

Indiana Law Review

Volume 47

2014

Number 1

SPRING 2013 JAMES P. WHITE LECTURE ON LEGAL EDUCATION

RECALIBRATING THE FUTURE OF HIGHER EDUCATION

GORDON GEE*

I want to thank Dean Roberts for the introduction. Dean Roberts, I read recently that you will be stepping down as dean in July. I wish you some rare moments of respite, which you surely deserve. I also must express my utmost gratitude to Jim White for this opportunity. First of all, Jim has been a longtime friend of mine. More importantly, he has been an iconic leader of legal education. Perhaps no one has had more of an impact on the modern American law school than Jim White. He has been a valiant soldier, a hard-nosed advocate for envisioning legal education in the future, and someone who is not intimidated by the large or small, rich or mighty. Jim is someone who has been willing to champion change when necessary, and he has been a friend to those in need when one needed a friend indeed. There were a number of occasions as a young law school dean when I needed guidance, and there have been a number of occasions since I have been a university president when I have looked to Jim for wisdom. In short, I stand here in the shadow of someone I greatly admire. So, I thank him and all of you for this opportunity.

I have been a college president for the past thirty-three years. Therefore, it has been thirty-three years since I have had the opportunity to be fully engaged in legal education. That said, I remain a law professor at heart, and on the faculty of the law schools that I have served. I have continued to publish in the field of law and higher education. I recently co-authored a casebook, *Law, Policy, and Higher Education*. In this book, my co-authors and I developed a policy approach to address major concerns in higher education, such as government regulation, academic integrity, discrimination of freedoms, and, what has become my favorite topic, innovative ways of financing public higher education. Indeed, my law degree remains the most important arrow in my quiver.

This goes to prove that you can do anything with a law degree—even become

* Dr. E. Gordon Gee has held leadership positions at several higher learning institutions, including serving as the chancellor of Vanderbilt University, and as President of both Brown University and the University of Colorado. Most recently, he served as the fourteenth president of the Ohio State University from October 2007 until his retirement in 2013. He currently is serving as interim president of West Virginia University where he was dean of the law school from 1979 to 1981 and president from 1981 to 1985.

a university president. To be sure, law schools remain very much in my heart. Law schools represent the opportunity to knit together the intellectual life of the university with the fabric of the community through the kinds of clinical and practical work that they do. I also believe that amid the barrage of changes of the twenty-first century, law schools, like universities, are being challenged to reinterpret their founding principles for the contemporary context. This is not a matter of legal education; this is a matter of higher education in a most ornery moment in history. Think of it, ours is an institution with origins in eleventh century Bologna, in the early Middle Ages when Dante and Chaucer were among the modern writers. No wonder we are resistant to change, slouching toward realization, looking over our shoulder for reassurance, rather than looking ahead.

As I was preparing to come here today, I read about one of Indianapolis's own sons, John Green, author of the novel *The Fault in Our Stars*. For those of you unfamiliar with the work, it is described as "exploring the funny, thrilling, and tragic business of being alive and in love."¹ I must say, if only my remarks today were about that topic, we would all be wholly entertained.

Alas, they are not. That allusion to Shakespeare which gives the novel its title, albeit turned on its head, is a good starting point for my remarks today. In the play "Julius Caesar," Cassius, he of a "lean and hungry look" (kind of like a young lawyer), tries to convince Brutus to join the Ides of March murder plot against Caesar.² He says "the fault, dear Brutus, is not in our stars, / But in ourselves, that we are underlings."³ I have spent so much of these past several years pondering the slings and arrows of higher education, so pardon my mixed Shakespearian metaphors.

For so long, the American system of higher education has been the envy of the world. Our colleges are economic engines, generators of insights and breakthroughs, knowledge cities, and cultural communities. That magnificent system is in jeopardy. We can no longer ignore a vexing constellation of issues that now confront us, such as the rising cost of college tuition, enrolled students who never graduate, diminishing state and federal funds, new expectations by nontraditional students, and on and on. I propose to you that if we are not the *architects* of our future, we will be the victims of our destiny. Indeed, the fault is *not* in the stars, in a star-crossed destiny, but in us, and higher education as a whole if we cannot pull ourselves up by our bootstraps, briefcases, iPads, and Blackberries, and adapt to an ever changing and ever more demanding world.

The fault is in ourselves, if we succumb to complacency, fear, and stasis. When all is said and done, I see this as a binary between complacency and curiosity. We can succumb to complacency, hide our heads in the sand, and ignore the luminous possibilities of the future, or we can take this occasion to reconfigure, recalibrate, rethink, and redefine what higher education will look like in the twenty-first century. In order to do this we need to challenge traditional

1. Amazon, <http://www.amazon.com/The-Fault-Stars-John-Green/dp/0525478817> (last visited May 20, 2014).

2. WILLIAM SHAKESPEARE, JULIUS CAESAR, act 1, sc. 2.

3. *Id.*

assumptions, drive creativity, foster greater innovation, and renew our own personal commitment to the large public ideals that underpin all of our efforts.

First of all, I wholly believe we must innovate from the inside out, rather than be forced into change by external forces. Kierkegaard once declared that a man's greatest fear is learning what he is truly capable of doing and becoming.⁴ Granted, Kierkegaard is known as the father of "angst" and "existential despair." So I offer the words of yet another philosopher, pop artist Andy Warhol, who said "They always say that time changes things, but you actually have to change them yourself."⁵ Last year, for the first time ever, representatives from all six national higher education associations met in Washington, D.C. for a series of unique conversations.⁶ Leaders from all sectors of higher education were at the table—from community colleges to small, private universities, to large, public universities.⁷ This National Commission on Higher Education Attainment became a forum for leaders to voice ideas, take stock of how our colleges are helping students, and offer suggestions to improve these efforts. In late January, this Commission issued an emphatic call to our colleagues and to the public that we must make college completion a national priority.⁸

Last year, a record 21.6 million students enrolled in American universities, yet nearly two in five will never don a cap and gown.⁹ This is an unacceptable loss of human potential with major implications. Students who do not graduate face diminished career prospects and a stack of student loans with little hope of paying them back. I offer our commission work as one example of how higher education must control its own destiny, how we must do more than just gaze at the landscape speeding by. We must take the wheel.

As you know, higher education in the United States has been facing tremendous headwinds. The financial crisis has been deep and pervasive, and recovery is slow. Many public universities have been on life-support for

4. LARRY CHANG, *WISDOM FOR THE SOUL: FIVE MILLENNIA OF PRESCRIPTIONS FOR SPIRITUAL HEALING* (2006).

5. ANDY WARHOL, *THE PHILOSOPHY OF ANDY WARHOL (FROM A TO B AND BACK AGAIN)* 111 (First Harvest ed. 1977).

6. The National Commission on Higher Education Attainment was convened in October, 2011. The six participating associations were the American Council on Education (ACE), the American Association of Community Colleges (AACC), the American Association of State Colleges and Universities (AASCU), the Association of American Universities (AAU), the Association of Public and Land-grant Universities (A P L U), and the National Association of Independent Colleges and Universities (NAICU). *National Commission on Higher Education Attainment*, AM. COUNCIL ON EDUC., <http://www.acenet.edu/news-room/Pages/National-Commission-on-Higher-Education-Attainment.aspx> (last visited June 28, 2014).

7. *Id.*

8. *An Open Letter to College and University Leaders: College Completion Must Be Our Priority*, NAT'L COMM'N ON HIGHER EDUC. ATTAINMENT (Jan. 2014), available at <http://www.acenet.edu/news-room/Documents/An-Open-Letter-to-College-and-University-Leaders.pdf>.

9. *Projections of Education Statistics to 2021*, 40th ed., NAT'L CENTER FOR EDUC. STATS. (Jan. 2014), available at <http://nces.ed.gov/pubs2013/2013008.pdf>.

months.¹⁰ The threat of sequestration has become a stark reality for our research universities across the country. And, for my part, I will say that this is a time in which the heads of university presidents rest lightly upon their shoulders. Even before the recession struck, it was evident that higher education needed to become ever more innovative.

The entire funding model for public universities is in fast-forward decline. Gone are the days when we can hold our palms outright and hope for the best. We know we can no longer depend on federal and state funds to support our aspirations. In the past, I have reiterated the litany of woes of universities around the country. These include layoffs, astronomical tuition hikes, larger class sizes, and fewer services. You have no doubt heard the horror stories. Thus far, Ohio has fared better than most. However, I will tell you that current analyses of funding scenarios based on state and federal budgets in the near term do not look promising. To be frank, early indications suggest even more perilous challenges ahead for higher education. At times, it seems the overwhelming response is one of hanging on and surviving.

I do not subscribe to that philosophy. I believe we must face these unprecedented challenges by being more agile, less bureaucratic, and infinitely more inventive. Indeed, we have undertaken a series of innovative financing strategies at Ohio State that show promise and potential.¹¹ Ohio State recently agreed to lease its campus parking operations for \$483 million, thus boosting our endowment by twenty percent overnight.¹² And, in 2011, we became the nation's first public university to issue \$500 million dollars in century bonds, which will help fund capital projects, such as our \$1.1 billion dollar Wexner Medical Center expansion.¹³ We will continue to look for new ways to reconfigure Ohio State for the future, as an institution that can endure any number of storms, any financial upheaval, and transitory questioning about the value of higher education. I want to make the point that everything we are doing is in service of building our academic core, so that bright young people are prepared for the twenty-first century.

Our colleges and universities spring from a rich and wonderful past. While traditions are important, the past cannot serve as our compass for the future. By all indications, the higher education institution of the future is going to be vastly different from the university of today. The modes of learning are evolving. The

10. Jeffrey J. Selinger, *Colleges Struggling to Stay Afloat*, N.Y. TIMES, Apr. 12, 2013, http://www.nytimes.com/2013/04/14/education/edlife/many-colleges-and-universities-face-financial-problems.html?_r=0.

11. See *Strategic Plan 2013-2017, Office of Business and Finance at the Ohio State University*, OSU.EDU (Nov. 2012), available at, <http://oaa.osu.edu/assets/files/strategicPlanning/2012-Strategic-Plans/Support%20Unit/BusinessFinance.pdf>.

12. *Ohio State Makes Final Recommendation on Leasing Parking Operations*, OSU.EDU (June 8, 2012), <http://www.osu.edu/news/newsitem3437>.

13. Bill Bush, *Ohio State Sells \$500M in Bonds for Construction*, COLUMBUS DISPATCH, Oct. 23, 2011, <http://www.dispatch.com/content/stories/local/2011/10/23/ohio-state-sells-500m-in-bonds-for-construction.html>.

funding model is devolving. Technology is revolutionizing our lives and integrating the global landscape. More and more universities are joining the online education revolution by developing massive open online courses to facilitate learning in today's fully wired and global world.¹⁴ This is happening all across the country, including at Indiana University.¹⁵

I will offer a few examples from my own university to illustrate that point. This spring, 26,000 students registered for one of our online calculus courses. And one of our instructors, who features the "flipped classroom" approach, has now reached 100,000 students through his online general chemistry class.¹⁶ Clearly, today's students will continue to dictate the high-speed cadence of our world, on and off campus. They are the most tech-savvy, global-minded, and collaborative students in history.

In order to remain relevant, we must step outside of the comfort zone of the past century and match their pace. We must move boldly forward, holding fast to the enduring principles of the past, the art of the possible, and the shining promise of the future. Now, how does this translate to legal education?

From the distance of thirty-three years and from the distance of the president's chair, I am not going to suggest *how* legal education should be reformed; I am going to suggest that it *should be* reformed. I believe these times require us to ask fundamental questions about all aspects of the educational system. Clearly, legal education, like all of higher education, is facing a torrent of challenges and is, in many ways, under a barrage of criticism from all sides, including from within. Young lawyers are having a difficult time finding positions.¹⁷ Law school applications are down almost fifty percent over the last three years.¹⁸ And, like other college graduates, law school graduates are shouldering far too much debt. These sharp realities give us the opportunity to ask some tough questions. I am not advocating any of these questions, but I am saying that these are the kinds of questions we need to be asking.

In order to move forward, we must decide the following things: How do we reward and recognize our faculty? How do we provide more partnerships and training with the legal community? What are the possibilities of degrees beyond the Juris Doctor, such as executive education for business or a master's degree in

14. Tyler Kingkade, *MOOC Skepticism Persists Among University Presidents, Despite Rapid Growth Of Online Courses In 2012*, HUFFINGTON POST, Nov. 26, 2012, http://www.huffingtonpost.com/2012/11/26/moocs-skepticism_n_2191314.html.

15. *Id.*

16. Liv Gjestvang, *Ohio State Chemistry Flips the Classroom*, DIGITAL FIRST.OSU (May 21, 2012), <http://digitalfirst.osu.edu/news/75>.

17. Susan Adams, *The Best Law Schools for Career Prospects 2013*, FORBES, Oct. 8, 2013, <http://www.forbes.com/sites/susanadams/2013/10/08/the-best-law-schools-for-career-prospects-2013/> (stating that the American Bar Association unemployment statistic for 2012 law school graduates is 10.6%).

18. Staci Zaretsky, *Law School Applications Plummet*, ABOVE THE LAW (Aug. 20, 2013), <http://abovethelaw.com/2013/08/law-school-applications-continue-to-tumble/> (noting law school applications down thirty-eight percent).

legal studies? Is it true that we scare our law students to death the first year, work them to death the second year, and bore them to death the third year? The dean of Moritz College of Law at Ohio State says *that* is definitely not true, by the way.¹⁹ But we *are* looking carefully at these questions and others.

As the economic pressures continue, we are looking for additional ways to provide pathways from school to practice. One such example at Ohio State is our Corporate Fellowship Program, which I believe is the first of its kind in the country. This program allows our new graduates to spend a year inside the General Counsel's Offices of major corporations, which are normally staffed exclusively by lawyers with many years of practice. The program allows our graduates a unique "inside look" at how corporations use legal services, while launching them into practice, shoulder-to-shoulder with experienced lawyers. Like a medical residency, the program provides elite, post-graduate training. And, I am told, that the companies love this too. They have been deeply impressed by what our hard-working, young graduates can do for them at a reasonable cost, and are pleased by the opportunity to join in training the next generation.

We are also starting to look at other changes, such as how to incorporate technology into the classroom. We are not incorporating technology as a replacement for our small and intimate class discussions, but rather as a way to complement those discussions and continue to explore ways to expand resources for our students. Just this month, our law school decided to move forward with a synchronized online education program with the University of Iowa. Because we have the leading election law program in the country, students from Iowa will take one of our election law classes online, alongside our students in the classroom. And our students will participate in an antitrust law class at Iowa which is taught by one of their superstars. It is a win-win for everyone, and it is a clear example of how we must continue to innovate and hone our curriculum in order to better prepare our students for the twenty-first century legal stratosphere.

To be honest, I am not one to dwell on the negative, but I will tell you this very clearly—the greatest impediment I can imagine is a culture that is rooted in balkanization, lacking in curiosity, and mired in complacency. In other words, a culture that is unable or unwilling to scan the horizon for brighter prospects. To fulfill our shared promise we must pursue our goals with both a heightened concentration and an inclination for the long view. We cannot contemplate our future through the rear-view mirror. We must keep our eyes trained on the skyline ahead, and on the luminous possibilities that are ours for the taking.

Indeed, I believe that this time of uncertainty and challenge is precisely what American education has needed to loosen us from our moorings. As we consider new directions together, I caution against the natural impulse to see challenges and changes as obstacles, and to seek comfort by sounding the retreat. I firmly believe that every challenge we face is also an opportunity to charge ahead, to

19. Alan C. Michaels, J.D. is the Dean of the Moritz College of Law at the Ohio State University. *The Moritz College of Law: Administration*, OSU.EDU, <http://moritzlaw.osu.edu/about/administration/> (last visited May 20, 2014).

think differently, to collaborate more fully, and reconfigure ourselves for the long-term benefit of our students and our nation. Author Nassim Nicholas Taleb, you may have read about some of his volatility theories, proposes that we have most to gain when we have most to lose, when we are forced to view turmoil and challenge square in the eye, when necessity *demand*s innovation.²⁰ In Taleb's view, the institutions that continue to adapt—especially in moments of crisis—will flourish in the long haul.²¹ Indeed, Taleb describes these moments of crisis as Black Swans, rare and unpredictable events that impact “almost everything in our world, from the success of ideas and religions, to the dynamics of historical events, to elements of our own personal lives.”²²

Black Swans from recent history would include September 11, the rise of the Internet, the fall of the Soviet Union, and the recent global financial crisis, which really had a tsunami effect on the funding of public higher education. Taleb suggests that, in order not just to survive but to thrive in a volatile world, we must be robust enough to “gain from disorder,” a state of resiliency and adaptability that he calls being “antifragile.”²³ I find his theories fascinating, but also daunting.

I have often said that my university, as one of the largest, most comprehensive university in the country,²⁴ is something of an elephant, powerful and unwieldy. We have to be ever-more nimble and agile, like a ballerina, to adapt more gracefully to the future.

Ladies and gentlemen, 150 years ago, President Lincoln had the wisdom and foresight to invest in young people and re-chart American higher education when he signed the Morrill Act.²⁵ Without knowing what the future held, our forefathers determined that the path forward was paved with education. What Lincoln did was thoroughly radical, and he undertook this act in a moment of great peril and challenge for our country.

We, too, are at a pivotal moment in our country's history. What hangs in the balance is nothing less than the future of public education and our ability to sustain democracy through an educated citizenry. I often ponder the questions about higher education in the twenty-first century from my office in the heart of the Ohio State campus. Quite prominently, amid all the wonderful memorabilia and reams of paperwork, is a quote that lies at the heart of how I approach leading Ohio's flagship university. The quote is not from Plato, Abraham Lincoln, or

20. NICHOLAS NASSIM TALEB, *ANTIFRAGILE: THINGS THAT GAIN FROM DISORDER* 41-42 (2012).

21. *Id.* at 3-4.

22. NICHOLAS NASSIM TALEB, *THE BLACK SWAN*, at xviii (2d ed. 2010).

23. TALEB, *supra* note 20.

24. The U.S. Department of Education ranks Ohio State as the ninth largest university in the country with an undergraduate enrollment of 56,867. U.S. DEPT. OF EDUC., NAT'L CENTER FOR EDUC. STATS. (2012), <http://nces.ed.gov/fastfacts/display.asp?id=74>.

25. The Morrill Act was signed into law by President Lincoln in 1862 and provided 30,000 acres of federal land to each state which was then sold by the states in order to fund public colleges. *Primary Documents in American History*, LIBRARY OF CONGRESS, <http://www.loc.gov/rr/program/bib/ourdocs/Morrill.html> (last visited May 20, 2014).

Thomas Aquinas. There on an easel, looming over the conference table, inserting itself in the proceedings every day, are the words of General Eric Shinseki. “If you don’t like change,” the General said, “you’re going to like irrelevance even less.”²⁶

Ladies and gentlemen, the crux of my argument is simply this: the case for reconceptualizing the American university, and our law schools as part of the university, is the case for the future. The animating principle that has carried millions of Americans to universities, that moved previous generations to build those universities, was a relentless belief in the future. No one would pursue the American dream, much less live it, nor even dream it, without a fundamental belief in what is yet to come, without the belief that what is in the stars for generations of young people—what *must* be our destiny, theirs and ours—is that higher education will continue to shine brightly enough to light the way for the future.

26. James Dao & Thom Shanker, *No Longer a Soldier, Shinseki Has a New Mission*, N.Y. TIMES, Nov. 10, 2009, http://www.nytimes.com/2009/11/11/us/politics/11vets.html?pagewanted=all&_r=0.