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Random Gripes of a Law Professor

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LET US BEGIN at the beginning—the "slave markets." Everyone, both "buyers" and "sellers," agree that it's an exhausting, demeaning, and inefficient way to hire professors. But the art form remains remarkably constant, since no better means of mass matchmaking has yet been devised. Possibly we should adopt the British system, requiring all schools to advertise their openings in the *Times* classified section. More likely, we will start computerizing to remove the last vestiges of humanity from the system. But until the system is basically changed, why not try to smooth out some rough spots?

For example, most schools have some notion of what courses will be available for the new man. Why not publicly (at the convention, anyhow) list the specifications? Even vague statements might help avoid obvious mismatches, such as a school looking for a man in the corporate area interviewing someone interested in teaching poverty law. (Of course, these days *everyone* is interested in teaching poverty law.) The Association resumé form might be amended, so that in addition to most-preferred courses, the applicant could list least-preferred courses. And since most new teachers are assigned one first-year course, why not list these courses and ask the applicant to rate himself for each on a seven-point scale ranging from torrid desire to absolute frigidity? These techniques might help fit the proper pegs into the proper holes: specialist into speciality, and generalist into generality.

All of the above overlooks the immeasurable intangibles of personality; but in the supercharged atmosphere of the slave markets a quick twenty minutes really doesn't permit much evaluation of such intangibles, especially as all candidates (or schools, as the case may be) tend to blur and merge sometime during the second day. It's senseless to continue beating a dead horse. Criticism of the slave market could fill a large book, with most of us able to contribute a chapter. But it's all we have. And in the back of my mind is the suspicion that the major reason this "system" persists is that—within very wide limits—*it really doesn't matter who a particular school hires for a particular position.* Given certain minimal academic achievements, which can be listed on paper, and given a communicative personality, which can be observed in a brief meeting, maybe all teaching prospects are fungible; this would explain why the present system "works."

Gripe number two also relates to the hiring process. Has anyone noticed that the progression (retrogression?) of preconditions to entry

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into law teaching is approaching the "doctoritis" (or degree for degree's sake) of the rest of academe? While the overwhelming majority of present-day teachers have no more than the first degree in law, it is becoming much more difficult for a newcomer to enter the profession without the LL.M. Why? What does the LL.M. represent that makes it so desirable to deans and faculty recruiting committees?

First of all there are really two types of LL.M.'s: the "professional" and the "academic." The professional LL.M. is most common in taxation, but is also conferred in such fields as labor law, trade regulation and international law. Most recipients of the professional LL.M. do not enter teaching, but use the highly specialized knowledge and techniques learned in the graduate-student-only courses in the practice of law. For them, the significance is the content rather than the label; "LL.M. in Taxation" is just a short way of saying "one who has taken twenty four credits in taxation."

For the relatively few "professional" LL.M.'s who do enter law teaching the significance should be the same. The school looking for a neophyte "tax man" might well limit its search to LL.M.'s in tax for this reason. But no one should ever lose sight of the fact that the three letters are insignificant *per se*. On the other hand, the quest for an "academic" LL.M. has been referred to as "a fourth year of law school." Most, if not all, of the work consists of courses and seminars regularly open to undergraduate law students, which the particular degree candidate never happened to elect as an undergraduate. This is not the place to rehash the arguments of "professional" vs. "academic" degrees; I have done substantial work toward both types of degree and find each type to be challenging, if different from each other. What is being questioned here is the notion that either represents some *sine qua non* for law teaching.

What does the prospective teacher gain from his "fourth year of law school"? One definite advantage is the association with others desirous of becoming teachers, and also with the outstanding faculties at the prestigious schools from whence most LL.M.'s arise. Yet I submit that most potential law teachers (except possibly the "professional" LL.M. for the specialist) are in LL.M. programs solely because they feel—whether rightly or wrongly—that in fact it is the *only* way into teaching for them. Some of them are "second-chancers" who feel that they must redeem a mediocre law school record with superlative grades in graduate school to have any chance of getting a job. Redemption is similarly sought by those with excellent records for their J.D. or LL.B. but who feel that they went to the "wrong" law school and must atone for their error by a year's penance at Harvard or Yale or some other "right" school.

The sad thing is they are correct in large part. They are correct in their feelings not because of the truth of the matter, but because at least

to some extent the collective faculties (and deans) of law schools tend to act as if it were true. I don't know whether academic snobs tend to become teachers, or whether teachers tend to become academic snobs, but the correlation seems to be high. Most of the time such snobbery may be laughable, if irrelevant. But to the extent that we force otherwise promising candidates into a year's "penance" in order to win our approval for a place on our faculties, we exalt snobbery to a stupid extreme.

Even if they do not feel need of "redemption," many prospective teachers seek the LL.M. "to have the big schools behind them." In fact this is an advantage for them, since the deans and faculties of "buying" schools tend to look to the big school LL.M. purveyors as preliminary screening agents; and a visit to the four or five of the largest LL.M. schools gives the most efficient returns for a recruiter in terms of both time and money. I suppose the only alternative to this big-school-as-clearing-house approach is a better AALS clearinghouse.

Please remember that I am not condemning either the LL.M. programs or the candidates. And it's true that many new teachers are hired because of personal contacts with the school, or from the excellent (non-LL.M.) teaching fellow programs at several schools. And some hiring does come from the AALS register of non-degree candidates. All that I'm saying is that there seems to be a perceptible trend towards a *de facto* degree prerequisite to employment, and I hope it never approaches the "union-card" status of the Ph.D. in some departments of some undergraduate schools. Hopefully we can keep looking at the man, and not at the initials after his name.

Much of the above is really relevant to teachers only and not to practitioners, although the type of teachers we hire today helps shape the type of practitioners we have tomorrow. But all lawyers should be concerned with what is going on in the law schools today. Law students generally have not been involved in the student-administration "confrontations" that have plagued many schools recently. (Indeed, given the general political orientation of many law students, this is quite surprising; possibly they are too conservative.) While the mechanics of confrontation are dangerous and probably counterproductive in the long run, the basic notion that the *status quo* might not be the best of all possible worlds cannot be ignored.

Many campus radicals seem to feel that anything that exists is wrong; many in the "Establishment" seem to feel that everything is almost perfect. Intellectually, we know the answer is in between.

The role of students in governing a law school should be the topic of several complete articles and will not be discussed here. All I would like to do is to caution faculty members against falling into one or the other of the above polar positions with respect to *any* issue. We—the

collective faculties of the law schools—are by and large the almost-genetically determined heirs of our teachers; because our minds and thought processes were most identical to those of our mentors, we received the best grades, which "qualified" us to teach. Our best students —those with the highest grades—are those who mentally conform to our patterns; presumably they will be the next generation of law teachers. Thus, the long gray line continues, with each of us reproducing himself *ad infinitum.*

Note that this is quite a different matter from the *mea culpa* thrust upon us by the sociologists: that our middle class white backgrounds disqualify us from empathizing with the black revolution. That is a cultural homogeneity; I refer to an intellectual homogeneity. Note further that this does not mean that we all agree on all matters. It just means that we test the merits of any proposal against the same model.

Possibly the most irritating manifestation of this is what I call "Harvarditis." A few years ago I was deeply involved in the movement to replace the LL.B. with the J.D. degree. The single most common argument I heard against the change was that "Harvard (or some other prestigious school) doesn't do it," and *therefore (sic)* it would be presumptuous for us to do it. If this is almost laughable with respect to something as essentially trivial as the name of our degree, it becomes quite serious when it arises during a discussion of curriculum changes. It is one thing to use the experience of others as a factor in determining our policies, it is quite another matter to give that factor overpowering weight. On the other hand, some of my colleagues see a need and want action NOW. The details and possible problems are ignored or given short shrift. Again a polarization occurs. This is healthy as long as the resolution is not destructive. All I suggest, however, is that the resolution will be much happier for all if we try, intellectually, to overcome the basic intellectual processes that made us enter law teaching in the first place.

This professor has many other gripes, such as the atrocious English and even worse penmanship of students' exams. I'd like to sound off about the economic repercussions on the teaching profession of the new Wall Street salaries. Then there is the notion that law teachers can consistently have much higher effective student-teacher ratios than any other academic discipline and not have performance suffer. But I suppose these must await another article because of space limitations here. Nothing has been solved in the last few pages, but I feel much better for the opportunity to air my gripes in public and I would like to hear from those who care to comment on them.