

by J.B. Ruhl

Preparing Students for the Big Reinvention in Law

Although the law, legal practice, and legal education are constantly evolving, the three sides of the legal triangle have not, in the past century, experienced as much pressure as they do today. These domains have all become moving targets of change that goes beyond a linear extrapolation of the past. Words like reinvention, structural change, transformation, and paradigm shift are frequently used to describe their future. What happened? How did it get to this, and where is it all going? Nobody knows for sure, though many commentators have expressed views ranging from measured analysis to hype and spin.

With 12 years in private practice and going on 20 in academia, I have a vested interest in what the new legal horizons look like—not for my own career-planning purposes, but for my students'. What do I tell them to do about this big reinvention? Following are one legal educator's efforts to unpack what is happening in law, legal practice, and legal education into a set of themes that a law student or young practitioner could use to guide his or her career path.

First, let's take the law itself. The substance and procedure of law have always been in flux, but the path and pace of change have remained fairly stable since the New Deal invented the regulatory state almost a century ago. Doctrinal change was inherent in the common law, and still is, but the pace is glacial. By contrast, the regulatory state relies on its capacity to change in real time as new policy challenges demand new legal instruments and institutions. Yet, while countless new laws and administrative agencies have come and gone since the 1930s, they all have mostly followed the same model and procedure.

Since the beginning of the regulatory state, lawyers have not been swayed by legislative pushes for new regulations or new agency acronyms. What is on the horizon today, however, is something completely different. Climate change, globalization, polarized politics, sea changes in social norms, and wildly rapid technological advances have combined to create a hyperdynamic legal environment unlike anything experienced in relevant historical time frames.¹ The regulatory state struggles to keep up, and calls for new institutional arrangements and novel legal instruments grow louder. Truly, it's anyone's guess as to where law is headed over the next few decades.

As for legal practice, the private law firm model hasn't changed

much either since the Cravath firm forged the partner–associate pyramid structure in the 1920s.² Firms around the nation quickly adopted the “up or out” retention practice and based client relations on the billable hour, producing a relatively stable and prosperous private practice world through the 1970s. This model gave way for young lawyers to enjoy their post-graduate apprenticeships—unlike young doctors slogging away in residencies—basking in generous salaries financed by firm clients paying billable hour rates set high enough to support both associates' salaries and the partners' profit margins.

However, the staid private firm model began to unravel in the late 1980s, as lateral partner movement became more common, firms began to adopt the non-equity partner category, and firm size began to explode. Law firms started to behave more like businesses, with chief financial officers and lots of number crunching. Still, even as recently as 2005, law firms looked pretty much the same as they had for 80 years. Signs of more fundamental change began to surface, though, as storied firms began to consolidate and—the unthinkable—to fail.

The tipping point was a combination of the Great Recession, which forced corporate in-house counsel to demand more for less, and the law technology movement, which made it increasingly possible to meet this demand.³ To put it bluntly, corporate law firm clients are no longer willing or able to support the associate-heavy, billable-hour firm pyramid structure, and they are willing to turn to outsourcing and other providers to take advantage of the new law + tech industry. The race to build a better legal services provider model is now well underway.

Legal education institutions cannot ignore either of these two trends. Law schools also have had a relatively stable run of it since Christopher Columbus Langdell introduced the case study method at Harvard in the late 1800s, which was eventually adopted by law schools throughout the nation.⁴ Even the demand for more skills-based instruction, which has surfaced and boiled over several times in the past 20 years, has not shaken law schools from a pedagogical model conceived more than a century ago.

But law schools now face three fundamental challenges. First, the sheer number of institutions—more than 200—and escalating tuitions do not match up well with a changing and more demanding

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market for legal services. Second, legal education, still firmly locked into the case study method, has focused primarily on studying what the law was and is, which may no longer sufficiently prepare students for a world where law is headed into uncharted territory. Third, if law firms can no longer finance the apprenticeship period of lawyer education through billable hours charged to clients, who will? Government agencies and non-governmental organizations (NGOs), which depend heavily on law firms to produce trained lawyers they could hire away, are not stepping in to fill the gap. All eyes are turning to law schools, as if they could produce fully formed lawyers in just three years.

and ride the crest of change as much as any seasoned attorney—indeed, perhaps their blank slate of experience makes them better suited to accept radical change. Hence, law students should seize every opportunity in their three years to learn not just what the law was and is, but what it will be. For example, rather than writing a seminar paper on how lower courts have interpreted a Supreme Court case from 20 years ago, try writing one that predicts how lower courts will interpret a Supreme Court case decided last week or how some emerging technology like 3D printing will shake up patent and copyright law.

As for entering legal practice, now more than ever I advise stu-



It's delusional to dismiss this as a temporary blip that will revert to the good old days as soon as...as soon as what? As soon as climate change, globalization, and technology stop transforming the legal world around us? As soon as law firm clients find deep pockets and fall in love with the billable hour again? As soon as law firms decide to subsidize three years of highly compensated lawyer apprenticeships on their own dime? As soon as new law graduates burdened with debt agree to apprentice for three years for pittance? As soon as new lawyers are in high demand again? As soon as law schools figure out how to squeeze the basic legal education and legal apprenticeship into three years of debt-free education? You get the idea. The past is history—it's time to adapt.

So, what do I tell students when they seek advice for navigating this no-analog future? First, as scary as radical legal change is, they should look at it as an unbounded opportunity. Expertise is short-lived when the legal landscape is rapidly shifting, meaning a new lawyer can catch up to a senior lawyer all that more quickly. I advise students to jump on legal change with an entrepreneurial spirit. They have every reason to believe they can shape the future

and to above all else find a job that puts the J.D. degree to work, even if it is not the dream job. There is no way to sugar coat the effects the changes in demand for legal services have had on employment opportunities, particularly in large private law firms. Those jobs remain, but securing one and holding on to it will require more than just showing up. Law students who can afford to diversify their employment search should also actively seek government, corporate, and NGO jobs. They should also explore the "J.D. preferred" job category, which includes many policy institutions, trade associations, and even the growing law + tech sector.⁵ In all cases, students should demonstrate the capacity to adapt to legal change, even to take advantage of it, and exhibit a keen awareness of the economic and technological forces changing the way legal services are provided. I tell them that advancement in any legal employment setting will increasingly be based on performance, not tenure, so be prepared to work hard, adapt, be efficient, and be effective at what you do.

Law students should also demand that law schools provide

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an American school, which was established in at William and Mary.) See Friedman, *supra* note 5, at 320; McManis, *supra* note 7, at 609.

⁹Kendall, *supra* note 4, at 66.

¹⁰McManis, *supra* note 7, at 618.

¹¹David Clark, LEGAL EDUCATION AND THE LEGAL PROFESSION, IN INTRODUCTION TO THE LAW OF THE UNITED STATES 14 (D. Clark & T. Ansay, eds. 2002); McManis, *supra* note 7, at 618.

¹²Clark, *supra* note 11, at 14.

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.* at 15.

¹⁶Jutta Brunée, *The Reform of Legal Education in Germany: The Never-Ending Story and European Integration*, 42 J. LEG. ED. 399, 414 (1992).

¹⁷John H. Wigmore, *The Legal Clinic* (1917), in THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 876-879 (Steve Sheppard ed. 1999).

¹⁸Clark, *supra* note 11, at 15.

¹⁹*Id.*

²⁰*Id.* at 15.

²¹*Id.* at 21.

²²*Id.*

²³George S. Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 175 (1974).

²⁴American Bar Association, SECTION ON LEGAL EDUCATION AND ADMISSION TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF LAW SCHOOLS (1979).

²⁵American Bar Association, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (July 1992) [hereinafter ABA Report].

²⁶Roy Stuckey et al., BEST PRACTICES FOR LEGAL EDUCATION (2002).

²⁷William M. Sullivan et al., EDUCATING LAWYERS: PREPARATION FOR

THE PROFESSION OF LAW (2007).

²⁸NYSBA Report on the Task Force of the Future of the Legal Profession, April 2, 2011; California Bar Association, Task Force on Admissions and Regulation Reform, Working Group Drafting Proposals for Discussion: Phase 1 (Version 2/12/13).

²⁹Clark, *supra* note 11, at 25.

³⁰ABA Report, *supra* note 25, at 75.

³¹*Id.* at 73.

³²*Id.* at 76 (indicating at least one law school offers eleven different in-house clinics and another offers fourteen off-site clinics).

³³*Id.* at 77.

³⁴2012-2013 ABA Standards and Rules of Procedure for Approval of Law Schools, Standard 302 (a)(3).

³⁵Sherry Karabin, *Law Firms Prepare Their New Associates*, CHICAGO LAWYER, September 1, 2012; Joe Palazzolo, *First-Year Associates: Are They Worth It?*, WALL ST. J. L. BLOG, Sept. 17, 2011.

³⁶Lincoln Caplan, *An Existential Crisis for Law Schools*, SUNDAY OBSERVER, July 14, 2012.

³⁷*Id.*

³⁸*Prepared for the Profession: Washington and Lee University School of Law Brochure*, [law.wlu.edu/deptimages/career%20planning/3L%20\(2\).pdf](http://law.wlu.edu/deptimages/career%20planning/3L%20(2).pdf)

³⁹Ethan Bronnier, *To Place Graduates, Law Schools are Opening Firms*, N.Y. TIMES, March 7, 2013, as corrected March 9, 2013.

⁴⁰*The Third Year in Detail*, WASHINGTON AND LEE SCHOOL OF LAW, law.wlu.edu/thirdyear/page.asp?pageid=651.

⁴¹*College of Law to Launch Teaching Law Firm in Summer 2013*, SANDRA DAY O'CONNOR COLLEGE OF LAW, www.law.asu.edu/News/CollegeofLawNews.aspx?NewsId=4416.

⁴²David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011.

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them with the foundations they need to do the above. This does not require overhauling the core of the legal education system, which has worked pretty well for more than a century. First-year law students will always need a solid grounding in what the law was and is—lawyers need domain knowledge just as much as doctors and accountants do. While a cliché, law school should teach you to “think like a lawyer”—who wants to hire a lawyer who can’t think like one? But thinking like a lawyer is not the same today as it was 100, or even 25, years ago. Law schools must challenge students to think about the legal future. How will climate change influence property law? How will liability law respond to robotics and human bioengineering? How will energy regulation law need to change to accommodate a renewable energy future? How can lawyers draw from nonlegal disciplines such as scenario planning and change forecasting to focus on the social, economic, technological, and environmental forces of the future that will put pressure on law to change and will open up new legal opportunities? How can lawyers use the emerging law + tech tools to enhance service to clients? How can lawyers reconceive the way they deliver legal services? At Vanderbilt Law School, for example, we have launched a new upper-level elective called Law Practice in 2050 to put students in the position of asking and answering questions like these.

New lawyers looking ahead to a career of 30 to 40 years must

anticipate the possibility of sea changes in their chosen fields as climate change, globalization, technological advancements, demographic shifts, and other forces put stress on existing legal doctrine and demand new institutions and new legal tools. The most successful lawyers participate in these processes and take anticipatory steps to adapt rather than simply watch them happen and react. My objective as a legal educator is to help my students think this way, so they are prepared for the big reinvention. Are you prepared? ☉

Endnotes

¹For examples of how climate change adaptation will demand new legal doctrines and regulatory responses, see *The Law of Adaptation to Climate Change: U.S. and International Aspects* (Michael B. Gerrard and Katerina Fischer Kuh, eds., ABA Press, 2012).

²See Cravath, Swain and Moore, LLP, *The System's History*, www.cravath.com/systemshistory.

³See Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (2010)

⁴For a contemporary's account of Langdell's transformation of legal education, see Charles W. Eliot, *Langdell and the Law School*, 33 HARV. L. REV. 518 (1920).

⁵This is a theme of Richard Susskind's more recent book, *Tomorrow's Lawyers: An Introduction to Your Future* (2013).