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Introduction: Lawyers as Conservators?

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INTRODUCTION: LAWYERS AS CONSERVATORS?

*Joan W. Howarth**

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INTRODUCTION

Legal education and the legal profession are widely perceived to be in the midst of turbulent, troubling times. The Great Recession has exacerbated or perhaps simply revealed what appears to be a colossal and fundamental market failure in the legal profession: too many lawyers out of work, and too many people and communities without legal services. The out-of-sight law school tuition increases and astronomical law graduate debt loads were easier to rationalize before the bottom fell out for law jobs for new graduates. Some commentators perceive a turning point for the profession and a crisis in legal education.¹

The *Michigan State Law Review* is paying attention and moving these discussions several steps forward. This Symposium reminds us of our most important work, to protect legal institutions and the rule of law, and asks this most provocative question: *Will 21st Century Business, Regulatory, and Educational Challenges Destroy the Lawyer's Role As Guardian of Legal Institutions and the Rule of Law?* To some Symposium participants, the question posed is too dystopian. Is survival of the rule of law really at stake? For others, the Symposium question suggests a prior, even darker one: How

* Dean and Professor of Law, Michigan State University College of Law. I thank the Professors Barnhizer, David and Dan, for conceiving of and organizing this Symposium. I am also grateful for all the presenters and participants in the Symposium for enlarging my understanding of many of the vexing issues facing our profession.

1. *E.g.*, Symposium, *Perspectives and Distinctions on the Future of Legal Education*, OHIO N.U. L. REV. (forthcoming 2012); Symposium, *The Future of Legal Education*, 96 IOWA L. REV. 1449 (2011).

can we conserve what is already lost? How, indeed, will we conserve legal institutions and the role of law? Are we, as lawyers, up to this great task? If lawyers cannot do this work, who will?

The answers collected here are varied in premise, method, and substance. Readers will find the existing legal institutions of professional regulation and legal education passionately defended and equally passionately condemned. Market pressures are welcomed and denounced. The moods range from despair to delight, from alarm to steady confidence. The answers sometimes float on the romance of idealism, sometimes are driven by flinty realism, and sometimes proceed in simple, pragmatic, step-by-step forward motion. The common threads are expertise and a deep commitment to the importance of the Symposium's question.

I was privileged to participate in the Symposium gathering, which brought together a vibrant collection of outstanding thinkers about the legal profession and legal education. The excitement of that gathering is now captured in this volume. My goal here is to introduce the contributions that follow, and then use the context of that work to present the metaphor that was my modest contribution to the Symposium, "Building the Justice App."

I. THE CONTEXT OF CHANGE

In his Symposium contribution, *On the Declining Importance of Legal Institutions*,² keynote speaker Professor Thomas D. Morgan offers a mild challenge to the bold scale of the Symposium premise by suggesting that lawyers have never focused much on the rule of law, but rather on helping clients muddle through their problems. At the same time, Professor Morgan's contribution enlarges the timeframe by addressing the pressures of the immediate past by considering the profession over the past fifty years. He posits five changes that have reduced lawyers' ability to guard the rule of law and legal institutions: judicial decisions that undermine "self-regulation"; the increase in the number of lawyers reducing our sense of common purpose; globalization; information technology; and the changing roles and rising power of in-house counsel. Morgan counsels that lawyers are no longer in control of the legal system, if we ever were. Law is a public good, but is being privatized in our world of reduced government costs. Professor Morgan paints a compelling picture of a new world in which legal services are increasingly provided by entities, not individuals, but more individuals may be served.

2. Thomas D. Morgan, *On the Declining Importance of Legal Institutions*, 2012 MICH. ST. L. REV. 255.

II. TRUST AND DISTRUST FOR SELF-REGULATION

Who should regulate the legal profession? Several contributors provide widely varying answers. For Solicitor Gordon Turriff (*The Importance of Being Earnestly Independent*),³ the clear answer is lawyers ourselves. Turriff is an unabashed purist about attorney independence from government regulation, which he argues is crucial to the rule of law. Turriff uses the sad story of Oscar Wilde's downfall and disgrace⁴ to make his argument. Turriff suggests that Wilde's conviction followed his failure to tell his lawyer the truth, because, perhaps, Wilde did not understand that the lawyer would have kept his secret. For Turriff, attorney independence from government regulation is required to protect an attorney's loyalty to his or her client. And an attorney's loyalty is a foundation for the profession.

Professor James E. Moliterno (*Crisis Regulation*)⁵ does not share Turriff's confidence in keeping lawyers in charge of our own regulation. Indeed, Professor Moliterno is highly critical of what he argues is the American bar's self-serving, status-quo maintaining, crisis management version of self-regulation. Professor Moliterno argues that we solve problems *with* rather than *against* the flow of society, which for him means allowing non-lawyers to regulate the legal profession. He describes the history of lawyer regulation as professional elites responding to immigrant lawyers and lawyers representing workers by trying to eliminate contingent fees, advertising, and other mechanisms by which non-elites could practice law. Professor Moliterno brings equal skepticism to the latest American Bar Association ethics efforts, which he describes as backwards looking, protective of the status quo, and unlikely to limit behavior of the elite lawyers. Professor Moliterno skewers legal education as well: "Medical education decided that its mission would be to create doctors; legal education decided that its mission would be to create law professors."⁶

Far from trusting lawyers to protect the rule of law and legal institutions, Symposium Co-Convenor Professor David Barnhizer's concern in *Abandoning an "Unethical" System of Legal Ethics*⁷ is protecting consumers (clients) from lawyers. Professor Barnhizer's contribution advocates for statutory protection for clients who suffer ethical violations of lawyers. Pro-

3. Gordon Turriff, *The Importance of Being Earnestly Independent*, 2012 MICH. ST. L. REV. 281.

4. For legal scholarship considering Oscar Wilde, see Martha M. Ertman, *Oscar Wilde: Paradoxical Poster Child for Both Identity and Post-Identity*, 25 LAW & SOC. INQUIRY 153 (2000) and Joan W. Howarth, *Adventures in Heteronormativity: The Straight Line from Liberace to Lawrence*, 5 NEV. L.J. 260, 275 n.76 (2004).

5. James E. Moliterno, *Crisis Regulation*, 2012 MICH. ST. L. REV. 307.

6. *Id.* at 339.

7. David Barnhizer, *Abandoning an "Unethical" System of Legal Ethics*, 2012 MICH. ST. L. REV. 347.

fessor Barnhizer details lawyerly misdeeds and failures with the same combination of passion and damning evidence that Ralph Nader used to condemn the automobile industry in *Unsafe at Any Speed*.⁸ He is forceful and clear, “lawyers have betrayed their clients, are incapable of self-regulation, and . . . an entirely new system of civil accountability needs to be put in place that is not wholly controlled by the bench and bar.”⁹ The new system Professor Barnhizer proposes is a statutory consumer protection scheme of expectations regarding costs and outcomes of legal services.

Professor Jack A. Guttenberg (*Practicing Law in the Twenty-First Century in a Twentieth (Nineteenth) Century Straightjacket: Something Has to Give*)¹⁰ shares Professor David Barnhizer’s deep skepticism about lawyers’ self-policing. In *Something Has to Give*, Professor Guttenberg presents a full-throttle and comprehensive critique of lawyers’ self-regulation as self-serving, inefficient, and self-righteous. Like Professor Morgan, Professor Guttenberg notes the worsening conditions over forty years for attorneys representing people, rather than entities. Under Professor Guttenberg’s analysis, the American bar’s professionalism agenda of the twentieth century was based on cartel protectionism, not protection of the client, in spite of ringing rhetoric to the contrary.

After detailing pressures from almost every direction, Professor Guttenberg uses service to clients as his touchstone and concludes that deregulation may serve clients better. He urges “change that will enhance competitiveness and efficiency, drive down costs, increase competence, provide greater access to legal assistance, and promote innovation in the delivery of legal services across the spectrum of clients.”¹¹

Professor Benjamin H. Barton also takes the movement toward deregulation of the U.S. legal profession very seriously. In *Economists on Deregulation of the American Legal Profession: Praise and Critique*,¹² Professor Barton performs the crucial role of two-way translator, applying economic analysis to the regulation of the legal profession, explaining economic principles to lawyers, and teaching law to economists. Professor Barton’s vehicle is a careful and thoughtful critique of the strengths and weaknesses of a key new book by economists Clifford Winston, Robert Crandall, and Vikram Maheshri, *First Thing We Do, Let’s Deregulate All the Lawyers*.¹³ Professor Barton reveals the importance and usefulness of some of this

8. See generally RALPH NADER, UNSAFE AT ANY SPEED (1965).

9. Barnhizer, *supra* note 7 at 352.

10. Jack A. Guttenberg, *Practicing Law in the Twenty-First Century in a Twentieth (Nineteenth) Century Straightjacket: Something Has to Give*, 2012 MICH. ST. L. REV. 415.

11. *Id.* at 455.

12. Benjamin H. Barton, *Economists on Deregulation of the American Legal Profession: Praise and Critique*, 2012 MICH. ST. L. REV. 493.

13. *Id.* at 499-506 (citing CLIFFORD WINSTON, ROBERT CRANDALL & VIKRAM MAHESHRI, *FIRST THING WE DO, LET’S DEREGULATE ALL THE LAWYERS* (2011)).

work, and also some fundamental misconceptions about the law that illustrate the potential pitfalls of cross-disciplinary critique. For example, Barton criticizes *Let's Deregulate*¹⁴ for seemingly not recognizing the deep stratification of the legal profession, with big firms facing very different pressures and opportunities than other lawyers. Intriguingly, Professor Barton discusses data that suggest that the American public needs more lawyers, not fewer.

III. RE-CONCEPTUALIZING PROFESSIONALISM

Professors Russell G. Pearce and Eli Wald (*Rethinking Lawyer Regulation: How a Relational Approach Would Improve Rules and Roles*)¹⁵ are also reformers. Pearce and Wald propose a conceptual turn: legal professionalism should be understood to concern relationships, not autonomy. Their contribution rehabilitates a relational conception of professionalism, which they describe as being historically connected to the elitist stance of lawyers as wise counselors to the ignorant. Pearce and Wald reconceptualize legal professionalism away from autonomy toward relationality in order to connect lawyers more deeply to the public good. They suggest that the lesson of UK and Australian “principle-based” regulatory regimes can be borrowed to enhance relational conceptions of lawyerly identity. Pearce and Wald’s contribution seems consistent with the relational feminist work of such legal scholars as Robin West¹⁶ and, in the legal ethics field, Susan Kupfer,¹⁷ and may offer a conceptual challenge to the autonomy-based conceptions of lawyers underlying other contributions to the Symposium, such as Dean Morant’s¹⁸ and Solicitor Turriff’s¹⁹.

Whereas other participants embrace traditional notions of professionalism (e.g., Turriff²⁰ and Morant²¹), and Pearce and Wald rework our conception of lawyers’ professionalism, in *Will There Be Fallout from Clementi? The Repercussions for the Legal Profession After the Legal Services Act 2007*, Professor John Flood suggests that the very concept of professionalism is passé, or should be. He understands “professionalism” as a “taxo-

14. WINSTON, CRANDALL & MAHESHRI, *supra* note 13.

15. Russell G. Pearce & Eli Wald, *Rethinking Lawyer Regulation: How a Relational Approach Would Improve Rules and Roles*, 2012 MICH. ST. L. REV. 513.

16. E.g., Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

17. E.g., Susan G. Kupfer, *Authentic Legal Practices*, 10 GEO. J. LEGAL ETHICS 33 (1996).

18. Blake D. Morant, *Lawyers as Conservators and Guardians: Justice, the Rule of Law, and the Relevance of Sir Thomas More*, 2012 MICH. ST. L. REV. 647.

19. Turriff, *supra* note 3.

20. *Id.*

21. Morant, *supra* note 18.

conomic trope” that “triggers set responses without reflection.”²² The rise of technical expertise will displace the “mythic power of law,” including symbolic “folk terms” such as professionalism.²³ Professor Flood discusses the momentous changes in the regulation of the legal profession in the United Kingdom (“big bang in law”) in the context of profound changes in fundamental concepts of work.²⁴ Using the thought experiments of Tesco Law and Goldman Sachs Skadden, Professor Flood envisions concierge law services for high-wealth individuals and families and the buying and selling of law firms in capital markets.²⁵ Professor Flood presents a future created by new generations in which conceptions of our profession endure only in largely unrecognizable forms, replaced by post-modern networks and destabilized categories. Professor Flood not only views this new world with optimism; he is impatient for its arrival.

IV. LAW SCHOOLS AS CONSERVATORS OR DESTROYERS

From his perspective as a former practicing attorney, former federal trial court judge, and now experienced federal appellate judge and veteran adjunct law professor, Sixth Circuit Judge David W. McKeague (*Training Young Lawyers to Be Conservators of Legal Institutions & the Rule of Law*)²⁶ surveys the landscape of legal institutions—the judiciary, congress, state governments, and rests his attention on law schools. With pragmatism forged in experience, Judge McKeague concludes that law schools are best positioned to conserve legal institutions and the rule of law. Judge McKeague sees significant problems in legal education, but he also sees strength, and the promise of more. His critique is generally aimed at the potential tensions between a law school’s identity as a scholarly enterprise and its role as educating for the profession. Judge McKeague’s conclusion links the conservation of the rule of law and of legal institutions to the law school’s renewed commitment to immersion in the profession and dedication to teaching professional values.

Dean Steven R. Smith (*Financing the Future of Legal Education: “Not What It Used to Be”*)²⁷ addresses the economic pressures facing law schools, and offers a strong defense of the value of American legal education, even in today’s economic turbulence. Dean Smith is optimistic that the

22. John Flood, *Will There Be Fallout from Clementi? The Repercussions for the Legal Profession After the Legal Services Act 2007*, 2012 MICH. ST. L. REV. 537, 565.

23. *Id.*

24. *Id.* at 537.

25. *Id.* at 549.

26. Hon. David W. McKeague, *Training Young Lawyers To Be Conservators of Legal Institutions & the Rule of Law*, 2012 MICH. ST. L. REV. 567.

27. Steven R. Smith, *Financing the Future of Legal Education: “Not What It Used to Be,”* 2012 MICH. ST. L. REV. 579.

downturn in admissions is temporary. With the insider expertise of a veteran law school dean, Smith pinpoints a key budgetary challenge facing law schools. Law schools have gotten used to spending increases that far exceed inflation rates, meaning that we have grown accustomed to a world in which starting something new does not require terminating something else. Dean Smith suggests that the fundamental soundness of the legal education being offered means that law schools that find the discipline to modify those habits will not just survive, but thrive.

Professor Peter Toll Hoffman (*Teaching Theory Versus Practice: Are We Training Lawyers or Plumbers?*)²⁸ is squarely within the category of legal education reformer. His message is that rather than perpetuating a false dichotomy of theory and skills, with legal education captured by the former, legal educators should recognize the theories imbedded in scholarship and thinking about skills. He offers negotiation, a law school skill that has attracted extensive scholarly and theoretical attention, as an example, noting both the multi-disciplinary nature of negotiations scholarship, and the relative paucity of legal theory about negotiation. Professor Hoffman's central prescription is deceptively simple: legal educators should consider what law schools would look like if preparing students for the practice of law were the chief purpose.

Dean Blake D. Morant (*Lawyers as Conservators and Guardians: Justice, the Rule of Law, and the Relevance of Sir Thomas More*)²⁹ addresses the role of law schools in teaching professionalism and advocates the use of personal narrative to powerfully demonstrate the obligation of the lawyer to conserve the rule of law. By using the famous story of Sir Thomas More's self-sacrificing commitment to principle, Dean Morant reminds us that at its most basic, the rule of law means that law controls powerful people, not the reverse. Dean Morant mines the story of Thomas More to reinforce a heroic vision of a lawyer, identifying the strength of an individual's character as a bulwark against the institutional forces aligned against the profession. Using the story of an ethical challenge from his own career, Dean Morant suggests that the sturdiest foundation for the rule of law is a profession whose members put principle above personal gain; law schools can reinforce or perhaps create those values in future lawyers with stories, famous or obscure, huge or modest, of lawyers who do just that. Dean Morant suggests that the current storms are all the more reason to educate our students to be men and women for all seasons.

Heroism is utterly absent from the vision of legal education presented in Symposium Co-convenor Professor Daniel D. Barnhizer's provocative contribution (*Cultural Narratives of the Legal Profession: Law School,*

28. Peter Toll Hoffman, *Teaching Theory Versus Practice: Are We Training Lawyers or Plumbers?*, 2012 MICH. ST. L. REV. 625.

29. Morant, *supra* note 18.

Scamblogs, Hopelessness, and the Rule of Law).³⁰ Professor Barnhizer invites us to swim in the muddy waters of the vast scamblogger movement—angry, often crude, online indictments of legal education as an expensive scam on students for the benefit of law school deans and professors. Professor Barnhizer takes scambloggers seriously as a symptom and consequence of persistently irresponsible legal educators. Professor Barnhizer's contribution not only describes but also performs scamblogging by appropriating scamblogger's methods, themes, style, and tone of passionate contempt. His deadly serious point is that contempt for law schools comes dangerously close to contempt for law, and the rule of law does not survive in a culture of contempt for law. Professor Barnhizer wants us to pay attention to the complaints of the scambloggers, not just to improve legal education, but also to protect the rule of law.

Dean Smith's reminder that U.S. legal education is the envy of the world is supported by Izabela Kraśnicka's contribution (*Polish Legal Education in the Light of the Recent Higher Education Reform*),³¹ which describes the current state of legal education in Poland. The role of legal educators and lawyers in not just conserving but actually creating the rule of law is demonstrated in Professor Kraśnicka's contribution, an account of the role of legal education in the great Polish project started in 1989 of creating a post-Soviet legal system. The economics of a Polish legal education—no tuition—would be the envy of American students. For those of us confronting the U.S. problem of massive student debt, the strains from recent Polish reforms requiring fees for the first time in certain limited circumstances (such as when taking a course for the third time after twice failing) seem like quaint tales from an imaginary planet. Other current pressures recounted by Professor Kraśnicka—including the focus on new partnerships for funds and the pressure to monetize inventions and products—are utterly familiar. Professor Kraśnicka deftly describes a multitude of challenges facing Polish law schools, including adapting to the newly-adopted consumer protection device of student evaluations of their professors, imported from the United States, and a new scholarly focus on law review publications, with their established conventions. Thoughtful comparative work shines new light on even the very familiar aspects of home. For a minor example of the many revelations from this Essay, consider a new understanding of Bluebook citation as both icon and export of American legal culture.

30. Daniel D. Barnhizer, *Cultural Narratives of the Legal Profession: Law School, Scamblogs, Hopelessness and the Rule of Law*, 2012 MICH. ST. L. REV. 663.

31. Izabela Kraśnicka, *Polish Legal Education in the Light of the Recent Higher Education Reform*, 2012 MICH. ST. L. REV. 691.

V. A NEW THREAT TO THE RULE OF LAW, AND A NEW OPPORTUNITY

Professor Aviva Abramovsky's contribution, *Justice for Sale: Contemplations on the "Impartial" Judge in a Citizens United World*,³² assesses the impact of *Citizens United*³³ on judicial elections as a disaster for the rule of law. In her elegant and thoughtful contribution, Professor Abramovsky is a scholarly Paul Revere issuing an urgent warning: pouring unparalleled amounts of campaign contributions into judicial elections is incompatible with a judiciary that is perceived to be impartial. Impartiality and the perception of impartiality are necessary preconditions for the widespread respect for the judiciary required to maintain the rule of law. Professor Abramovsky shows that although the perception of judges being bought and sold is not new, the outsized impact of *Citizens United* is unprecedented.³⁴

Situated squarely within the reformist mode, Professor Laurel Terry's contribution, *Preserving the Rule of Law in the 21st Century: The Importance of Infrastructure and the Need to Create a Global Lawyer Regulatory Umbrella Organization*,³⁵ proposes a global regulatory organization as a mechanism to preserve the rule of law in the 21st century. Several other contributors (for example, Thomas D. Morgan,³⁶ Steven R. Smith,³⁷ Izabela Kraśnicka³⁸) notice the pressures of globalization. Professor Terry addresses those pressures and, in a martial arts move of redirecting pressure to momentum, uses them to construct a new organizational structure. Professor Terry builds her case with examples of other kinds of global regulatory umbrella organizations, including existing ones for securities, antitrust, and labor regulators.

Technology and globalization have spread common problems across the world. Professor Terry offers step-by-step instructions to move her proposed umbrella organization closer to reality. Some passionate critics of current regulatory schemes (see, e.g., David Barnhizer³⁹ and James E. Moliterno's contributions⁴⁰) may be dissatisfied with a proposal that could simply add a new layer of inadequate regulatory organization, or worse, spread the influence of flawed models. However, all should applaud Profes-

32. Aviva Abramovsky, *Justice for Sale: Contemplations on the "Impartial" Judge in a Citizens United World*, 2012 MICH. ST. L. REV. 713.

33. *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010).

34. Abramovsky, *supra* note 32.

35. Laurel Terry, *Preserving the Rule of Law in the 21st Century: the Importance of Infrastructure and the Need to Create a Global Lawyer Regulatory Umbrella Organization*, 2012 MICH. ST. L. REV. 735.

36. Morgan, *supra* note 2.

37. Smith, *supra* note 27.

38. Kraśnicka, *supra* note 31.

39. Barnhizer, *supra* note 7.

40. Moliterno, *supra* note 5.

sor Terry's careful attention to feasible plans to build a potentially important new legal institution, responsive to but undaunted by the serious challenges to existing legal institutions described in these pages. My own contribution is also a building project, but one whose feasibility is much less apparent than Professor's Terry's proposal.

VI. BUILDING THE JUSTICE APP

The Justice App addresses two looming problems. It is disruptive technology that reduces the injustice of so many Americans left without legal services. It also corrects the colossal market failure that leaves so many people in the United States without legal services, surrounded by an over-abundance of out-of-work lawyers. The Justice App is a metaphor and a dream. It is an optimistic vision of using technology to deliver legal services in very different, but affordable ways.

The widespread lack of affordable legal services for people of modest means is not a peripheral issue in discussions about conserving the rule of law and legal institutions. Where is the protection of the rule of law for people without legal representation? Lawlessness is not just a kind of danger; it is also a kind of vulnerability.

Similarly, what legal institution could be more important than a legal profession organized so that many (most?) lawyers earn decent livings handling the legal problems of living persons (as opposed to entities)? The backdrop of the current crises in the profession and in legal education is the slow-motion emergency of the last forty years in which lawyer income became relentlessly bimodal, with lawyers who represent people (as compared with entities) becoming less and less able to earn a good living.

One traditional solution to the lack of access to lawyers would be to expand the constitutionally-required legal protections for poor people to civil matters, a push for a civil *Gideon v. Wainwright*.⁴¹ Recognition of such a right would also create jobs for lawyers. In spite of my experience and orientation as a civil liberties attorney, extending Constitutional protections in that way is not my focus here. As contributors Professor Morgan and Judge McKeague have noted in different ways, we live in an era of diminishing state support for legal systems, not expansion. Also, even forty years after *Gideon*,⁴² meaningful Sixth Amendment protection remains elusive for too many poor people facing criminal prosecutions. A right to civil representation at best reaches only the most indigent in very limited legal areas, and could take decades to fully implement.

41. 372 U.S. 335 (1963).

42. *Id.*

The Justice App is arguably a more realistic twenty-first century fantasy: using technology to create market-based ways to make legal services accessible to those for whom lawyers are currently out of reach. The Justice App will deliver affordable, quality legal services to ordinary people on their telephones, or whatever super-smart and tiny device is next. (Pull-down screens on contact lenses by 2025?)

Technocrats imbued with entrepreneurial spirit and knowledge of legal doctrine already are building legal apps. But without a commitment to rule of law and a serious professional duty to client welfare, law delivered to the masses through technology is to justice what a Big Mac is to nutrition.

The Justice App is a bolder vision. Much of my inspiration as a legal educator comes from the power and beauty I have seen in the best attorney-client relationships. For that reason, I imagine the Justice App as somehow creating a meaningful attorney-client relationship, even without a personal relationship. But perhaps the Justice App is just as likely to be a set of complex networks connecting pro se individuals with a variety of planning, ordering, and dispute resolution mechanisms.

I am far from the first to consider technology in this role.⁴³ I am also not the first to consider what law school would look like if it embraced a mission very like that of educating the builders of the Justice App. Much of this conceptual work has been done by my colleague Professor Daniel Martin Katz in his paper, *The MIT School of Law*,⁴⁴ another compelling metaphor. Who will build the Justice App? Technology geeks, imbued with not only entrepreneurial spirit and legal knowledge, but also abiding respect for the never-ending challenge of seeking and realizing justice. The builders of the Justice App will need a great legal education.

The regulatory context of legal education enforces significant structural impediments to creating a law school with the capacity to educate builders of the Justice App. Current ABA Accreditation Standards, for example, impose severe limits on the number of credits a law student can take in online courses, a measure of the distrust of technology imbedded in the Standards. However real those structural constraints, the cultural restraints limiting legal education may be even more powerful.

The dominant culture of legal education is to chase success and stature by imitation, not innovation.⁴⁵ Consider the ABA accreditation standards

43. E.g., RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (2010).

44. Daniel Martin Katz, *The MIT School of Law: A Perspective on Legal Education in the 21st Century*, COMPUTATIONAL LEGAL STUDIES (Oct. 13, 2011), <http://computationallegalstudies.com/2011/10/13/the-mit-school-of-law-a-perspective-on-legal-education-in-the-21st-century-presentation-slides-version-1-01/>.

45. Note the caustic joke about legal education that is almost as true today as when I heard it thirty years ago: "There are only three categories of law schools: the law schools that want to be Harvard, the law schools that think they are Harvard, and Harvard."

limitation of distance education to no more than twelve credits of an entire J.D. degree. This limitation is likely to disappear soon, in part because of the ubiquity of excellent online education, and in part because of the pressure for mobility. But right now, very few law students graduate with their permissible twelve units of distance education. The impediment is the dominant culture of legal education, not the accreditation standards.

A commitment to seeking justice is a crucial foundation to both the rule of law and our most worthy legal institutions. This Symposium reminds us of the serious and seemingly insurmountable pressures facing the legal profession and legal education. The Justice App represents a vision of a future in which, perhaps against all odds, the financial, technological, and educational turbulence of today opens up new possibilities for lawyers to fortify the rule of law and do justice.
