

A COUNTERPOINT TO “THE MOST ROBUST LEGAL MARKET THAT EVER EXISTED IN THIS COUNTRY”

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There is a line in Professor Reich-Graefe’s recent essay, *Keep Calm and Carry On*, 27 Geo. J. Legal Ethics 55 (2014), that is attracting a lot of interest among lawyers, law students, and legal academics:

[R]ecent law school graduates and current and future law students are standing at the threshold of the most robust legal market that ever existed in this country—a legal market which will grow, exist for, and coincide with, their entire professional career.

This hopeful prediction is based on various trendlines, such as impending lawyer retirements, a massive intergenerational transfer of wealth that will take place over the coming decades, continued population growth, and the growing complexity of law and legal regulation.

Although I am bullish on future growth and dynamism in the legal industry, and I don't dispute the accuracy or relevance of any of the trendlines cited by Reich-Graefe, I think his primary prescriptive advice -- in essence, our problems will be cured with the passage of time -- is naive and potentially dangerous to those who follow it

THE ARTISAN LAWYER CANNOT KEEP UP

The primary defect in Reich-Graefe's analysis is that it is a one-sided argument that stacks up all impending positive trendlines without taking into account the substantial evidence that the artisan model of lawyering -- one-to-one consultative legal services that are tailored to the needs of individual clients -- is breaking down as a viable service delivery model.

Lawyers serve two principal constituencies--individuals and organizations. This is the Heinz-Laumann "Two-Hemisphere" theory that emerged from the Chicago Lawyers I and II studies. See Heinz et al, *Urban Lawyers* (2005). The breakdown in the artisan model can be observed in both hemispheres.

1. **People.** Public defenders are understaffed, legal aid is overwhelmed, and courts are glutted with pro se litigants. Remarkably, at the same time, record numbers of law school graduates are either unemployed or underemployed. Why? Because most

poor and middle-class Americans cannot afford to buy several hours of a lawyer's time to solve their legal problems.

2. **Organizations.** The most affluent organizations, multinational corporations, are also balking at the price of legal services. As a result, foreign labor, technology, process, or some combination thereof has become a replacement for relatively expensive and unskilled junior lawyers.

The primary driver of this structural shift is the relentless growth in legal complexity. This increase in complexity arises from many sources, including globalization, technology, digitally stored information, and the sheer size and scope of multinational companies.

But here is a crucial point: the complexity itself is not new, only its relative magnitude. A century ago, as the modern industrial and administrative state was beginning to take shape, lawyers responded by organizing themselves into law firms. The advent of law firms enabled lawyers to specialize and thus more cost-effectively tackle the more complex legal problems. Further, the diffusion of the partner-associate training model (sometimes referred to as the Cravath system) enabled firms to create more specialized human capital, which put them in an ideal position to benefit from the massive surge in demand for legal services that occurred throughout the 20th century. See Henderson, *Three Generations of Lawyers:*

Generalists, Specialists, Project Managers, 70 Maryland L Rev 373 (2011).

The legal industry is at the point where it is no longer cost effective to deal with this growing complexity with ever larger armies of artisan-trained lawyers. The key phrase here is cost effective. Law firms are ready and willing to do the work. But increasingly, clients are looking for credible substitutes on both the cost and quality fronts. Think car versus carriage, furnace versus chimney sweep, municipal water system versus a well. A similar paradigm shift is now gaining momentum in law.

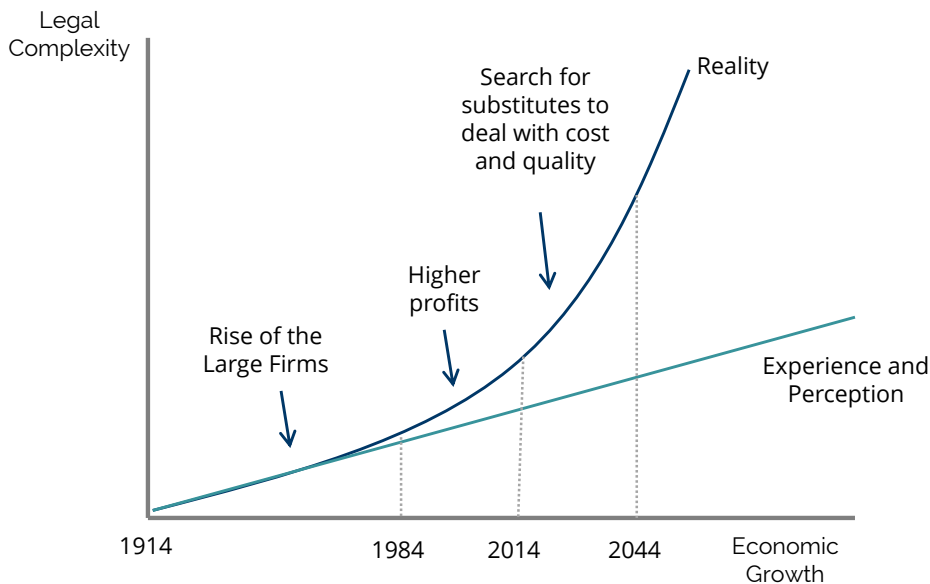
THE NEW LEGAL ECONOMY

I have generated the graph below as a way to show the relationship between

economic growth, which is the engine of U.S. and world economies, and the legal complexity that accompanies it.

This chart can be broken down into three phases.

- 1. Rise of the law firm.** From the early twentieth century to the early 1980s, the increasing complexity of law could be capability handled by additional law firm growth and specialization. Hire more junior lawyers, promote the best ones partner, lease more office space, repeat. The complexity line has a clear bend it in. But for most lawyers, the change is/was very gradual and feels/felt like a simple linear progression. Hence, there was little urgency



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about the need for new methods of production.

2. **Higher law firm profits.** Over the last few decades, the complexity of law outpaced overall economic growth. However, because the change was gradual, law firms, particularly those with brand names, enjoyed enough market power to perennially increase billing rates without significantly improving service offerings. Corporate clients paid because the economic benefits of the legal work outweighed the higher costs. Lower and middle class individuals, in contrast, bought fewer legal services because they could not afford them. But as a profession, we barely noticed, primarily because the corporate market was booming. See Henderson, *Letting Go of Old Ideas*, 114 Mich L Rev 101 (2014).
3. **Search for Substitutes.** Laws firms are feeling discomfort these days because the old formula -- hire, promote, lease more space, increase rates, repeat -- is no longer working. This is because clients are increasingly open to alternative methods of solving legal problems, and the higher profits of the last few decades have attracted new entrants. These alternatives are some combination of better, faster, and cheaper. But what they all share

in common is a greater reliance on technology, process, and data, which are all modes of problem-solving that are not within the training or tradition of lawyers or legal educators. So the way forward is profoundly interdisciplinary, requiring collaboration with information technologists, systems engineers, project managers, data analysts, and experts in marketing and finance.

Why is this framework potentially difficult for many lawyers, law firms, and legal educators to accept? Probably because it requires us to cope with uncertainties related to income and status. This reluctance to accept an unpleasant message creates an appetite for analyses that say “keep calm and carry on.” This is arguably good advice to the British citizenry headed into war (the origin of the saying) but bad advice to members of a legal guild who need to adapt to changing economic conditions.

There is a tremendous silver lining in this analysis. Law is a profoundly critical component of the globalized, interconnected, and highly regulated world we are entering. Lawyers, law firms, and legal educators who adapt to these changing conditions are going to be in high demand and will likely prosper economically. Further, at an institutional level, there is also the potential for new hierarchies to emerge that will rival and eventually supplant the old guard.

EXAMPLES

One of the virtues of lawyers is that we demand examples before we believe something to be true. This skepticism has benefited many a client. A good example of the emerging legal economy is the Available Positions webpage for kCura, which is a software company that focuses exclusively on the legal industry.

The current legal job market is terrible, right? Perhaps for entry-level artisan-trained lawyers. But at kCura, business is booming. Founded in 2001, the company now employs over 370+ workers and has openings for over 40 full-time professional positions, the majority of which are in Chicago at the company's LaSalle Street headquarters. Very few of these jobs require a law degree -- yet the output of the company enables lawyers to do their work faster and more accurately.

What are the jobs?

- API Technical Writer [API = Application Programming Interface]
- Big Data Architect - Software Engineering
- Business Analyst
- Enterprise Account Manager
- Group Product Manager
- Litigation Support Advice Analyst
- Manager - Software Engineering
- Marketing Associate
- Marketing Specialist -- Communications
- Marketing Specialist -- Corporate

rate Communications and Social Media

- Product Manager -- Software and Applications Development
- QA Software Engineer -- Performance [QA = Quality Assurance]
- Scrum Team Coordinator [Scrum is a team-based software development methodology]
- Senior Salesforce Administrator
- Software Engineer (one in Chicago, another in Portland)
- Software Engineer (Front-End Developer) [Front-End = what the client sees]
- Software Engineer in Test [Test = finds and fixes software bugs]
- Technical Architect
- Technical Architect - Security
- VP of Product Development and Engineering

kCura operates exclusively within the legal industry, yet it has all the hallmarks of a great technology company. In the last few years it has racked up numerous awards based on the quality of its products, its stellar growth rate, and the workplace quality of life enjoyed by its employees.

Deloitte.
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That is just what is happening at kCura. There are many other companies positioning themselves to take advantage of the growth opportunities in legal, albeit none of them bear any resemblance to traditional law firms or legal employers.

In early February, I attended a meeting in New York City of LexRedux, which is comprised of entrepreneurs working in the legal start-up space. In a 2008 essay entitled “Legal Barriers to Innovation,” Professor Gillian Hadfield queried, “Where are the ‘garage guys’ in law?” Well, we now know they exist. At LexRedux, roughly 100 people working in the legal tech start-up space were jammed into a large open room in SoHo as a small group of angel investors and venture capitalists fielded questions on a wide range of topics related to operations, sales, and venture funding.

According to Angel’s List, there are as of this writing 434 companies identified as legal start-ups that have received outside capital. According to LexRedux founder Josh Kubicki, the legal sector took in \$458M in start-up funding in 2013, up from essentially zero in 2008. See Kubicki, *2013 was a Big Year for Legal Startups; 2014 Could Be Bigger*, Tech Cocktail, Feb 14, 2014.

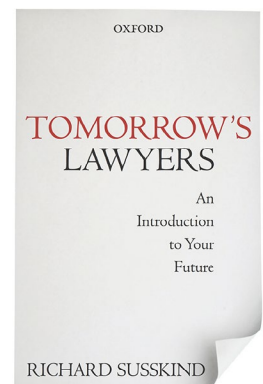
The legal tech sector is starting to take shape. Why? Because the imperfections and inefficiencies inherent in the artisan model create a tremendous economic opportunity for new entrants. For a long period of time, many commentators believed that this type of entrepreneur-

ial ferment would be impossible so long as Rule 5.4 was in place. But in recent years, it has become crystal clear that when it comes to organizational clients where the decisionmaker for the buyer is a licensed lawyer (likely accounting for over half of the U.S. legal economy) everything up until the courthouse door or the client counseling moment can be disaggregated into a legal input or legal product that can be provided by entities owned and controlled by nonlawyers. See Henderson, *Is Axiom the Bellwether of Legal Disruption in the Legal Industry?* Legal Whiteboard, Nov 13, 2013.

THE LEGAL ECOSYSTEM OF THE FUTURE

In his most recent book, *Tomorrow’s Lawyers*, Richard Susskind describes a dynamic legal economy that bares little resemblance to the legal economy of the past 200 years. In years past, it was easier to be skeptical of Susskind because his predictions seemed so, well, futuristic and abstract. But anyone paying close attention can see evidence of a new legal ecosystem beginning to take shape that very much fits the Susskind model.

Susskind’s core framework is the movement of legal work along a five-part con-



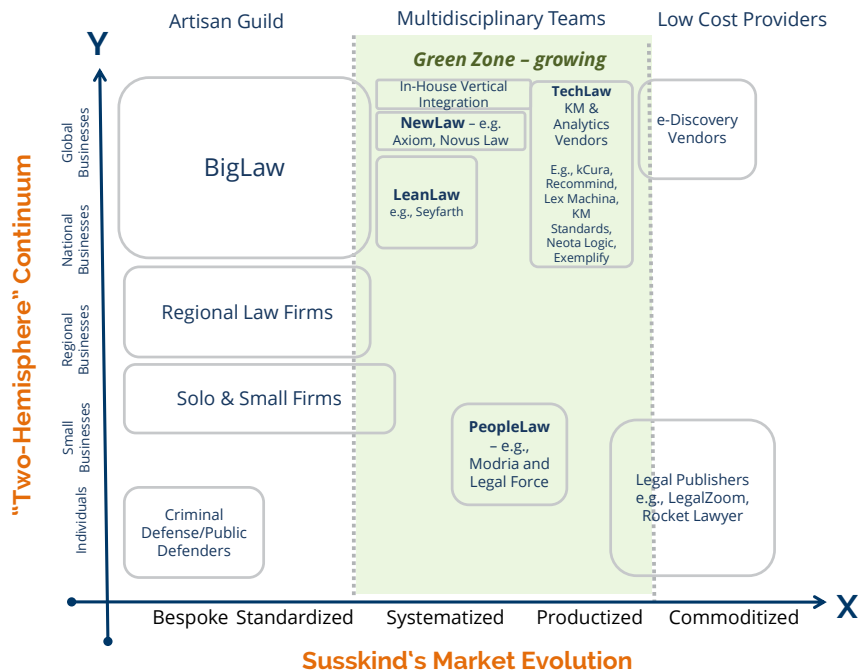
tinuum, from bespoke to standardized to systematized to productized to commoditized. Lawyers are most comfortable in the bespoke realm because it reflects our training and makes us indispensable to a resolution. Yet, the basic forces of capitalism pull the legal industry toward the commoditized end of the spectrum because the bespoke method of production is incapable of keeping up with the needs of a complex, interconnected, and highly regulated global economy.

According to Susskind, the sweet spot on the continuum is between systematized and productized, as this enables the legal solution provider to “make money while you sleep.” The cost of remaining in this position (that is, to avoid commoditiza-

tion) is continuous innovation. Suffice it to say, lawyers are unlikely to make the cut if they choose to hunker down in the artisan guild and eschew collaboration with other disciplines.

Below is a chart I have generated that attempts to summarize and describe the new legal ecosystem that is now taking shape [click-on to enlarge]. The y-axis is the Heinz-Laumann two-hemisphere framework. The x-axis is Susskind's five-part change continuum.

Those of us who are trained as lawyers and have worked in law firms will have mental frames of reference that are on the left side of the green zone. We tend to see things from the perspective of the artisan lawyer. That is our training and socializa-



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tion, and many of us have prospered as members of the artisan guild.

Conversely, at the commoditized end of the continuum, businesses organized and financed by nonlawyers have entered the legal industry in order to tap into portion of the market that can no longer be cost-effectively serviced by licensed U.S. lawyers. Yet, like most businesses, they are seeking ways to climb the value chain and grow into higher margin work. For example, United Lex is one of the leading legal process outsourcers (LPOs). Although United Lex maintains a substantial workforce in India, they are investing heavily in process, data analytics, and U.S. onshore facilities. Why? Because they want to differentiate the company based on quality and overall value-add to clients, thus staving off competition from law firms or other LPOs.

In the green zone are several new clusters of companies:

- **LeanLaw.** This sector is comprised of BigLaw that is transforming itself through reliance on process and technology. Seyfarth Shaw has become the standard-bearer in this market niche, see *What does a JD-Advantaged Job Look Like? A Job Posting for a "Legal Solutions Architect"*, Legal Whiteboard, Oct 15, 2013, though several other law firms have been moving under the radar to build similar capabilities.
- **NewLaw.** These are non-law firm legal service organizations

that provide high-end services to highly sophisticated corporations. They also rely heavily on process, technology, and data. Their offerings are sometimes called "managed services." Novus Law, Axiom, Elevate, and Radiant Law are some of the leading companies in this space.

- **TechLaw.** These companies would not be confused with law firms. They are primarily tool makers. Their tools facilitate better, faster, or cheaper legal output. kCura, mentioned above, works primarily in the e-discovery space. Lex Machina provides analytic tools that inform the strategy and valuation of IP litigation cases. KM Standards, Neota Logic, and Exemplify provide tools and platforms that facilitate transactional practice. In the future, these companies may open the door to the standardization of a wide array of commercial transactions. And standardization drives down transaction costs and increases legal certainty -- all good from the client's perspective.
- **PeopleLaw.** These companies are using innovative business models to tap into the latent people hemisphere. Modria is a venture capital-financed online dispute resolution company with DNA that traces back to PayPal and the Harvard Negotiations

Workshop. See *Would You Bet on the Future of Online Dispute Resolution (ODR)?* Legal Whiteboard, Oct 20, 2013. LegalForce is already an online tour de force in trademarks -- a service virtually every small business needs. The company is attempting to translate its brand loyalty in trademarks into to new consumer-friendly storefront experience. Its first store is in the heart of University Avenue in Palo Alto. LegalForce wants to be the virtual and physical portal that start-up entrepreneurs turn to when looking for legal advice.

that adapt and change to keep pace with the legal needs of the citizenry and broader society. And that task has barely begun.

CONCLUSION

When I write about the changes occurring the legal marketplace, I worry whether the substance and methodology of U.S. legal education provides an excellent education for a legal world that is gradually fading away, and very little preparation for the highly interdisciplinary legal world that is coming into being.

Legal educators are fiduciaries to our students and institutions. It is our job to worry about them and for them and act accordingly. Surely, the minimum acceptable response to the facts at hand is unease and a willingness to engage in deliberation and planning. Although I agree we need to stay calm, I disagree that we need to carry on. The great law schools of the 21st century will be those