On December 4, 2015, at the Georgetown University Law Center, the Academy hosted a panel discussion on “The Crisis in Legal Education” with Louis Michael Seidman (Carmack Waterhouse Professor of Constitutional Law at the Georgetown University Law Center), Robert A. Katzmann (Chief Judge of the United States Court of Appeals for the Second Circuit), Philip G. Schrag (Delaney Family Professor of Public Interest Law and Director of the Center for Applied Legal Studies at the Georgetown University Law Center), Robin L. West (Frederick J. Haas Professor of Law and Philosophy at the Georgetown University Law Center), and Patricia D. White (Dean and Professor of Law at the University of Miami School of Law). The program, which served as the Academy’s 2028th Stated Meeting, included a welcome from William Michael Treanor (Executive Vice President, Dean, and Professor of Law at Georgetown University Law Center) and Jonathan F. Fanton (President of the American Academy of Arts and Sciences). The following is an edited transcript of the discussion.

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2011, their hiring levels dropped to 2,900 graduates. This represented a nearly 50 percent decline in the segment of the market for new graduates that provided them the highest salaries.

That decline led to a series of grave problems confronting law students, lawyers, and law schools. The drop in hiring made students more attentive to financial aid because they began to worry even more about debt. When there are fewer jobs that are remunerative, there is an increased focus on the affordability of law schools. Law schools thus significantly expanded what they spent on financial aid. Further, there was a significant decline in applications. Ten years ago, we had 96,000 applicants to law schools. Now we have 56,000. This is an extraordinary drop in a decade. The decline in the number of students also put economic pressure on law schools. Finally, as schools struggled to place their graduates in a declining market, they often tried to make them more “practice ready,” and the cost of expanding clinics and improving legal writing programs put even more economic pressure on law schools.

This was the shape and substance of the post-2009 crisis. There were fewer lucrative jobs for new lawyers, graduates faced increased financial pressure, and law schools struggled economically as they tried to respond to a very different market. However, law schools currently face a much more profound level of crisis than simply the current economic challenges. The challenge of creating practice-ready graduates has long concerned us, but we need to ask, more broadly: are we preparing our graduates for their lives as professionals? Are we preparing them to make ethical choices, to reflect and to learn from their experiences? Are we educating them holistically?

Legal education professionals are concerned about the struggles that law school
applicants face and endure. Many law school students, for example, suffer from depression—much more than the population as a whole—and this depression often continues into their lives as professionals. Other questions arise as well: are we teaching people to flourish in their careers? Are we helping them to be professionals who can succeed in every aspect of their lives?

These are the two crises we face—the post-2008 challenge and the ongoing profound challenge to our educational model caused by our failure to educate too many graduates in ways that equip them for lives of meaning and professional fulfillment.

These crises confront the core of legal education, which was effectively created in 1870 by Langdell at Harvard. Langdellian legal education brilliantly brought law into the modern research university. Under this model, law schools prepare people to think like lawyers; law firms train them. The Langdellian model is cheap beyond belief. Indeed, other than a MOOC, it is hard to think of a cheaper form of mass education.

Since the late nineteenth century, we have seen a series of modifications of the system: the rise of legal realism in the 1930s, which challenged the formalist approach of Langdell and opened us up to a more interdisciplinary approach; the beginning of experiential education and clinics in the 1960s; and then, in the 1980s, issues of race, gender, and sexual identity became central to legal education. But today, far more than in the past, we are grappling with the core of the legal education model.

This is a time of extraordinary creativity in legal thought. We are witnessing the expansion of experiential education and a focus on teaching students a broader range of competencies not traditionally taught in law schools, like leadership and strategic thinking. We are trying to prepare our students better for legal practice that is global. We are examining ways to make legal education cheaper, such as through a one-year limited license, and we are looking at expanding the period of training through post-graduate residency equivalents, such as the wonderful Immigration Justice Corps championed by Judge Katzmann. All of these changes to the model of legal education are taking place at a time when we need to remain true to the core values of the university. It is an important moment for us to think through how we will promote access to justice, how we prepare our students for fulfilling lives, how we equip our students with the ability to succeed in their professional careers, and how we make sure that law schools and universities remain places of creativity that foster experimentation and innovation. We will be grappling with these issues today, and I look forward to the discussion.

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Historically, law schools have occupied an ambiguous position within universities. On one hand, they are professional schools; they train students to participate in a highly specialized profession. On the other hand, they are part of universities, and stand outside the profession, offering a locus from which people can analyze and think critically both about the field and about law in general. I do not think this is just true of elite law schools; it should be true of all law schools. Law schools are not doing their jobs if they are not regularly criticized by the bar, by judges, and by politicians. Their role is to stand outside of those forces of power and offer cogent social criticism. That position, by its nature, is precarious, but many of us think that it is worth preserving.

Louis Michael Seidman
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The Crisis in Legal Education

Robert A. Katzmann

Robert A. Katzmann is the Chief Judge for the U.S. Court of Appeals for the Second Circuit. He was elected to the American Academy of Arts and Sciences in 2003.

This afternoon, I would like to talk about the skills that a law school graduate needs today. This might help provide a frame to think about the challenges facing legal education.

We operate in a very specific context: a shrinking job market; declining law school applications; law schools decreasing their size both in response to the market and to maintain the quality of their student body; and finally, the challenge of meeting the financial needs of law students with great debt. As we think about the skills required of today’s law school graduates, we would do well to remember the diversity of legal experiences: post-graduate, private practice, government, public interest, judicial clerkships, business, and academia.

So what are the skills necessary to succeed across these settings? Two skills in particular that we need to emphasize are the capacity to think critically, and the capacity to write clearly. My impression is that law school graduates are too often deficient in these areas. I also believe graduates need to be able to express themselves orally – and concisely at that – so as to advocate effectively. Further, they need to be able to conduct legal research, and to exercise wise and balanced judgment. They need a mindset in which they strive to think about their professional obligations to their clients and to society. These skills are all part of the makeup of what constitutes a “complete” lawyer.

How does a lawyer acquire this skill set? There is a lot of discussion at the moment about black letter courses and more theoretical academic courses, with some advocating that the emphasis in legal education should be on the former, and others advocating for an emphasis on the latter. I believe that balance and moderation are in order. Legal education should foster a traditional mastery of the black letter courses, necessary for the practicing lawyer. At the same time, it is very important to have the academic, theoretical grounding that law school can give you.

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The legal profession, which is not about law schools but about legal services to the public. Already, most of the legal needs of people are not being met by lawyers, and that won’t change. Those needs will be met only if we allow people who are not lawyers to perform some of the tasks that we currently regard as legal services.

The downturn in law school enrollments provided all law schools with the opportunity to reflect on their missions and futures. In my view, the mission of the law school is threefold: first, to train people to provide legal services to the public; second, to produce educated citizens who will, in each generation, reform the laws, institutions, and procedures of society; and third, through the scholarship and public service of their faculties, to participate directly in reform.

Today, I want to focus on the first two missions: the teaching missions. In recent years, many people have called attention to the high cost of legal education, and to the fact that much of higher education, both at the undergraduate and graduate level, is financed by student loans. There is reason to believe that increases in the cost of legal and other graduate education over the last several decades, and corresponding increases in student debt levels, have been matched by improvement in the quality of education and services made available to students. In 1979, the faculty to student ratio in law schools was 30 to 1. Today, it is 14 to 1.

Nevertheless, some have called for radical changes in the educational models of most law schools. Five types of proposals have been made. The first, as Professor Philip G. Schrag is Director of the Center for Applied Legal Studies and Delaney Family Professor of Public Interest Law at Georgetown University Law Center.

The second proposal, supported by President Barack Obama, would reduce legal education from three years to two years, cutting tuition costs for students. Still others have urged, in a third proposal, that to a much greater extent than in the past students should be instructed by watching lectures on their laptops rather than coming to class. The law school accreditation arm of the American Bar Association (ABA) has recently accepted this proposal; it has increased the number of credits a J.D. candidate can earn online from six to fifteen, and has allowed up to a third of all other students’ courses to be taught online as well. In a fourth proposal, the ABA’s law student division has advocated that students should be allowed to earn academic credit for paid, term-time work in law firms, work that helps them offset their tuition and fees, but also may dilute an educational experience that depends on reflection. Recently, The New York Times has leapt into the fray with a fifth proposal, calling for cutbacks in federal loans to law students, based on the theory, unsupported by any evidence, that reduced lending would force schools to cut tuition.

All of these proposals seek to make law school cheaper. Unfortunately, cheaper education does not necessarily mean better education. Clinical education—the most important innovation in legal education in the last fifty years—is also the most expen-
sive method of education, and it may well be the first to be jettisoned if law schools respond to economic challenges by slashing budgets, laying off faculty, replacing retiring teachers with adjuncts, or eliminating semesters. Further, writing seminars are almost as expensive as law school clinics, and for much the same reason: the low faculty to student ratio that is required. University administrators could lower the cost of education by replacing clinics and seminars with large lecture classes, televised lectures, and online lectures that students could watch on their iPhones while, say, running on a treadmill. They could still bless these students with J.D. degrees, but these changes will not produce critical thinkers who have the skills to solve complex legal problems, or to argue effectively against the laws and regulations proposed by entrenched corporations, government agencies, and politicians.

These changes will also undercut or fail to advance the other major mission of law schools: training their graduates to serve the public. Wealthy individuals and large corporations will always get the high-quality legal services that they can afford to buy, but most studies show that about 80 percent of the legal needs of the general public, consisting of middle-income and lower-income individuals, are not met. Most people simply cannot afford legal services to address their needs. The most standard of these services are resolving employment disputes, consumer disputes, housing problems, family matters, and problems with government benefits. These are the real legal needs of the public. Unable to pay the high fees that lawyers ask, most people either do not try to assert their rights, or even find out what those rights are. If they do find out that they have a legal problem, they tend to go to a friend or a relative, rather than a lawyer. Or they simply give up.

But a modest reduction in law school tuition or debt does not translate to a market flooded with lawyers eager and able to address these problems at low cost. Why? First, loan repayment is not the main obstacle to low-cost legal services. Law graduates can now repay their student loans, no matter how large, by paying only 7 percent of their annual gross income toward those loans, with forgiveness of any remaining balances at the end of twenty years. So, reducing the size of the loan usually will not affect the amount or rate of repayment. Second, loan repayment is only a small fraction of the cost of operating a law office, or supporting a family. If cheaper legal education did bring about a modest reduction in the size of the monthly repayment, it would not greatly affect the price of legal services. Most important, lawyers have high expectations of the social order, and helping to provide better legal services to ordinary people, particularly in an era with smaller law school enrollments?

The market is already answering part of this question. Many law schools are now being subsidized, temporarily, by their universities, which is a reverse of the previous decades-long arrangement in which law schools subsidized universities. However, this university-subsidization will not last forever; if enrollment does not rebound, some law schools will merge or close. But though there may be somewhat fewer schools or graduates, many law schools will remain, continuing to produce thousands of well-trained lawyers every year to meet the needs of those who can afford to pay them.

**In my view, the mission of the law school is threefold:**

- **first,** to train people to provide legal services to the public; second, to produce educated citizens who will, in each generation, reform the laws, institutions, and procedures of society; and third, through the scholarship and public service of their faculties, to participate directly in reform.

Along with faculties, they will serve as critics and reformers of the law. Those graduates will replace the approximately 40,000 baby boomer lawyers who will retire during the next decade. Some of these graduates will serve the needs of large corporations, as the 16 percent of lawyers who work in large firms do today. Others will go into government, prosecution, criminal defense, transactional work, and dispute resolutions for small businesses. Occasionally, some will do some pro bono work for those who cannot afford to pay. But for the most part, they will not fill the void in the need for routine services that has long existed.
In her article “The Cost of Law,” Professor Gillian Hadfield argues that these needs cannot be met primarily by the graduates of three-year law schools. Individuals can solve a number of routine legal problems on their own, using online instruction forms. Others require the help of professionals with specialized legal training, but one year or eighteen months of such specialized training will suffice. Washington State is already experimenting with licensing legal technicians – the legal equivalent of physicians’ assistants – to perform specific tasks, such as advising clients in family law matters, the writing of wills, and resolving landlord-tenant disputes. After a period of apprenticeship, these technicians will no longer have to be supervised by lawyers. Other experiments in the delivery of legal services are bound to follow. Following Washington State’s lead, state supreme courts will need to change their rules so that lawyers no longer have a monopoly on providing services that they themselves are unwilling or unable to provide.

Law schools can serve a critical role in providing this training. In fact, several law professors at Washington State are currently offering low-tuition courses for the first wave of legal technicians who will offer family law services. In addition to J.D. degrees, many law schools could offer one-year programs, awarding either technical certificates or masters degrees to future legal technicians. These programs could include a course that exposes students to legal methods and reasoning, the nature of legal institutions, and a limited amount of technical writing, along with several practical courses in the subject matters of their chosen specialty, including discussions of the ethical issues that may arise in each particular area of work.

Clinical education – the most important innovation in legal education in the last fifty years – is also the most expensive method of education, and it may well be the first to be jettisoned if law schools respond to economic challenges by slashing budgets, laying off faculty, replacing retiring teachers with adjuncts, or eliminating semesters.

This is not a one-size-fits-all proposal. No single formula is likely to be adopted by all law schools. Of the law schools that survive the reduction in enrollments, some will want to remain research institutions, whose graduates gravitate primarily to large law firms and government agencies. Other schools may survive by cutting costs and offering large amounts of academic credit for externships or distance learning.

But if enrollments do not bounce back, I would suggest that the better way for law schools to fulfill their traditional mission is to cut back on faculty and student numbers while preserving teaching methods that have produced excellent lawyers and citizens for the past fifty years, and also to offer a lower-cost, specialized, non-doctoral degree to those who are willing to do the hard work of providing routine legal services to those who need them.
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Part of the crisis in legal education, and, more broadly, the value of the legal academy, is focused on the perceived lack of value in legal scholarship.

Robin L. West

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Part of the contemporary skepticism about the value of a legal education, and, more broadly, the value of the legal academy, is focused on the perceived lack of value in legal scholarship.

With what the law ought to be, and not only with what the law is. While over the last couple of decades, it may have become more theoretical, interdisciplinary, or philosophical, this form of inquiry has been the bread and butter of legal scholarship for a century.

What is the case against normative legal scholarship? I want to focus on just one complaint, nicely captured in *Save the World on Your Own Time* by Stanley Fish. Fish’s complaint, aimed at his colleagues in English departments, was that humanities scholars should not preach their politics in the classroom. Legal scholars who conduct normative scholarship are much more unequivocally guilty of the same sin: they are often overtly and unapologetically trying to save the world in their — our — scholarship. But overtly normative legal scholarship is not scholarship; it is sloganeering, campaigning. It is not grounded in reason, but rather in passion, sentiment, or, worse yet, in partisan politics. Arguments about what the law should take fall on the value side of the fact/value divide.

Two practices have arisen within normative legal scholarship; they are, in some ways, responsive to this complaint, if not a direct defense against it. One practice I will call the quasi-Dworkinian response, and the second the quasi-Poseranian response, named, unimaginatively, after Ronald Dworkin and Richard Posner. The quasi-Dworkinian response is that statements about what the law *ought* to be, and not only what the law *is*, can be defended as *true*.

Let me first note the utter, absolute *ordinariness* of normative legal scholarship over the past century. By this I mean traditional doctrinal scholarship, including policy-based scholarship, precedent-based scholarship, and scholarship that is often derided as “extended briefs.” I also include “big-idea pieces,” such as Benjamin Zipursky’s pioneering work refashioning tort law as a law of wrongs, Hanoch Dagan’s work unearthing the public regarding theories of justice and contract, and Larry Kramer’s arguments about and against judicial review. All of these arguments fall under normative legal scholarship, which contends with what the law ought to be, and not only with what the law is. While over the last couple of decades, it may have become more theoretical, interdisciplinary, or philosophical, this form of inquiry has been the bread and butter of legal scholarship for a century.
I believe that normative legal scholarship is important, has great social value, and is often moving. It is *sui generis*, meaning, it is not done well anywhere except for in law schools. It often influences our political environment, our history, and the world of ideas within the university.

The quasi-Posnerian defense, which many may be more familiar with today, is to tame, or rationalize, the normativity of traditional legal scholarship by re-characterizing normative claims through a cost-benefit analysis. The aim is to basically transform claims about what the law *should be* into claims of fact, with the benefits and costs of various policies, laws, and rules drawn from real cases. If successful, the result is that legal scholarship can be both normative and rational, or nonpolitical. Using the metrics of tabulating benefit and cost, and drawing inferences from the same, we can make claims about what the law ought to be, while avoiding the claim that we are pushing personal politics in the classroom or in the pages of law reviews.

I believe that normative legal scholarship, including the Dworkinian and Posnerian forms, is important, has great social value, and is often moving. It is *sui generis*, meaning, it is not done well anywhere except for in law schools. It often – consequentially and impactfully – influences our political environment, our history, and the world of ideas within the university.

However, I also believe that normative legal scholarship deserves a much more robust defense than either the Dworkinian or the Posnerian arguments described above provide. Normative legal scholarship, at root, is about what justice requires, and the degree to which law delivers on that requirement. The scholarship is, and should be, rooted in passion as well as intellect.

Normative scholarship, which aims to show what the law ought to be, is in need of defense today. However, it is itself a threat to a field even more marginalized by all of these forces – critical legal scholarship, or scholarship with no direct normative ambitions.

There is a significant problem with normative scholarship, as well as with the defense of it, that is entirely different from the Stanley Fish – inspired claim that we are inappropriately and unethically trying to save the world on the law students’ and taxpayers’ dime. When lawyers, as well as law professors, focus on what we could do with law to bring the world more into alignment with what we think the law ought to be, we sacrifice, to some degree, our critical voice. This is precisely because our sense of the way the law ought to be is so heavily influenced, if not determined, by the bulk of the law that is given a critical pass. When we focus on the normative and on our scholarship, we internalize a huge loss.

To correct for that loss, we – both in the legal academy and in society – need legal scholarship that has no normative ambition whatsoever, so that we can better understand, and therefore better criticize, the world that we inhabit. By focusing our work in the legal academy solely on our normative ambitions, and on law as a means to justice, we risk losing, to some degree, a focus on law as a means of exploitation, of legitimation, of subordination, and of suffering. In other words, we lose our sight of law as a means to injustice, to promote the ends of power.

Normative scholarship, which aims to show what the law ought to be, is in need of defense today. However, it is itself a threat to a field even more marginalized by all of these forces – critical legal scholarship, or
scholarship with no direct normative ambitions. Critical legal scholarship has the aim of helping us better understand our own situation, which might be steeped in injustice and beyond the repair of a legal fix. If we want to understand our currently unjust milieu, and use law to further the ends of justice, I believe we need ambitious scholarship that is unabashedly critical, and unabashedly non-normative and non-pragmatic. We in the legal academy need to aggressively carve out space for that work; it will disappear if we do not.

At the current moment, normative legal scholarship, even of the rationalist Posnerian or Dworkinian variety, and certainly of the non-Posnerian and non-Dworkinian variety, is under severe and even vicious attack. But critical legal scholarship is in even worse shape. It has become so vilified that it has almost disappeared. At various points over the last half century, the legal academy has (to its credit) been a welcoming environment for both normative and critical legal scholarship. It has even understood such scholarship as central to its mission. We need to foster that environment once more. Doing so will not be easy; it will require self-consciously resolute conviction.

Patricia D. White

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iven the frame of today’s conversation about the legal crisis, in which the profession faces significant economic changes and diminishing applications, the question is: how do we keep our core values in legal education intact?

Certainly, these core values include training lawyers to appreciate, understand, and promote the rule of law, and to appreciate, understand, and promote equality, justice, due process, and the role of social justice for all, particularly for the less served. This commitment is fundamental to law schools and to the profession. We take it as a constant and a core.

But over the past number of years, this commitment has grown in its ambitions, and largely in ways that are deeply expensive. This was possible in part because we lived in a world in which the legal profession was thriving, much like the medical profession. We had built an infrastructure, which grew quite substantially, but also became ever more costly to maintain. We were then suddenly struck by an economic recession, leading to a significant retrenchment within the legal profession.

Law schools started taking on an additional task, namely, the task of on-the-job-training, under the pressure of law firms and judges, and the attendant needs of law students taking on sole practitioner roles. Historically, our role as law schools was to give people the basics, to teach them about legal analysis, and then to have them take that knowledge out into the world. On-the-job training occurred in different contexts, in law firms both big and small, and in public governmental settings. It did not normally occur in law school.

Around the time that the language about becoming “practice-ready” emerged, legal institutions, due largely to economic pressure, started to step back from providing on-the-job training. Suddenly, real “on-the-job” training was foisted upon law schools as an expectation. We needed to react. However, as a general matter, law schools are not particularly good at providing such training. That is not what they have historically been designed to do.

The core values in legal education include training lawyers to appreciate, understand, and promote the rule of law, and to appreciate, understand, and promote equality, justice, due process, and the role of social justice for all, particularly for the less served.
I want to comment generally about the economic reality of higher education. Schools come in two varieties: public and private. Private schools are traditionally funded by tuition, with some money coming from charitable giving. Public schools, historically, are deeply subsidized by the state, and are therefore affected by state retrenchment.

In the private school world, for years tuition have risen at a faster rate than inflation. We need now to look for other funding sources outside of tuition and charitable giving. What those sources will be is not all clear. Our law schools are no different from colleges and universities that have to grapple with the same issues of funding; except that law does not have the grants and other government-sourced forms of income that the sciences, particularly medicine and engineering, benefit from.

Unfortunately, law schools stand at the forefront of a fundamental problem in American education. We need to find ways to change our funding structures. How can we scale back while keeping everything important in place?

When I first started teaching here at Georgetown in 1978, the standard teaching load was between three and four courses, and the classes were very big. We had more committee responsibilities and administrative duties than is now the case. At law schools outside the top 20, you would find that faculties generally ran the schools. They were very lean administratively, and teachers had a considerable teaching load. This was gradually scaled back; faculty were paid very well, but they were required to write more, and to do very complicated, broad-ranging scholarship. That expectation is still there.

The legal profession is changing, and demanding new skills. It is demanding efficiency. It is demanding technology. It has become deeply international. There are many more subjects that need to be taught.

Historically, our role as law schools was to give people the basics, to teach them about legal analysis, and then to have them take that knowledge out into the world.

We in law schools need to rise to the challenge of these demands. We need to figure out how to meet these challenges while keeping the spirit of scholarship alive.