68] One graduate who had been a locally-elected judge told me he had been embarrassed in a judicial race when his opponent had pointed out that he was the superior candidate because he "had a law degree and had not dropped out of law school."

I consulted with University of Houston officials, who gave me permission to establish a catch-up, one-time provision to enable this cohort to make up the hours by regular law school coursework and to receive their degrees. This grandfathering process meant that several of the candidates had to complete seminars and meet all of the current hour requirements (which had risen to ninety), and to meet all of the current curricular obligations, but they willingly did so in order to graduate and receive their degrees.[69] One 84 Club member

65. *See, e.g.*, SUPREME COURT STATE OF ARIZONA, RULES FOR ADMISSION OF APPLICANTS TO THE PRACTICE OF LAW IN ARIZONA (2013), *available at* http://www.azcourts.gov/Portals/26/admis/2012/Miscellaneous/Rule_of_Admission.pdf (on file with the *McGeorge Law Review*) (stating that Arizona requires compliance with ABA standards for admission to the state bar).

66. *Six Degrees of Separation*, 23 UHLC BRIEFCASE 47 (Fall 2003); *see also Back Page*, 66 TEX. B. J. 534 (2003).

67. *Id.*

68. *Id.*

69. The biggest change, in addition to the increased number of hours required to graduate, was the

participated almost twenty years later than his original bar admission. This entire process was necessary because of the comity arrangements of other state bars, which would not let this cohort be admitted to the other state bars due to their not having the degree and not having the hours for degree equivalence. All the other state schools could have done the same thing, but some chose not to do so, leaving University of Houston Law Center graduates in a unique position to work their way out of what was technically a deep hole.

This natural experiment shows the deep and complex relationship of state bars with each other, and if one state did allow members to sit for the bar with two-thirds of the hours that others took for admissions, this cohort of bar-passers would find themselves in the same situation as did the Texas law school attendees who were short the required degree and total hours. They would not be admitted to temporary jurisdiction, *pro hac vice* appointments, or other bar memberships that chose not to have reciprocal relationships such as exist widely now, when all applicants have met or exceeded the standards and requirements. When one is starting out a practice with a narrow band of residency requirements and other bar eligibility at the age of twenty-four, it will not seem like a long-term bar to other licensing opportunities. And this lower standard will likely dupe and attract more marginal students into selecting it.

III. CONCLUSION

Other thoughtful observers, like Judge Jose Cabranes, have spoken positively about reforming legal education to shorten the law school experience:

> After questioning the value of much of the third year of law school, he offered some suggestions. Law schools could offer two years of basic law courses followed by an apprenticeship in the third year. Law firms could hire students at much lower salaries than they currently pay junior associates, and bill them out for lower rates that clients would welcome. He acknowledged that such a model "may make sense for students, law firms, and clients, although not necessarily for the profits of law schools."[70]

advanced writing course requirement. Every UHLC 84 Club member took a seminar course to meet this writing requirement.

70. I invited Judge Cabranes to give the Keynote Address at the AALS Annual Meeting, in January, 2012. Katherine Mangan, *At Meeting, Federal Judge Hands Down a Sharp Opinion About Law Schools*, CHRON. HIGHER EDUC. (Jan. 8, 2012), http://chronicle.com/article/Federal-Judge-Hands-Down-a/130264 (on file with the *McGeorge Law Review*). Professor Estreicher took his cues from Judge Cabranes' two-year proposal. Estreicher, *supra* note 1, at 605–06.

Dean Richard Matasar also has been critical of the traditional arrangement:

> Students have no alternative than to attend schools that are remarkably similar. All students must have had an undergraduate education. They cannot complete their studies in less than two years. They must all attend school in person (except for a few limited courses). They cannot work more than twenty hours a week for pay. They cannot receive academic credit and pay for the same work. They will be taught primarily by full-time, job-secure, faculty members. They will attend classes in large physical facilities. Whatever variations exist among schools, these create certain minimum investments that must take place before the school can be accredited.[71]

In applauding a reform program that emphasized practice skills, legal scholar William Henderson noted, "there is still room for improvement, but [I applaud] Washington & Lee's gains." Henderson writes:

> To use a simple metaphor . . . W&L is tooling around in a Model-T while the rest of us rely on horse and buggy. What ought to be plain to all of us, however, is that, just like automobile industry circa 1910, we are entering a period of staggering transformation that will last decades. And transformation will be roughly equal parts creation and destruction.[72]

There are more possibilities for reforming the perceived "third-year problem," and if this growing chorus[73] is any indication of such a call to reform, many ideas will emerge, and institutions will find their own maximal mixture of the ingredients for successful implementation. These ingredients are likely to be combinations of some form of practice skills training, whether simulated, clinical, supervised externships, or other formats, and each of them will have to fit into institutional resources, faculty norms, practice opportunities, and student skill sets.[74] In turn, all of these will have to pass ABA and accreditation muster.

71. Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 474–75 (2004).

72. Weiss, *Law school grapples with student surplus after switch to 3L practical skills training*, *supra* note 1.

73. At the time this article was going to print, President Obama joined the chorus. *See* Peter Lattman, *Obama Says Law School Should Be 2, Not 3*, *Years*, N.Y. TIMES, August 24, 2013, at B3.

74. *See, e.g.*, Ashby Jones, *The Boldest Move (To Date) in Legal Curricular Reform?,* WALL ST. J. LAW BLOG (Sept. 9, 2009, 10:52 AM), http://blogs.wsj.com/law/2009/09/09/the-boldest-move-to-date-in-legal-curriculum-reform (on file with the *McGeorge Law Review*) (critiquing the "redundancy" of the third year); David Segal, *So You Want to Learn to Practice Law? Wait Until After You Finish School*, INT'L HERALD TRIB., Nov. 22, 2011, at 18 (criticizing legal education for downplaying practical, real-world training); Katherine Mangan, *As They Ponder Reforms, Law Deans Find Schools Remarkably Resistant to Change*, CHRON. HIGHER EDUC. (Feb. 27, 2011), http://chronicle.com/article/As-They-Ponder-Reforms-Law/126536 (on file with the *McGeorge Law Review*) (noting the difficulties in fostering changes). Virtually all of the proposals I have reviewed in this Article have excellent ideas for potential third year curriculum revision, but no one size will fit

And, no matter the changes sure to occur—whether fundamental or cosmetic—it can be asserted with some assurance that the demography of the undergraduate population will not remain constant. In addition, there are serious, substantive changes occurring in the worldwide practice of law and the US political economy, over which legal educators will have little or no influence.[75] As all of the prescriptions begin to be considered, it is worthwhile recalling the nostrum that legal education reformers should at the least do no harm. The reasons that the US legal education model has influenced the world are still in place, and we must not uselessly wring our hands. Virtually every law school can use its existing or reasonable resources to improve its lot. There are sure to be some schools that will consider closing and the expanded universe will likely stop growing. I do not consider this to necessarily be a bad development.

These complex issues are different from, but related to, the economic and political economic issues addressing worldwide higher education and college governance in the United States. We are not likely to be able to resolve legal education issues or other post-baccalaureate topics until the more fundamental and widespread undergraduate reforms—in whatever format they will occur—have been addressed. This does not mean that we should simply wait on the sidelines while they play themselves out. But financial aid legislation, accreditation, demographic influences, and the worldwide economic restructuring all have affected higher education as a system, and system remedies will be required to return it to health. A first response may have been jumpstarted in President Obama's 2013 State of the Union, when he released a number of proposals that would address higher education–how these proposals play out will likely point a way for legal education.[76] However, I predict an increased role for

all. Those who suggest that law schools are cookie cutters with the same basic approaches simply have not familiarized themselves with this literature.

75. If there were one person whose work I would recommend and whose views are worth considering (but are generally overlooked), I would cite Professor Laurel S. Terry, who has been laboring to explain the global interconnectedness of legal practice. Pick any one of these and drink deeply. *From GATS to APEC: The Impact of Trade Agreements on Legal Services*, 43 AKRON L. REV. 875 (2010); *The European Commission Project Regarding Competition in Professional Services*, 28 NW. J. INT'L L. & BUS. 1 (2009); *The Future Regulation of the Legal Profession: The Impact of Treating the Legal Profession as 'Service Providers,'* 2008 J. PROF. LAW 189; *The Legal World is Flat: Globalization and its Effect on Lawyers Practicing in Non-Global Law Firms*, 28 NW. J. INT'L L. & BUS. 527 (2008).

76. For the unusual interest that was prompted by the President's second term higher education proposals, *see, e.g.*, Eric Kelderman, *Obama's Accreditation Proposals Surprise Higher-Education Leaders*, CHRON. HIGHER EDUC. (Feb. 14, 2013), http://chronicle.com/article/Obamas-Accreditation/137311 (on file with the *McGeorge Law Review*); Kevin Carey, *Obama's Bold Plan to Reshape American Higher Education*, CHRON. HIGHER EDUC. CONVERSATIONS BLOG (Feb. 13, 2013, 11:44 AM), http://chronicle.com/blogs/conversation/2013/02/13/obamas-bold-plan-to-reshape-american-higher-education (on file with the *McGeorge Law Review*); Richard Perez-Pena, *Scorecard For Colleges Needs Work, Experts Say*, N.Y. TIMES, Feb. 14, 2013, at A19. In my view, the alternative calls for some of the fundamental accreditation criteria, such as those that would be beyond the time-on-task. Accountability, value-added, or evaluative criteria all have their own flaws and will not deliver the "radical restructuring" being called for in legal education. In August, 2013, Congress agreed upon a series of complex proposals to regulate and cap student loan interest rates. Jeremy W. Peters and Ashley

accreditation, accountability, and transparency, which are the major crosscutting themes of reform from the political left and right. At the least, answer this: if today's third-year graduates are not "practice-ready," how much less preparation will they have in a two-year structure? Those who advocate reducing our time-on-task to two-thirds of the historic metric have a substantial burden of persuasion, and there is nothing in today's increasingly-complex practice that will justify this regression to a lower mean.

Parker, *An Unusual Feat in Congress: Student Loan Bill Breezes On*, N.Y. TIMES, August 1, 2013, at A10.