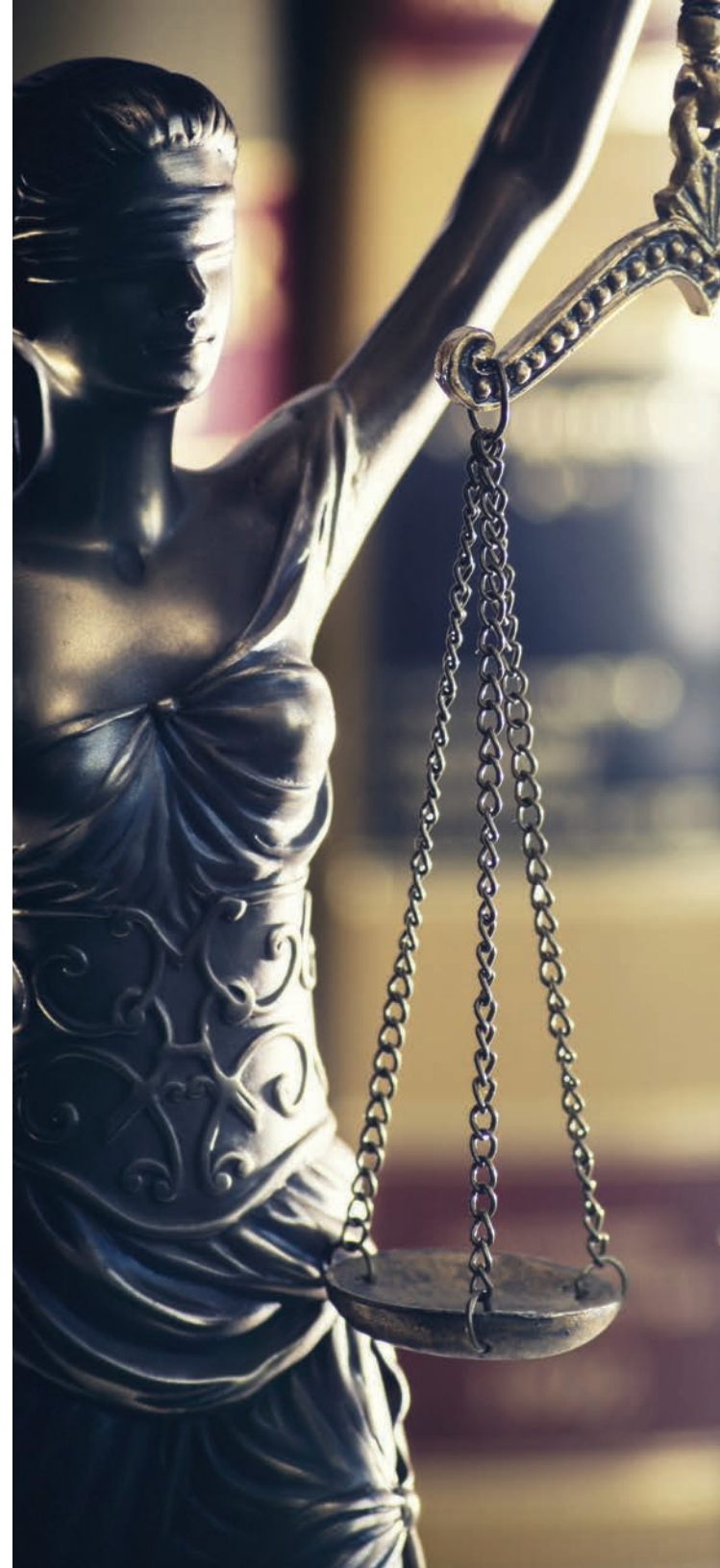


DISRUPTING LAW SCHOOL:

How disruptive innovation
will revolutionize the
legal world

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EXECUTIVE SUMMARY

Facing dramatic declines in enrollment, revenue, and student quality at the same time that their cost structure continues to rise and public support has waned, law schools are in crisis.¹ A key driver of the crisis is shrinking employment opportunities for recent graduates, which stem in part from the disruption of the traditional business model for the provision of legal services.

Although this root problem will soon choke off the financial viability of many schools, most law schools remain unable or unwilling to address this existential problem in more than a marginal way, as they instead prefer to maintain the status quo and hope that the job market soon improves. In reaction to the growing crisis, most law schools have accordingly continued to focus their attention and energies on maintaining their existing status within the legacy model used to rank and compare law schools: the U.S. News & World Report's annual law school rankings. In the face of the crisis, the dominant focus of law schools and their administrators has been to retain their schools' rankings so that their schools can outlast competitor law schools—some of which, the argument goes, may have to shut their doors—until, in the long run they hope, the market evens out and everything returns to the pre-crisis status quo.

This is a strategy of attrition. By fixing their gaze on maintaining prestige in their juris doctor (JD) degree programs,² law schools and their administrators run the risk of overlooking the longer-term impact that the disruption of traditional legal services businesses will have on the provision of legal services and, in turn, on law schools themselves. This is happening at the same time as disruption is primed to take place in legal education itself. As we have seen in industry after industry, disruptive innovations change sectors in ways that do not allow for a return to the status quo. Instead, the changes that disruptive innovations bring are so fundamental that entire products or services are marginalized or, in some cases, even displaced, never to return again.

The roots of disruptive innovation lie in the serving of nonconsumption—areas in a sector where people have no access to the existing offerings because they are too expensive, inconvenient, or complicated to use and therefore

the alternative to the innovation is nothing at all. There is significant nonconsumption in the market for legal services, which disproportionately impacts low-income and disenfranchised individuals. Access to a lawyer is expensive and out of reach for many potential customers because the market for legal services is opaque,³ the provision of legal services has been restricted through licensure, and the services themselves have traditionally been provided on an individual, customized basis. Such nonconsumption of legal services creates opportunities for disruptive entry into the market in an effort to serve nonconsumers on the periphery of the market and out of view of embedded incumbents. Were disruptive entrants to seize this opportunity, it could dramatically change the opportunities for representation for the most vulnerable members of society.

By maintaining their traditional strategies focused on prestige, law schools are ignoring the longer-term impact that the disruption of traditional legal services businesses will have on law schools.

The legal industry is now in the early stage of disruption—and there is a corresponding opportunity for disruption to emerge in legal education. Over time, law schools will only be as successful as the industry for which they train graduates. The growing misalignment between the commoditization of legal services and traditional legal education will last only so long.

Despite these changes in the broader legal services industry and law schools' own internal challenges, some law schools likely feel immune from the prospect of disruptive entrants in legal education because of the licensing advantages that accrue to students of schools accredited by the American Bar Association (ABA). Most state bar licensing authorities require applicants for the bar examination to have a JD degree bestowed by an ABA-accredited law school upon completion of three years of legal education. This licensing advantage affords ABA-accredited schools protection from new law school competitors entering the space. But the history of disruptive innovations in countless other sectors shows that it is a dangerous illusion to imagine that these regulatory advantages will never be seriously challenged. Indeed, regulators of lawyers and law practice are themselves beginning to encourage disruption in the market for legal services.

Fortunately for traditional legal educators, the opportunities for disruptive innovation in the market for legal education and, to a lesser extent, for legal services have not yet materialized in significant ways. The time is ripe for legal educators to understand the underlying forces that are impacting law schools and the larger market for legal services and to reimagine these forces not as threats, but as opportunities to renew the promise and energy of the legal sector with a vigor not seen in years. If existing schools and legal educators do not heed the lessons from disruptive innovations and seize this opportunity, then others will.

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WHAT IS DISRUPTIVE INNOVATION?

The central threat to law schools has been put into motion by the power of disruptive innovation. The theory of disruptive innovation explains why it is so difficult for organizations to sustain success over time. In business, companies tend to innovate faster than their customers' needs evolve. They do so because introducing improvements to what they offer—what we call sustaining innovations—is what has historically helped them succeed. By launching more sophisticated products, they can charge higher prices to their most demanding customers and thereby achieve greater profitability.

As a result, most companies tend to overshoot the performance needs of their customers by introducing services that are too expensive, sophisticated, or complicated and, at the same time, unwittingly open the door to disruptive innovations at the bottom of the market. A disruptive innovation gains traction by initially offering simple, more affordable, or more convenient products or services to nonconsumers—people for whom the alternative is nothing. Individuals would rather have some service, which is infinitely better than their alternative—nothing at all—even if the service provided by the disruptive innovator appears initially to be of lesser quality than the dominant service, as judged by the historical measures of performance. Yet, over time, the disruptive innovations continue to improve in quality and, soon enough, can take over a larger segment of the market by providing solutions capable of handling more complex problems that are simpler, more affordable, or more convenient than the dominant solutions that the incumbent providers offer. As a result, customers begin to migrate from incumbents to the disruptive innovator. At this point, even if the incumbent wants to respond by emulating the disruptive innovation, it is often too late, and the former leaders in the industry typically cannot catch up.

In 1995, for example, when Amazon.com started to sell books online, stock in Borders Group, the owner of the Borders bookselling chain, went public on the New York Stock Exchange. Borders—an icon of the “Comfy

Chair Revolution”⁴—prioritized the in-person experience, but at the price of inattention to the fledgling online market. For a few years the strategy was rewarded; its stock reached an all-time high in 1997. But the success was short-lived. Maintaining this strategy—Borders even outsourced its online operations to Amazon in 2001—set the stage for long-term failure, as the online tail of the bookselling market grew strong enough to wag what had become a dog of a traditional market. When Borders awakened to the reality that the future of bookselling was online, it was already too late. In 2011, three years after ending its relationship with Amazon and launching its own website, Borders filed for bankruptcy. Reflecting on the company's 40-year history, its president admitted that the agreement to outsource Borders' online retail business to Amazon was “a crucial error” for the company.⁵

What was that error? As many incumbent companies find in a disruptive environment, a business-as-usual approach is the riskiest approach of all. Borders erred fatally by prizing its own comfort with the ways of the past over the necessity to create a separate model that could focus on and master what was, for it, an uncomfortable new environment that appeared unattractive for several years after its debut. This common and very human reluctance to change what has worked before is now challenging much of the traditional legal services market—and will come to challenge law schools as well if they don't act first.

THE DISRUPTION OF LEGAL SERVICES

The job of lawyer has traditionally been a sought-after occupation in the United States. One major reason it has been so desirable is financial; legal services are and generally have been expensive and lawyers have benefited. The cost of legal services has been boosted by the expense of customization—lawyers’ work has traditionally been provided on an individual case-by-case, solution-shop⁶ basis—combined with regulations that have limited the number of providers of legal services.

These twin causes of legal services inflation are now entering what is likely to be a prolonged period of attenuation, which will continue to have significant implications for law schools. To an unprecedented extent, advances in technology alongside business model innovations are altering the traditional legal services value network that was built over several decades. This large value network—comprised of all entities involved in the provision of legal services, from law schools to law firms and from prosecutors to public defenders, court systems, and other local, state, national, and international bodies that regulate industries and administer justice—is currently undergoing a major shift as component parts of the network face disruption.

These disruptions are bringing about at least three significant changes in the market for legal services. First, they are directly attacking the necessity for expensive customized solutions and bringing more standardized,

systematized, and, in some instances, commoditized offerings to the market. Second, technological innovations are allowing lawyers within traditional law offices to boost their productivity, thereby making it possible to perform the same amount of work with fewer lawyers—an efficiency innovation for law firms. These technological developments are pressuring lawyers throughout the spectrum for legal services: from low-end solo practitioners to big law firms. And, finally, the same technological developments are also breaking down the traditional rationale—the protection of the public—for granting lawyers a monopoly on the practice of law. If a non-lawyer aided by software can provide the same service as a lawyer, then it is not the public but the lawyers who are being protected by the legal profession’s monopoly on the provision of legal advice.

Technological innovations replace some aspects of lawyers’ work

As in other sectors, the first targets for disruptive innovations in the legal market have been areas of nonconsumption with services that solve relatively simple legal problems. Much of the nonconsumption has existed historically because legal services have been expensive and therefore out of reach for so many. As computers combine with non-JDs to do the work on a mass scale that was traditionally done on an individual client-to-client basis, legal services are becoming more affordable and accessible.

Advances in technology alongside business model innovations are altering the traditional world of legal services.

One example of this evolution relates to the task of incorporating a new business. As recently as 10 years ago, when a business wanted to incorporate, representatives from the business typically would retain corporate lawyers to advise on the best form of legal entity for the business and, once that was decided, to draft incorporation documents. Now, as more information about different forms of legal entities becomes available online, small businesses do not need the help of a lawyer in the same way as they did years ago to educate themselves about the various forms of legal entities. Instead, the business owners can learn about business entities on their own using free online materials. Then they can use the do-it-yourself (DIY) information provided by startups, such as LegalZoom or Rocket Lawyer, to develop standard incorporation documents, all without ever hiring a lawyer.⁷ In 2011, just 10 years after its founding, LegalZoom helped incorporate 20 percent of the limited liability corporations in the State of California and reported \$156 million in revenue.⁸ And this DIY model of legal services is not limited to incorporating companies. As with disruptive innovators in other industries, many DIY disruptors in the legal space have started by providing routine, low-end services that appear initially to threaten sole practitioners and small law firms more than big national and international law firms. DIY information and services are now available for a host of routine aspects of law practice, such as drafting a simple will or trust, a living will, a contract for services rendered, a non-contested divorce agreement, a pre-nuptial agreement, a name change, and a power of attorney form, among a host of many more legal documents and forms.

Technological advances may also enable the creation of new entities that displace traditional courts as the locus for adjudication of disputes. The Civil Resolution Tribunal (CRT) in Canada, which plans to open in 2016, is an online dispute resolution tool that will adjudicate small claims or condominium disputes as an alternative to court. The online site will provide DIY information that individuals can use to diagnose their problem, identify relevant documentation, and resolve their legal disputes. A decision made in the CRT is enforceable in court in the same way as judgments that originate from that court system. Entirely online and accessible from a computer or mobile device 24 hours a day, seven days a week, the online tribunal will work around the schedule of the litigants, eliminate the inconvenience and costs associated with court appearances, and not require the services of a lawyer.

Other court systems are also looking into online dispute resolution. The United Kingdom's Civil Justice Council, for example, is considering an online system to handle low-cost cases.⁹ Through the online system, cases will be automated or handled with minimal supervision from legal experts, which will make the process cheaper, faster, and more convenient to litigants.¹⁰ And in New York City, vehicle owners can now elect to use an online dispute resolution system to resolve parking violations.

Similarly, Modria provides online dispute resolution for small consumer claims. Of the 60 million annual disputes on eBay, the Modria software resolves 90 percent of them without any intervention by lawyers or judges. According to Modria, "the results are 'almost never' appealed"

Disruptions are bringing three significant changes in the legal services market:

- 1) Creating more affordable, standardized, and commoditized offerings
- 2) Allowing traditional lawyers to boost their productivity and perform the same amount of work with fewer lawyers
- 3) Breaking the traditional rationale for granting lawyers a monopoly on the practice of law

to court.¹¹ As these and similar technologies improve and begin to tackle more complicated cases—as all disruptive innovations do—the implications on the practice of law for both lawyers and judges will be wide-ranging.

Efficiency innovations: Technology improves lawyers' productivity

Technological developments are also changing the nature of lawyers' work by making it more efficient. Disruptive entrants in the legal research space, for example, are changing the way lawyers work with computers. Because case law evolves based on precedent from prior court decisions, legal research is a core lawyering task. Consequently, lawyers have historically spent countless hours conducting legal research to find relevant law among mounds of legal source materials and court cases. Startups are now beginning to tackle that problem. Ravel, for example, uses computer technologies to help lawyers find the cases most relevant to their legal problems. Another promising startup not yet in operation, Judicata, is “mapping the legal genome.” ROSS, a startup built upon Watson IBM's cognitive computer technology, takes the technology even further. Lawyers can ask ROSS a simple legal question, and it will do the legal research by combing through its database of legal documents to find relevant legal source materials using advanced pattern recognition software, rather than key words. Even more revolutionary, lawyers can “coach” ROSS to understand exactly what they are researching; the more a lawyer works with the computer program, the better ROSS understands the results that best match the lawyer's interests. And ROSS also serves as a research assistant; it continuously researches and notifies lawyers of new developments. Other disruptors, such as the Practical Law Company, provide web-based subscription services, including standard corporate document templates, contract clauses, and deal checklists that make the work of lawyers at big law firms and corporate law departments more efficient.

These innovations have profound implications for both the type of work lawyers will need to do in the future and the number of lawyers firms will need to employ to do that work. Computer technologies that process standardized forms and perform legal research represent only the first stage

in the disruption. With sufficient human support and training, computers are increasingly able to perform more nuanced work as well. The classic image of a lawyer is one whose expertise was based on prior knowledge and experience, plus what he or she could learn from researching books in a law library. Increasingly, a lawyer's expertise will be based on prior knowledge and experience plus what the lawyer can train a computer to do. For example, through computer-based predictive coding, lawyers can train computers to review large numbers of documents—work that replaces countless hours of lawyer time. As law firms adopt these and other efficiency innovations into the workplace, the innovations will likely cause firms to hire fewer lawyers and employ people with different skillsets, as they will not need as many lawyers to do an equivalent amount of legal work as was needed in the past.

The impact of these innovations will be most pronounced in the demand for entry-level lawyers, as, over time, the market will increasingly expect entry-level lawyers to perform work that cannot be outsourced or done by computers. For example, document reviews, which formerly took weeks or even months for hordes of individual—typically entry-level—lawyers to conduct, are now performed more efficiently by computers. Also, legal process outsourcing (LPO) companies are taking on tasks formerly performed more expensively by entry-level associates.

These changes are already undercutting the market for recent law school graduates. Ten months after graduation, only 60 percent of graduates in the class of 2014 were employed in long-term, full-time positions where bar passage was required.¹² And these changes are likely to accelerate as technology continues to advance.

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Disruption in regulated markets: Stripping the monopoly from lawyers

Incumbents accustomed to operating in a regulated market are often complacent when disruptive entrants first appear. In the case of lawyers, they believe that regulatory protections, such as bar licensure and restrictions on the unauthorized practice of law, will protect them from disruption in the long term. Lessons from other industries, however, illustrate that heavily regulated industries can be disrupted. Disruption is most successful when disruptors start by innovating in segments that circumvent regulators or are peripheral to their vision. Then, once the innovator accumulates a sufficient number of customers, regulations are ultimately changed in reaction to the innovator's success.

For example, Southwest Airlines was able to disrupt the airline industry in the 1970s by operating under the radar of the Civil Aeronautics Board (CAB), which had heavily regulated interstate travel, including the routes that airlines could fly and the prices they could charge. When Southwest Airlines initially entered the market, it did not offer interstate travel, so its routes and fares were not subject to federal regulation. By flying short routes within the state of Texas at very low prices, Southwest developed a new market by serving people who previously could not afford to travel by airline. When Southwest gradually started a few flights to adjacent states, it minimized the impact on and opposition of established carriers by shuttling between smaller airports that were not the bread and butter of the larger carriers. By 1978 it became clear that the safety of discount airlines was just as good as—and the pricing for consumers significantly better than—what major airlines had been offering. So the CAB deregulated the airline industry. Once again, the existing regulations had not protected the incumbents from disruptive change.

A more current example of disruption in a highly regulated market is Uber's assault on the taxi industry.¹³ Uber, a technology company whose app matches drivers and their cars with customers looking for rides in cities around the world—yet operates no taxi cabs and owns no taxi medallions—has been embraced by customers and investors alike.¹⁴ Uber's strategy has not been to lobby for regulatory changes in markets with entrenched incumbents. In fact, Uber “generally does not consult transportation regulators before it starts rolling in each city. Because it is not an actual provider of rides, it says that it is not subject to such regulation.”¹⁵ Rather, by developing a new network that customers value—in 2013 alone, one-third of San Francisco's taxi drivers gave up driving registered cabs in favor of joining Uber, Lyft, and other transportation network companies (TNCs)¹⁶—TNCs' disruptive

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innovations are forcing regulators to reconsider their legacy approach. Accordingly, “New Approaches to Regulation in a TNC World” was the first topic discussed at the September 2015 conference for the International Association of Transportation Regulators, with proposals that support wide-scale adoption of the innovations.¹⁷

These examples are not unlike disruptions being sown on the legal services landscape. Although services like those offered by LegalZoom and Modria are first being introduced on the periphery of the legal market, like other disruptive innovations, they will continue to improve and then begin to move up-market. The LPO industry provides a good example. After working on the periphery of legal services, LPO companies are now steadily expanding their range of activities to do increasingly sophisticated work. As recently as 15 years ago, the LPO industry was a mere dot on the legal services landscape; it is now enjoying constant and impressive annual growth rates of approximately 20 percent, with 2015 revenues exceeding \$3 billion.¹⁸ As it becomes apparent that these disruptors provide cheaper, more convenient, and more reliable services that the public demands, it will be hard for regulators to keep them out of the rest of the market for legal services.

Indeed, the emergence of legal disruptors has moved nonconsumption and inefficiencies within the legal marketplace onto regulators’ radar screens. In the last few years, regulators have been openly pushing for innovation in licensing models for the provision of legal services. A variety of bodies that oversee legal regulations—such as the ABA and state regulators of bar licensure—are beginning to adopt new frameworks for licensing or otherwise authorizing non-JD providers of legal services.

One group clearing the way for non-JD providers of legal services is the court system. Increasingly, courts have found that some of the legal work performed by non-JDs or computers do not fall within the unauthorized practice of law. LegalZoom, for example, succeeded against legal challenges in several states that claimed that it engages in the unauthorized practice of law.¹⁹ On the heels of these victories, LegalZoom, as with most disruptive innovators, is now motivated to grow and expand its reach. It plans to move

up-market beyond the legal forms that have until now been the mainstay of its business to provide legal advice and prepaid legal services plans.²⁰

Similarly, state regulators of bar licensure are rethinking their regulations governing licensing for the provision of legal services. With some limited exceptions, licenses to practice law have been granted only to individuals who hold JD degrees from ABA-accredited law schools and have passed the bar examination issued by the licensing authority in the state in which the graduate seeks admission.²¹ But state regulators are beginning to recognize that disruptive innovations are shifting the ground beneath them. Accordingly, regulations may not limit non-JDs from entering the legal market for as long as some might expect. As the disruptive entrants illustrate, the work that lawyers have traditionally performed can be unbundled—and lawyers don’t have to do it all. Indeed, regulators are starting to experiment with new licensure models by licensing non-JDs to perform some of the tasks that lawyers have traditionally performed. Under the new licensing models, some traditional lawyer work, such as representing clients in court, will likely remain the sole province of lawyers, whereas other aspects of the traditional lawyer work will increasingly be performed by non-lawyers, a segment of whom may be licensed in limited ways to work on behalf of clients and educated through programs that substitute for the JD program of legal education.

Even the ABA, a relatively conservative body, is encouraging this new licensing paradigm. The ABA is keenly aware that “many people today

Even the ABA has encouraged state regulators to authorize persons other than lawyers with JD to provide limited legal services.

cannot afford the services of [lawyers] or may not need legal services calling for their degree of training.”²² In response, the ABA’s Task Force on the Future of the Legal Education called on state regulators of lawyers and law practice to:

- (a) Authorize Persons Other than Lawyers with J.D.’s to Provide Limited Legal Services Without the Oversight of a Lawyer; (b) Provide for Educational Programs that Train Individuals to Provide those Limited Legal Services; and (c) License or Otherwise Regulate the Delivery of Services by Those Individuals, to Ensure Quality, Affordability, and Accountability.²³

The State of Washington is the first U.S. state to license legal technicians—non-JDs who are specially trained²⁴ to advise clients in limited areas of practice. The first legal technicians are being licensed to work in the area of family law, including divorce and child custody. Akin to a nurse practitioner who can diagnose and treat patients and prescribe medication, under new regulations, a limited license legal technician (LLLT) can perform many of the functions that JDs traditionally performed, including consulting and advising, completing and filing necessary legal documentation, and helping clients understand and navigate a complicated family law court system. Also, like a nurse practitioner who is not licensed to perform surgery, the scope of work that an LLLT is currently authorized to perform is limited; an LLLT cannot represent clients in court or negotiate on behalf of clients, for example.

Other state bars are studying this model, including the bars in California, Colorado, Massachusetts, New York, Oregon, and Utah, which are all now considering similar limited licensing options for non-lawyer practitioners. And the trend extends beyond the United States; in 2014, the Law Society of British Columbia experimented with a model²⁵ similar to Washington State’s for family law matters and a few years earlier, the Law Society of Upper Canada began licensing paralegals to provide legal services in limited civil law contexts.²⁶

If these limited licensing models offer efficient and effective alternatives to JD-provided legal services, we can predict that, especially with the aid of technology, they will likely expand to serve other areas of the market, each time taking more work away from JDs. Indeed, the Supreme Court of Washington is already talking about expanding the purview of LLLTs to other practice areas, such as housing, consumer, and elder law. The efficiency innovations described above will not only make it easier for lawyers to perform their work more efficiently and at lower cost to clients, but they will also make the work of limited licensed non-JDs more efficient and expansive over time as well.

Akin to a nurse practitioner who can diagnose and treat patients and prescribe medication, under new regulations in Washington State, a limited license legal technician can perform many of the functions that JDs traditionally performed.

DISRUPTION IS LESSENING THE ATTRACTIVENESS OF A JD DEGREE

Disruptions in the marketplace for legal services directly impact both the students that law schools can attract and the jobs law school graduates will take on after graduation. From the perspectives of both prospective law school applicants and employers of recent law school graduates, a JD degree does not hold the value it once did. The net result of these pressures is a growing storm for law schools that will not recede in the years ahead.

Law school inputs: Applicants to law school

It is less desirable today to be a lawyer, or to be trained as one, than in the past. Prospective law students have recognized this. Law school applications are down 40 percent since 2005,²⁷ and students with scores in the highest score bands of the LSAT, the law school admission test, are down in recent years, while those with scores in the lowest score band have increased.²⁸

In the context of an increasingly competitive marketplace for law students, law schools vie to compete against their fellow institutions by moving up in the annual U.S. News & World Report's national rankings. The drive to maintain their U.S. News rankings creates a catch-22; the typical law school business model relies on tuition revenue to fund operations, yet in an effort to bolster their U.S. News rankings, many law schools offer tuition discounts to students whose LSAT scores and undergraduate GPAs will reward the school when it comes to calculating the school's ranking, without regard to whether the applicant needs help paying full tuition.²⁹ This practice of discounting tuition—during the 2013–14 school year, only 38 to 40 percent of law students paid full tuition³⁰—reduces revenues and creates budgetary pressures for law schools, as most are tuition driven and do not have large endowments. As a result, in a reversal of a long-standing pattern, some law schools are relying on financial support from their universities to stay afloat.

Perniciously though, the expenditures necessary to remain competitive and improve as a law school are continuing to rise, as has been true in all of traditional higher education. The discounting coupled with declining enrollments are straining the business model of many law schools to the breaking point and leaving them all the more open to disruption from below.³¹

Over time, it will become increasingly difficult for law schools to sustain their focus on the traditional metrics for measuring their rankings, especially as prospective students come to expect both tuition discounts and additional training, as explained in the next section, to qualify them for entry into an increasingly competitive job market for entry-level lawyers.

Law school applications are down 40 percent since 2005, and the number of students with high LSAT scores has declined as well.

Law school outputs: Recent law school graduates

Since the 1800s, when law schools began initially to secure their place within universities, law schools have focused on teaching how to think like a lawyer. This focus on “learning to think” was designed, in large part, to distinguish university-affiliated law schools from the alternative law schools that were more abundant at the time—stand-alone schools that focused exclusively on training practicing lawyers by teaching practical skills. These vocational “trade schools” had long been excluded from universities because they were not considered academic in nature. Law schools eventually gained prominence within the larger academic community after Harvard Law School’s dean, Christopher Columbus Langdell, successfully branded the law as a subject that could be studied as a science, rather than as a mere practical occupation. Indeed, underscoring this point, the first professor that Dean Langdell appointed to teach at Harvard Law School had no experience practicing law, as he transitioned directly from being a student to a teacher.

Today, most law schools, including former practitioner-run law schools that have since merged with universities and the handful of remaining independent law schools, adhere to the Langdellian model of legal education. Law schools focus significant resources on instilling doctrinal knowledge about the law, with an expectation that students will learn about the practice of law from employers after graduation. A 2007 report by the Carnegie Foundation for the Advancement of Teaching noted, for example, that law school education “clearly tilts the balance toward the cognitive and intellectual” and is deficient in the training in practical lawyering skills and professional values, with “neither practical skills nor reflection on professional responsibility figur[ing] significantly in [the] legal education” of most students.³² Under the prevailing model, a law student could graduate from law school without any exposure to the practice of law or to real clients.

In recent years, however, there has been a shift in the value proposition of law schools. For many years, law students and their employers accepted the learn-to-think value proposition. But now, as in other areas of higher education, the value proposition of law schools is evolving to one that places a much greater emphasis on a learn-to-practice paradigm. From both sides—that of prospective law students and that of their future employers and clients—there is increasing dissatisfaction with the on-the-job tradition of training entry-level lawyers in the practice of law. Recognizing that the job market is tight, students are demanding more practical training to help them secure employment post graduation.³³ Also, “[c]lients are no longer interested in paying full freight for associates who are learning on the job.”³⁴ Law

From the perspectives of both prospective law school applicants and employers of recent law school graduates, a JD degree does not hold the value it once did, which creates a growing storm for law schools that will not recede.

firms are thus reconsidering the on-the-job training tradition, which consumes the time of both entry-level lawyers and those who train them and is increasingly not billable to clients.³⁵ With pressures on lawyers to bill their time on work that can be charged to and collected from clients, it is becoming increasingly difficult for recent graduates to find mentors within their workplaces who are willing to devote time to training them in the practice of law. As a result, increasingly employers want law schools to teach students practical lawyering skills and professional values before they graduate.

Law schools have responded to this shifting value proposition as incumbents usually do—by adding programming that responds to the learn-to-practice value proposition, while sustaining the bulk of the core educational model. The recent growth of field placements and incubators offer two examples. While their traditionally trained faculty members continue to teach the traditional topics in traditional ways, many schools have responded to the learn-to-practice value proposition by expanding field placements. This response essentially pushes the learn-to-practice teaching outside the four walls of the law school. For the most part, operations within the law school remain unchanged, while students earn credit toward graduation

Law schools are predictably adding practical training to the traditional curriculum—but as an add-on to sustain the status quo.

requirements while “working” under the supervision of practicing lawyers, who are, for the most part, not paid by law schools or otherwise affiliated with them.

Similarly, several law schools are starting incubator programs—law firms that law schools run to provide legal services to members of low-income or disenfranchised communities who otherwise would not have access to legal counsel. Students work in the incubator after they graduate from law school to gain practical lawyering experience. Although incubator programs provide needed legal services to low-income and disenfranchised communities and also provide practical lawyering training to a handful of recent graduates—a win for the community and, in certain respects, for the alumni/ae—they do not address the underlying issues facing law schools. By pushing training in practical lawyering skills out of the three years of legal education, law schools are essentially sustaining the status quo.

Moreover, although the ABA is pushing law schools to respond to the shifting value proposition by adding more practical training into the required curriculum, the resulting changes are minimal when considered in light of the entire three-year academic program. New ABA accreditation standards, for example, require law students to take at least six credit hours of courses—simulation courses, law clinics, or field placements—that are primarily experiential in nature. Although it took the ABA more than six years to enact this change, its ultimate effect is not that large, as more than 92 percent of a traditional law school education remains untouched.

There are indications that state bars may push law schools further down the learn-to-practice path than the ABA has. The California bar, for example, is considering a rule change that would require applicants to the bar to spend 18 percent—or 15 credit hours—of their law school education on practice-based experiential coursework.³⁶ Although the natural tendency of incumbents is to push back against new requirements that run counter to their priorities, the larger forces acting upon regulators will not subside. Accordingly, should law schools succeed now in resisting the push for a more practice-oriented curriculum, their victory is likely to be a pyrrhic one, for in the long run it will only make them more vulnerable to the prospect of disruptive innovators in legal education itself.³⁷

POTENTIAL FOR DISRUPTION OF LEGAL EDUCATION

The disruption of legal services and the fundamental changes in the market for entry-level JDs have hit law schools hard in recent years. A more direct challenge to law schools looms, however, as the building blocks for disruptive innovations in higher education more broadly are materializing.

What does disruption in higher education look like?

A variety of potential disruptors, all powered at least in part through some form of online learning, are emerging in higher education. From coding bootcamps that do some blending of online and face-to-face learning,³⁸ such as General Assembly and Galvanize, to online course providers, such as Udacity and Udemy, and from providers of modules of online content, such as Lynda.com and the Khan Academy, to online, competency-based programs, such as Western Governors University and Southern New Hampshire's College for America, there is no shortage of organizations serving nonconsumers of traditional higher education. These disruptors seek to transform higher education by offering programs that are more flexible, more convenient, and often more affordable than programs offered in the traditional higher education model. With the emergence of a variety of new technologies, business models, and teaching pedagogies, these players are positioned to change the status quo in higher education. They are introducing new technologies that offer students the opportunity to learn and interact with faculty members and fellow students in novel ways—both online and offline—through projects, simulations, game-based learning, adaptive learning, and mobile learning.

Given that disruptors of these kinds are challenging training paradigms in a number of professions, there is no reason to believe the study of law will be an exception. In particular, were programs that coupled online competency-based learning with robust clinical training and field placements to emerge, they would fundamentally challenge law schools'

traditional model and point to a path forward for the eventual disruption of legal education.

The online and competency-based pieces of the equation are critical elements. In competency-based education, students move on in their learning upon mastery, not based on seat time. Given that online, competency-based programs are also often far lower in cost than traditional higher education,³⁹ legal education versions of them would be uniquely positioned to target nonconsumers of the legal education market—and, given the rise of LLLTs, for example, not necessarily by offering a JD. This new market of students could be educated to practice law, as well as to think about it, with knowledge and skills that would allow them to take on work that targets nonconsumption in the broader legal market—work that has historically been the exclusive domain of JDs.

Low-cost programs that combine online and competency-based learning and target nonconsumers of traditional legal education could be powerful disruptors.

Why disruptors could threaten law schools

When disruptive innovators get their start, incumbent institutions typically dismiss them because they do not offer the same quality as incumbents do according to the industry's traditional metrics of performance. As a consequence, it is easy for incumbents—in this case, reputable law schools associated with reputable universities that have been successful in serving an established law school applicant market—to overlook disruptors. As non-traditional education progresses, this complacency may turn fatal. Signs already suggest that law schools have overshot many of their customers given their soaring costs, and, as explained above, converted others into nonconsumers—witness the 40 percent drop in applicants and the drop in applicants with the highest LSAT scores. Unless law schools respond appropriately, more students who otherwise would have considered pursuing a JD from a traditional school are likely to forego it and prefer a less expensive, more convenient online or blended online and in-person alternative, either in law or in other related fields.

There is still time though for law schools to change. But the window of opportunity will not be open forever. Law schools should begin now to set *themselves* up as the disruptor and begin to offer online, competency-based education programs that train students to provide legal services, not necessarily to be a JD. Yet being both a disruptor and an incumbent is not easy.

There is still time for law schools to change, but the window of opportunity will not be open forever.

The challenges incumbents face when trying to disrupt from within

Incumbent institutions have particular ways of doing things that have served them well and brought them success over the years. In the case of law schools, the school's faculty members, administrators, facilities, committee structure, and customs, are all focused on furthering those traditional processes and objectives. Consequently, like all incumbent institutions, law schools tend to embrace innovations that are in line with their existing resources, processes, revenue formula, and value propositions, but reject those—like disruptive innovations—that are not.⁴⁰ This tendency to support sustaining rather than disruptive innovations is complicated in law schools because a school's principle resources—its faculty members—play a significant role in law school governance. From that locus of control, they tend to support the traditional pedagogical model, one under which they were successful, and to block changes that will adversely impact the status quo.⁴¹ The same dynamic is at play in its processes—proposing a shift in pedagogy to a program through which students predominately learn in a manner that differs substantially from the Socratic teaching method with summative assessments would be challenging at best given law schools' capabilities and incentives.

Yet, this is precisely what trying to launch a disruptive innovation from within would ask law schools to do: change their long-standing value proposition—shift from a learn-to-think to a learn-to-think-and-to-practice value proposition—and their corresponding resources, processes, and revenue formula. Against this backdrop, disruptive innovators will enjoy a clear advantage because they will be able to introduce new pedagogies and focus exclusively on a single, value-adding business model—focused on teaching and learning—and will not be encumbered by the pursuit of prestige that absorbs the attention and resources of incumbent law schools—instead reinventing the definition of prestige. Although incumbent law schools also devote significant resources to teaching and learning, that is only one of the aspects of an incumbent law school business model, with a significant—and often competing in terms of faculty members' time and resources—one being a focus on scholarly research and writing.

Disruptive innovators, on the other hand, start with a blank slate. And, as a result, they may approach educational design very differently from traditional law schools. For example, they may break the teaching and learning process down into its component parts—for example, mapping of curricula, crafting learning objectives, designing modules, developing educational content and assessment tools, assessing and providing feedback, and overseeing in-person experiential learning capstones and clinics—and involve several people in the instructional process, some of whom are not law professors. A decision to take similar steps within an incumbent institution would likely face much resistance by decision-makers.

By starting from a blank slate, upstart competency-based education programs could create at least three distinct challenges to which traditional law schools would have difficulty responding.⁴²

Time is no longer the measure of accomplishment

Online competency-based learning reverses the traditional relationship in education between time and student learning. In the traditional educational model, from K-12 through higher education, time is fixed while each student's learning is variable. Other than on the extreme ends of the spectrum, students proceed through K-12 schools based on their age, not on their competency or mastery of a set of knowledge or skills, for example. Time is the main currency in legal education as well. Fixed seat time is used to measure faculty workloads, academic calendars, credit units, and eligibility for graduation. For example, ABA accreditation standards reference time, rather than learning; they mandate that: (1) each student take 83 credit hours of instruction before graduation; (2) each class hour include at least 50 minutes of instruction; and (3) the course of study be completed no earlier than 24 months, and no later than 84 months, after the student commences law study at a law school.

With online competency-based learning, the relationship between time and learning is flipped, as time becomes the variable and each student's learning becomes essentially fixed. Students can learn at their own pace as

they move on from topic to topic upon mastery of each. Those who need more time to master a concept before moving on to the next can take the time they need, while others can move ahead to the next set of material and learning objectives.

The centrality of competencies, learning outcomes, and assessments

Online competency-based programs facilitate shifts in teaching pedagogy toward student-centered learning. In an online, competency-based program, faculty and instructional designers start by identifying the competencies students must master to achieve the desired learning outcomes and then work through each to understand how a student would demonstrate mastery of those objectives. That in turn leads to creating assessments—quizzes, exercises, and projects—that are interwoven throughout the course to provide students and teachers with feedback. Through constant feedback, students know how they are doing and what they need to do next and teachers can determine when students have mastered competencies and are ready to move forward. The assessments in other words are both *for learning*—assessments that help determine what a student studies next—and *of learning*—assessments that indicate whether a student has mastered the material.

In contrast, the traditional law school curriculum has relied almost exclusively on summative assessment. Most law school classes give one assessment—a high-stakes final examination after the course has ended, which is used mostly to measure performance and/or sort students in relation to others in the class. Final exams lack the feedback that the learning sciences have identified as a touchstone of a sound pedagogical approach. As a consequence, many law students never develop an adequate understanding of whether they have mastered the relevant material until the course has ended, at which point they have little opportunity or inclination to identify and remedy their misunderstandings, which is in stark contrast to the use of assessments in a competency-based education model. Assessment that is formative in nature, on the other hand, is designed to give feedback to students—and also to professors—as learning is taking place. It happens

simultaneously with the learning so that students can assess their own understandings and review material that they do not understand fully. Indeed, the most effective type of assessment is embedded into the learning process and provides students immediate feedback on established criterion so that they can adjust and revise their understandings based on the feedback.

Recent changes to ABA accreditation standards call for law schools to adopt learning outcomes and incorporate new methods for assessing student learning. The new accreditation standards require law school professors and administrators to be more deliberate and systematic about developing a law school curriculum that promotes relevant learning outcomes and lawyering competencies and to assess students appropriately as they advance through the curriculum. But this is new to legal education. Most law schools and professors are considering these concepts for the first time and trying to figure out how they relate to their own school and way of teaching.

Of course, constant assessment embedded into the learning process does not preclude also having clinics or other capstone projects that assess student learning at the end of a course of study. These final projects provide students a holistic, practice-oriented encapsulation of all the learning that has preceded the clinics or projects and provide teachers assurance that students have retained what they learned and can apply the material in a comprehensive way. Here, too, student performance in clinics and capstone projects can inform whether each student has mastered the relevant material and, if not, what he or she still needs to learn—and students should keep working on their project or performance until they have demonstrated true mastery—a process that is at odds with the time-based nature of traditional legal education.

The shift from courses to modules provides more flexibility and different business models

Online competency-based learning is also changing key elements of the traditional higher education business model. Online technologies make it possible to modularize the learning process—that is, to break usual semester-long courses into shorter learning units or modules, which can be studied in sequence or separately. When material is packaged in online modules, it is easier to use for multiple educational purposes and multiple audiences in different combinations.

By starting from a blank slate, upstart competency-based education programs could create at least three distinct challenges to which traditional law schools would have difficulty responding:

- 1) Time is no longer the measure of accomplishment
- 2) Pedagogy shifts to competencies, learning outcomes, and assessments
- 3) Modules, not courses, form the building blocks of new programs

Modularity provides much more flexibility and creates the opportunity for models directly at odds with the traditional legal educational model. Law schools today have examples of modularity in their curriculum, but they are on the fringes of their operations, not the core, and are not available online or packaged for different audiences. For example, short courses offered between semesters and orientation sessions for clinical or field placement courses are examples of modularity. In many schools, students participate in such modules, usually scheduled at times that are outside the traditional academic schedule at the beginning of the academic year or semester, to study a discrete topic, such as how to begin working with and representing clients. In clinics, the orientation modules provide just-in-time learning for students before embarking on their practice-based learning experience.

Modules could also be used to eliminate duplication and optimize teaching resources. For example, a module that teaches principles of administrative law could be used for students who are learning about any area of law that involves an administrative agency, such as immigration, telecommunications, tax, or environmental. The same module could also be used for different audiences, including law students, of course, but also accountants, bankers, regulators, journalists, and students of the same.

This model can be extended to many parts of the law school curriculum. In contrast with traditional courses that last 13 to 14 weeks and have prescribed meeting times, each module can be as long or short as needed for

students to achieve the learning objectives. The modules can be stacked in multiple combinations based on the learning objectives and competencies that each individual student seeks to master. When competencies are each broken down into a series of learning objectives and teaching materials are tagged according to those objectives, students can combine modules from a host of different subject areas to achieve the learning objectives necessary to master a competency.

If online, competency-based providers enter legal education, modularity like this presents a host of opportunities. Stackable modules make it possible for students to create individualized curricula based on their own learning goals and objectives. For students who attend law school knowing the area of law in which they want to practice—a segment of the student body currently underserved on this dimension because of limited course offerings in any one topic at any one law school—modules open up opportunities to stack credentials from multiple sources. Because of economies of scale, an individual law school cannot offer specialty courses in many topics because of insufficient student demand in that particular school. But the long tail of the Internet opens up these opportunities; there may be sufficient student demand if online courses can aggregate demand and serve students from around the country or even the world.

This flexible architecture, enhanced by technology, can create an entirely new business model for law-related education. Modular flexibility enables online competency-based providers to create and scale a multitude of stackable credentials or programs for a wide variety of audiences. When learning is broken down into competencies, rather than semester-long courses, online competency-based providers can easily arrange modules of learning and package them into different scalable programs for very different audiences—for example, paralegals, legal technicians, lawyers, judges, law students, administrative agencies, non-JDs working in law-related fields, foreign students, high school/college moot court teams, undergraduate students, journalists, clients, life-long learners, and so forth. And teachers of these modules can come from a wide range of backgrounds, many outside the traditional legal academy. Lawyers, judges, administrative agencies, anthropologists, psychologists, sociologists, historians, business leaders, communications experts, among many others, can provide well-designed modules on topics relevant to lawyer-based competencies.⁴³

Stackable modules allow students to create individualized curricula based on their own learning goals and objectives.

WHAT MIGHT DISRUPTION IN LEGAL EDUCATION LOOK LIKE?

As changes in licensing models evolve, disruptive entrants, leveraging online, scalable, competency-based educational models that lower costs, increase access, and train students in the practical side of lawyering, will find their way into legal education. Indeed, the creation of entirely new fields, job categories, and licensure models provides great opportunity for new institutions, unencumbered by legacy processes and priorities, to emerge to educate and provide students with credentials for these new roles. These new providers could collaborate directly with employers and regulators to determine the competencies required and build tailored learning pathways to match those educational goals.

Initial opportunities for legal education disruptors

Where might disruptive innovators in legal education begin to gain a foothold? There are ripe possibilities in the areas where alternative licensing models exist to address nonconsumption of in-demand legal services, but no law school-based program trains professionals for these positions. By targeting these areas of legal education, an upstart program would deliberately avoid competing with traditional law schools at the outset.

Immigration law presents such an opportunity. Under existing regulations, the Executive Office for Immigration Review (EOIR) within the U.S. Department of Justice and the Department of Homeland Security (DHS) each authorize non-JD “accredited representatives” to represent clients before the federal immigration courts and DHS offices, respectively. This is an important alternative licensing model, as there is significant nonconsumption of traditional immigration law services. A recent report by the Committee on Immigration Reform Implementation (CIRI) estimates conservatively that at least one million of the unauthorized immigrants living in the United States are eligible for a legal form of relief and would have status in the United States if they had access to legal representation. CIRI found, however, that only 1,200 full-time equivalent staff members provide legal representation to low-income immigrants through a collection of non-profit organizations, far below the demand for their services.⁴⁴ Many people therefore face the legal system unrepresented, which has significant

implications: “Legal counsel is one of the most important determinants [in success of an immigration case], even more important than the strength of the underlying legal claim.”⁴⁵ Despite the demand for such non-JDs though, no formal program of legal education exists to train non-JD accredited representatives—an area of nonconsumption of legal education. If an online, competency-based educator were to develop an educational program that led toward an “accredited representative” credential, then the EOIR and DHS could address existing nonconsumption of legal services in these spaces.

This potential exists in other areas of the law as well. Under current practices, federal and state administrative agencies before which lawyers represent clients, such as the Social Security Administration and the Internal Revenue Service, defer to state bars for the licensure and regulation of lawyers; lawyers who are admitted to practice before a state bar are also authorized to practice before the agency. Following the state bar licensed legal technician model, these administrative agencies could themselves expand licensure options for non-JDs to provide legal assistance to clients appearing before them. This would create an opportunity for disruptive legal education programs to emerge to train these professionals and be a realistic way to increase the pool of qualified representatives authorized to provide legal assistance to currently underserved client communities. The likelihood of extending a licensed legal technician model to other jurisdictions will increase, as scalable, competency-based educational models are developed to train and assess non-JD practitioners.

Figure 1. Conditions that create room for disruption



A WAY FORWARD FOR LAW SCHOOLS

There are at least three productive paths forward for law schools in the years ahead. All three would be advanced by law students and legal educators learning about how technology is changing the practice of law. Once law schools better appreciate the scope of disruption in the legal marketplace—as long as that appreciation does not come too late—courses that teach about and train graduates to participate in the disruption will likely emerge and in turn foster new energy and enthusiasm, from JD and non-JD students, for the new paths that law schools must take not just to thrive, but to survive.

In our studies of disruptive innovation, the only foolproof way for an organization to launch a successful disruption relative to its core operations has been for it to create an autonomous business unit that has freedom from the constraints of its existing model. This is what drove Southern New Hampshire University to create an autonomous division to launch its online university and then, a few years later, to create another autonomous unit to launch its online, competency-based program, College for America.

For law schools, the recent introduction of online learning for LLM programs offers an early model for how law schools could create the space for a non-JD offering. For the most part, law schools that are using online learning are not doing so as part of the traditional JD degree program. That is, they are not introducing technological innovation into the product that they sell to their principle or core customers. As disruption theory suggests, disruptive changes will not start in that market. Rather, those law schools that are using online learning are doing so to expand into new markets of nonconsumers at the fringe, such as in LLM and master's programs. Consumers of those programs value convenience and lower costs and may even be willing to forgo a little in terms of performance in service of those objectives. For example, several law schools, including the University of Alabama, Boston University, Georgetown, New York University, and Villanova, offer online LLM programs in tax. Others, including Arizona State, Northeastern, and West Virginia, offer online master's degrees in legal studies. Autonomous, administration-driven business units that are not beholden to law school tradition can show how online learning, especially when it is competency-based, can improve student learning outcomes. The early attempts to expand into alternative new markets, through LLM and master's programs, may lead the way for the development

of competency-based modular educational models designed for multiple non-JD audiences, as well as, eventually, for JD students themselves.

Reconsideration of the JD from the ground up would spark a revolution in legal education. A law school interested in moving in this direction would start as if from scratch, with a view toward developing an educational model through which graduates prove mastery of the myriad lawyering competencies that will be most relevant to the 21st-century lawyer. Online modules would teach and assess mastery of basic laws, processes, and procedures. In-class sessions would focus on reinforcing learning and providing opportunities to apply one's knowledge through role-play, simulation, and small group work. Clinics would supplement the online and simulated training with exposure to real-time applications of material learned in online and simulated settings through work with real clients on real legal issues.

A second way forward is to improve learning and control costs by using online learning as a sustaining innovation. In this model, law schools would use online learning to shift their doctrinal pedagogy from the near-exclusive use of the Socratic method or lectures to hybrid learning approaches and activities. Hybrid learning marries in-class activities with online learning and assessments. This model provides some of the benefits of online learning—students, for example, can do some of their work at any time, from any place, and at their own pace—with the benefits of face-to-face instruction—intimacy, motivation, fixed times that require students to show up and engage, and an in-person community. Having done part of the learning online at their own pace, students then come to class ready to engage in activities that reinforce the learning that took place

online and that ask students to use it in higher-level learning to apply, analyze, evaluate, or create material—all of which reinforce the material learned online. This may be a particularly useful model for legal education, as it begins to focus more on experiential learning, practical training, and performance-based competencies. Under this model, some of the “learn-to-think” aspects of legal education can effectively migrate to online learning, while in-person learning time can be used to reinforce the online learning through activities that focus on the “learn-to-do” aspects of legal education. The emergence of coding bootcamps that blend online with in-class learning and activities suggests a model for law schools to follow, whether they approach blended learning from within their existing institution or from an autonomous, disruptive entity they create. The new online modules could also be repurposed for other programs and audiences.

Finally, law schools could create programs that allow JD students to focus deeply on a particular area of law. Currently, law schools provide everything to all students. But as entry-level JDs are asked by employers to do more sophisticated work, there will be increased demand for specialization during law school. Schools could offer core subjects through online competency-based programs and focus the in-person experience, including experiential learning courses, clinics, capstones, directed research, and field placements, on extensive training in a particular area of law. In that way, individual schools could differentiate themselves by seeking to attract students interested in discrete practice areas, such as tax law, environmental law, family law, or criminal law.

The ABA’s recent decisions about online learning may provide an additional tailwind in favor of moving forward in these ways and pushing law schools to think more seriously about how they use assessment and the advantages of a more modular curriculum. In addition to new accreditation standards that authorize more of the standard law school curriculum to be offered via distance learning, the ABA also recently granted a variance to Mitchell Hamline Law School to offer a blended online, in-person JD program. This broader acceptance of online learning, coupled with the ABA’s push for the adoption of learning outcomes and formative assessment tools, suggest that efforts to innovate in these ways will find support by accreditors. Online programs may find that they are more attractive to students as well. Judging by its first class, there is a pent-up demand for such an offering, as the students who enrolled in Mitchell Hamline’s blended program had higher predictors of success (LSAT and undergraduate GPA) than the class of students enrolled in the live JD program. A Mitchell Hamline dean has noted that students in the blended program, relative to students in the brick-and-mortar program, seem markedly more grateful to the institution for offering an opportunity to learn the law. Apparently, they recognize that before this offering became available, the alternative was nothing at all. As students seek out more experiential learning opportunities that prepare them for the practice of law, through clinics, field placements and employment, the flexibility to take courses on their own time and at their own pace will likely become even more attractive. Today, the options are limited. Once options for online learning become more available, schools may find nonconsumers and students who would otherwise default to in-person programs flocking to online alternatives.⁴⁶

Law schools have three possible paths:

- 1) Launch autonomous models to pioneer disruptions
- 2) Use online learning as a sustaining innovation to improve current practice
- 3) Specialize by creating programs that allow JD students to focus deeply on a particular area of law

CONCLUSION

The theory of disruptive innovation suggests that the traditional law school model is breaking apart at its seams. The collapse is so fundamental that law schools cannot circumvent it by improving the financial performance of endowment investments, tapping wealthy donors more effectively, or collecting more tax dollars from the public. They need a new model. The only question is whether law schools will react in time or whether new institutions aggressively using scalable, competency-based online programs will do so instead—and ultimately grow to replace today’s traditional institutions.

Law schools can survive. But in order to do so they must recognize that competition will come from outside the industry—from institutions that are not currently even on their radar screen and that are not encumbered by concerns about traditional ranking and prestige. After recognizing the threat, to survive and thrive, law schools must then reframe this moment as an opportunity to stop chasing prestige for its own sake and start creating disruptive educational models themselves.



NOTES

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3 Although online services that match clients with lawyers—such as Avvo, LawDingo, and LawGives—are emerging, in general, the market for lawyers is not transparent. It is difficult for a potential client to find a lawyer who specializes in the relevant area of law and, once a lawyer is identified, to assess the lawyer’s competency in that field.

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5 Nathan Bomey, “Borders plans to liquidate, ending 40-year-old bookstore chain,” *The Ann Arbor News*, July 18, 2011, <http://www.annarbor.com/business-review/borders-liquidation-chapter-11-ann-arbor-bookstore-chain-borders-group-e-books/> (accessed February 16, 2016).

6 Professors Øystein Fjeldstad and Charles Stabell have developed a framework of three generic types of business models. We call the three business types solution shops, value-adding process (VAP)

businesses, and facilitated networks. Solution shops employ experienced, intuitively trained experts whose job is to diagnose problems and recommend solutions. High-end consulting, law, advertising firms, R&D organizations, and specialist physicians’ diagnostic activities in hospitals are examples of this type of business model: they diagnose problems and recommend solutions.

7 The availability of these DIY services has forced lawyers to reconsider pricing models for their work. For example, responding to LegalZoom and other DIY services, some firms now provide incorporation services to clients for free or at a lower fixed cost rate than they previously charged and use the provision of the services as a loss leader to gain future work.

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13 Although several experts in disruptive innovation have opined that Uber is not a disruptive innovation, we disagree.

Clayton Christensen, Michael Raynor, and Rory McDonald argue in “What is Disruptive Innovation?,” *Harvard Business Review*, December 2015, <https://hbr.org/2015/12/what-is-disruptive-innovation> (accessed February 16, 2016) that Uber does not meet the classic tests of a disruptive innovation because it did not originate in a low-end or new-market foothold and because it caught on with the mainstream quite rapidly in a way that has been described as being “better than” the incumbents.

If their analysis is right, then Uber is indeed not disruptive even as it may be successful.

But we think there is a misunderstanding in the origins of Uber’s business, the nature of its business model, and its subsequent growth. Clarifying its origins and this growth shows that Uber did follow the pattern of disruptive innovations and is indeed disruptive.

First, Uber started in an area of nonconsumption—among people who wanted to have a black car service but could not afford it. The Uber version of a black car was certainly not as good or reli-

able as booking through a traditional black limousine service, but it was better than the alternative, nothing at all, for these consumers. And for the drivers of the black limousines, Uber created business for them, as it increased their utilization and allowed them to make money by driving when they would have been otherwise idle.

For students of disruptive innovation, Uber's next move—to take on the taxi industry—seems counter-intuitive at first because it appears to be a march down-market as opposed to up-market. But for Uber to improve, grow, and ultimately build its profitability rather than just be a niche service that Lyft or one of its competitors might have swallowed up, it had to increase its capacity and availability, and the only viable market was the taxi market. Thus, this move we think appeared to be an up-market one from the perspective of Uber—counterintuitive to the broader market, and precisely why it was so effective, as disruptive innovations typically flip conventional wisdom around competition in an industry on its head.

To take on taxis, Uber created its UberX offering, which allowed people who owned any car to monetize their time by driving others. The seemingly high-end offering that Uber already had—its successful black car service—boosted Uber's reputation and likely reduced its marketing cost to acquire both customers and ordinary drivers, many of whom had never before driven to earn money, in the early going of the new UberX service, which likely made it more profitable than observers might imagine. In addition, because Uber's core technology asset in many ways represents a fixed cost, each additional user on its platform carries only a marginal cost and therefore represents pure profit; as such, even with the addition of support personnel and so forth as the platform has grown exponentially, disrupting the larger taxi market has represented more of an up-market move than it might at first appear from the outside.

And from the beginning, UberX cost significantly less than the comparable service from a taxi—the hallmarks of a low-end disruptive innovation at the very least, and potentially a new-market disruption as well in that Uber has served some nonconsumers of taxis who previously had opted for mass transit—as its technology platform eliminated the need for the middleman taxi services. Today its service remains lower cost than the comparable taxi service almost everywhere, from the United States to Vietnam. This elimination of the middleman and accompanying reduction in cost has helped Uber create asymmetries of motivation that make it hard for taxi services to respond effectively—another measure of whether something is disruptive. Because of how fast Uber has cut into their businesses, taxis of course have responded, but their introduction of apps or other technology solutions has missed and not responded to the fundamental innovation Uber's technology platform allowed, which was the elimination of the middleman taxi company that owns taxi medallions and often the cars themselves, as well as the role of the dispatcher.

By having a technology enabler that allowed it to strip out the middleman, Uber has also been able to improve rapidly and retain its low-cost value proposition, a key test of a disruptive innovation. Although many have said that Uber was better than taxis from the get-go, a strike against something being a disruptive innovation, this analysis ignores the fact that Uber's availability in many areas and at many times was far less reliable or predictable than the local taxi option, particularly in suburban areas just outside of cities, in situations where a customer would want to reserve a taxi in advance for a specific time, or in circumstances in which ordinary drivers did not want to be driving. By increasing capacity rapidly with the aid of its technology platform and its capacity for dynamic surge pricing, Uber has continued to improve along the same trajectory it did when it launched UberX after UberBlack and tackle these more complicated

problems where there is less population density, timing is critical for customers, or there are fewer cars at a particular hour or in a particular circumstance. Thus, although Uber may now be better than a taxi service in many areas and situations, it wasn't always so. The slope of Uber's improvement has just been extremely rapid.

There are also certain circumstances in which taxis are still arguably better than Uber, which further illustrates Uber's disruptive origins. For example, because of regulations governing who can pick up at certain airports and how, for customers needing to get in a car as soon as they land, Uber can be a risky, unpredictable substitute for a taxi. The history of disruptive innovation, however, suggests that these regulations that preserve the status quo will likely fade away over time, and Uber will improve to serve these situations as well with its lower cost value proposition.

Perhaps the most compelling point suggesting that Uber is not disruptive comes from Scott Anthony's observation in his piece "How Understanding Disruption Helps Strategists," *Harvard Business Review*, November 18, 2015, <https://hbr.org/2015/11/how-understanding-disruption-helps-strategists> (accessed February 16, 2016). In the piece, he writes, "If you compare the snapshots of Uber and Airbnb on Crunchbase one fact stands out: Uber has had to raise 3.5 times the amount of capital Airbnb has raised (\$8.2 billion versus \$2.3 billion) even though it is a younger company. Uber knows its battle against incumbents will prove costly." Anthony's argument in essence is that Uber has to spend a lot of money because it is in a head-to-head confrontation with the incumbents as opposed to a disruptive one where it would not need to spend as much money. That said, we think the nature of Uber's business, which operates in a different market from Airbnb, its rapid progress and growth, its competition from Lyft, and its loftier ambitions of replacing car ownership, likely

helps explain why it has raised this much capital and yet still is disruptive.

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17 "2015 IATR 28th Annual Conference Program," International Association of Transportation Regulators, http://www.utrc2.org/sites/default/files/Conference-Program_0.pdf.

18 "Transformation of Business Process Outsourcing: Business Models, Technology Enablement and M&A Themes in the Growing and Fragmented BPO Sector," Baird, Spring 2015, <http://content.rwbaird.com/RWB/Content/PDF/InvestmentBanking/transformation-of-business-process-outsourcing-highlights.pdf>. See also "LPO growth leads to increased merger activity," *The Global Legal Post*, May 5, 2015, <http://www.global-legalpost.com/management-speak/lpo-growth-leads-to-increased-merger-activity-90531119/> (accessed February 16, 2016).

19 The highest court in South Carolina recently found that LegalZoom's work does not constitute the unauthorized practice of law. Other cases in California, Washington, and Missouri were settled and in Alabama and Ohio the cases were dismissed. Robert Ambrogi, "Latest legal victory has LegalZoom poised for growth," *ABA Journal*, August 1, 2014, http://www.abajournal.com/magazine/article/latest_legal_victory_has_legalzoom_poised_for_growth (accessed February 16, 2016).

20 Ambrogi.

21 Some, but not all, state bars offer reciprocity to lawyers who are admitted to practice in other states. In such cases, lawyers admitted to practice in one state are allowed to apply for bar admission in a second state without taking the second state's bar examination.

22 "Report and Recommendations," American Bar Association's Task Force on the Future of Legal Education, January 2014, p. 24, http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

23 "Report and Recommendations," p. 33.

24 The Washington State LLLT educational requirements are more flexible (some courses are offered online), less time-consuming (courses can be completed part time in less than two years), and less costly (less than \$10,000) than obtaining a JD degree. To qualify for the LLLT license, applicants must have completed 45 credit hours of required courses, including civil procedure, interviewing and investigation techniques, legal research, writing and analysis, and professional re-

sponsibility (30 credit hours), and 15 credit hours of family law courses. For a limited period of time, the educational requirements are waived for individuals who passed a certified paralegal exam, retain active paralegal certification, and have at least 10 years of substantive law-related work experience supervised by a licensed lawyer. The work experience can be full or part time, externship or internship, paid or volunteer.

25 "Paralegals: Pilot Project," The Law Society of British Columbia, December 31, 2014, <https://www.lawsociety.bc.ca/page.cfm?cid=4029&t=Paralegals:Pilot-Project> (accessed February 16, 2016).

26 "Paralegal Licensing Frequently Asked Questions," The Law Society of Upper Canada, January 2016, <http://www.lsuc.on.ca/licensingprocess-paralegal.aspx?id=2147491230> (accessed February 16, 2016).

27 Jacob Gershman, "Law School Applicant Pool Still Shrinking," *The Wall Street Journal's Law Blog*, April 23, 2015, <http://blogs.wsj.com/law/2015/04/23/law-school-applicant-pool-still-shrinking/> (accessed February 16, 2016).

28 Jerry Organ, "The Composition of Graduating Classes of Law Students—2013–2016—Part One," *The Legal Whiteboard*, December 29, 2014, <http://lawprofessors.typepad.com/legalwhiteboard/2014/12/the-composition-of-graduating-classes-of-law-students-2013-2016-part-one.html> (accessed February 16, 2016).

29 The U.S. News ranking system considers criterion such as the school's acceptance rate, the LSAT score and undergraduate grade point averages (GPAs) of its incoming class, the bar passage and job placement rates of the school's graduat-

ing class, and the school's reputation among other law schools and among practicing lawyers and judges. Although many of the criteria are outside an individual school's ability to control, the undergraduate GPAs and LSAT scores of the school's incoming class are within its control. See also Archer, pp. 10–11.

30 Archer, p. 27.

31 For an explanation of this phenomenon and the breaking business model of traditional higher education, see Clayton M. Christensen, Michael B. Horn, Louis Caldera, and Louis Soares, "Disrupting College: How Disruptive Innovation Can Deliver Quality and Affordability to Postsecondary Education," Center for American Progress, February 2011, https://cdn.americanprogress.org/wp-content/uploads/issues/2011/02/pdf/disrupting_college.pdf. See also Michael B. Horn, "Yale's struggles signal broader challenges ahead for colleges," *Forbes.com*, November 14, 2013, <http://www.forbes.com/sites/michaelhorn/2013/11/14/yales-struggles-signal-broader-challenges-ahead-for-colleges/#5f9d47f14e71> (accessed February 16, 2016).

32 William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Shulman, "Educating Lawyers Preparation for the Profession of Law," Carnegie Foundation for the Advancement of Teaching, 2007, http://archive.carnegie-foundation.org/pdfs/elibrary/elibrary_pdf_632.pdf.

33 Alicia Albertson, "Pre-law students want legal education to change," *preLaw*, August 5, 2013, <http://www.nationaljurist.com/content/pre-law-students-want-legal-education-change> (accessed February 16, 2016).

34 Sarah Kellogg, "The Professional Development Imperative: Ongoing Training Keeps New Lawyers Invested," *Washington Lawyer*, vol. 29, no. 11, July/August 2015, p. 24.

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40 Michelle R. Weise and Clayton M. Christensen, *Hire Education* (San Mateo, CA: Clayton Christensen Institute, 2014), p. 4.

41 Most did not spend a significant amount of time practicing law; the average law professor has around three years of practical experience. See Brent Evan Newton, "Preaching What They

Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy," *South Carolina Law Review*, vol. 62, no. 105, 2010, pp. 105–156.

42 Weise and Christensen.

43 Witness the emerging selection of online courses offered on e-Discovery, for example.

44 Charles Kamasaki, Susan Timmons, and Courtney Trudi, "Immigration Reform and Administrative Relief of 2014 and Beyond: A Report on Behalf of the Committee for Immigration Reform Implementation (CIRI), Human Resources Working Group," *Journal on Migration and Human Security*, vol. 3, no. 3, 2015, p. 283.

45 Migration and Refugee Services/United States Conference of Catholic Bishops, "Unlocking Human Dignity: A Plan to Transform the US Immigrant Detention System," *Journal on Migration and Human Security*, vol. 3, no. 2, 2015, p. 194.

46 In addition, there appears to be some winds behind the sails of competency-based learning in legal education, as the University of North Texas-Dallas College of Law recently opened to provide a low-cost legal education geared toward developing "practice-related competencies." Although the program doesn't actually offer competency-based learning, its emphasis on learning-to-practice and identifying key competencies for training lawyers could provide a strong foundation for other competency-based learning programs to follow. See "About UNT Dallas College of Law," UNT Dallas College of Law, <https://lawschool.untsystem.edu/about> (accessed February 16, 2016) and Archer, p. 13.

About the Institute

The Clayton Christensen Institute for Disruptive Innovation is a nonprofit, nonpartisan think tank dedicated to improving the world through disruptive innovation. Founded on the theories of Harvard professor Clayton M. Christensen, the Institute offers a unique framework for understanding many of society's most pressing problems. Its mission is ambitious but clear: work to shape and elevate the conversation surrounding these issues through rigorous research and public outreach. With an initial focus on education and health care, the Institute is redefining the way policymakers, community leaders, and innovators address the problems of our day by distilling and promoting the transformational power of disruptive innovation.

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