



Legal Mosaic: Essays on Legal Transformation





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Preface

This is the 3rd volume in the LegalMosaic series in which my dear friend and Global Legal Industry Thought Leader Mark A. Cohen shares his valuable insights, knowledge, and experience on the transformation of the legal market.

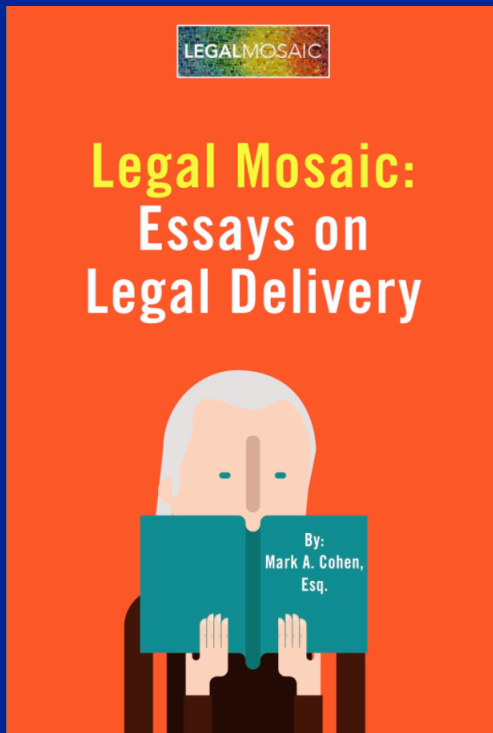
We all know by now that the legal market is changing and this once calm and stable marketplace has turned into a dynamic ecosystem in which change is inextricably linked to Growth, Maturity, and Sustainability. However, this is easier said than done. Change often means leaving your comfort zone, rethinking your business and economic models, and challenging your longstanding views. This eBook will certainly help you in this process.

In a witty, informative, and probing fashion, Mark succeeds in triggering you to reflect on the industry, your own practice, and the development of the legal profession. With his profound knowledge and experience—as a noted civil trial lawyer, managing partner, outside General Counsel, Receiver, entrepreneur, and legal innovator-- he invites you to think beyond your daily business and accept that changing market dynamics are an inseparable part of your success.

In conclusion; When reading the articles ask yourself ‘What is my opinion on this subject and what would or should I do?’ and I promise that it will be an invigorating, enlightening experience. Enjoy!

Joek Peters CEO LegalBusinessWorld

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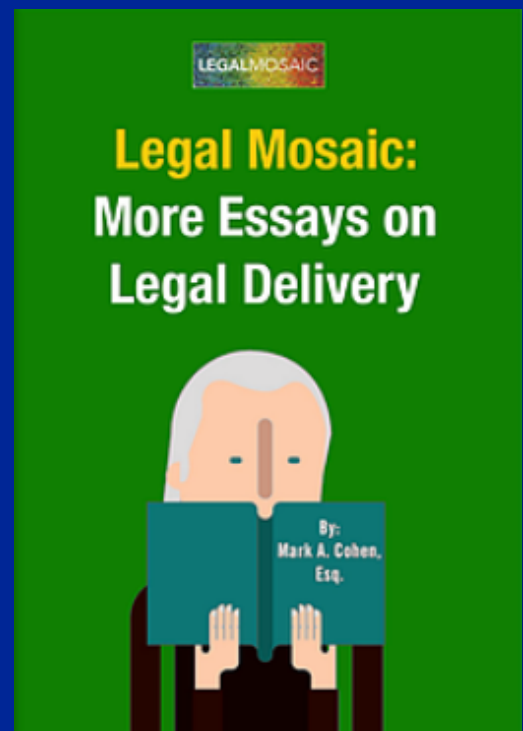


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What's A 'Law Company' and Why are Legal Consumers Embracing it?

A recent American Lawyer [article](#) by Roy Strom extolls the growth of 'alternative providers.' It focuses on The Corporate Legal Operations Consortium (CLOC), an oft-cited industry bellwether. Strom references a recent CLOC [survey](#) that reveals the growing use of 'alternative providers' (read: non-law firms) by corporate consumers, especially among the Fortune 500. Connie Brenton, CLOC's Chairman and chief of staff and director of legal operations at Net-App noted, "When a Fortune 500 GC sees that 46 percent of their peers have leveraged [a legal service outsource firm], it is not risky any longer."

Ms. Brenton's comment casts a bright light on the shifting legal services buy/sell dynamic. The CLOC survey confirms that: (1) it is changing; (2) legal buyers—especially the largest ones—are signalling that 'it's safe to use service providers, even for more complex work'; (3) that means that a tipping point has been reached where sourcing to 'alternative providers' becomes the norm—not an 'alternative' (necessitating new nomenclature for service providers); and (4) traditional law firm market share, already showing signs of softening, is projected to erode further. The big winners will be companies like Elevate and Axiom, the leading provider sources in the CLOC survey. Thomson Reuters and Adam Smith, Esq. project legal provider revenue will mushroom from \$2B in 2015 to \$55B by 2025. Law firm revenue is targeted to decline while in-house share will increase during this same time-frame. It's a changing marketplace indeed.

This begs the larger question: *why* is this market shift occurring and *what* is it about the new provider sources that consumers find attractive?

Market Change is About Elevated Consumer Expectations and Providers That Satisfy Them

Legal consumers—like buyers in other industries—have elevated provider expectations in the post-global financial crisis era. Providers of goods and services are expected to deliver on a ‘faster, better, cheaper’ basis. Consumers expect easier access to providers, more transparency and choice, faster delivery, lower cost, and instant, ongoing connectivity with providers. Corporate legal buying is no longer the exclusive province of in-house lawyers; procurement and the C-Suite—especially CFO’s—now routinely participate in legal buying decisions. Legal ‘services’ are not presumptively bespoke. In fact, the pendulum is shifting in the other direction. That means fewer ‘relationships’ and more metrics. Law has always been about admissible evidence and burden of proof *except* in the sale and purchase of its services-- until now. With procurement and the C-Suite in the purchase mix, the burden shifts to lawyers to show cause why sources other than law firms are required to handle non-differentiated work.

But what about the provider side? That’s the other element of the larger story of law’s metamorphosis from guild to digital marketplace. Initially, disaggregation—peeling ‘legal tasks’ from law firms and having them performed by other sources-- played out in two ways: (1) migration of work from law firms in-house (labor arbitrage); and (2) sourcing high-volume/low value and risk tasks--re-

search, document review, etc.-- to legal process outsourcers (labor arbitration and adoption of technology). The emergence of CLOC and The Association of Corporate Counsel Legal Operations group signals the digital phase of disaggregation. This involves melding technology and process to leverage ‘practice’-- differentiated legal skills, judgement, and expertise. By separating legal ‘practice’ from ‘delivery’ the legal industry has fashioned a new delivery paradigm. Legal delivery is no longer solely about lawyers and law firms deploying a labor-intensive, value-insensitive approach to all tasks they deem ‘legal.’ Consumers now decide what’s legal and when a lawyer is required. And consumers—not law firms—determine the appropriate resource--lawyer, other professional, paraprofessional, and/or machine—best suited to perform a task. The new delivery paradigm is also about automation, predictive tools, data, and analytics designed to enable consumers to detect legal problems before they metastasize and to solve business challenges that raise legal issues more quickly and efficiently.

Law is entering the digital age, and a handful of ‘alternative providers’—and the Big Four accounting firms-- are providing digital solutions to the legal marketplace. The new providers are filling a market demand fueled by the void created by law firms resistant to digitization because of its short-term, deleterious impact upon profit-per-partner. Law firm *hubris*, structure, economic model, culture, greed, and short-term perspective have opened the door to new providers and the unwillingness—or inability—of firms to effect material changes is starting to have significant economic impact.

CLOC and the Association of Corporate Counsel (ACC) Legal Operations groups embrace the separation of legal practice—differentiated skills, judgement, and knowledge that (some) lawyers possess—from the business of delivering legal services. That divide did not exist when the traditional law firms morphed into the large, multinational organizations many have become. While their clients increasingly relied on technology and process to manage their complex, geographically dispersed business(es), law firms resisted change and remained labor-intensive to sustain their economic model. Legal practice was—and remains—what firms sell. But with the confluence of the global financial crisis, the accelerated, pervasive impact of technology across all industries, and the inability of legal self-regulation to immunize ‘the legal island’ from their impact, law firms are selling a declining portion of what legal buyers are buying. To put it another way, legal practice is shrinking, and legal delivery is expanding. It’s easier to bolt legal expertise onto a digitized model than it is to transform a traditional law firm partnership model into a corporate digital one.

It is in response to this market shift and its underlying causes that companies like Elevate and Axiom—among others-- are garnering increased market share and wider use, especially among Fortune 500 companies. Liam Brown, Executive Chairman of Elevate, noted in the *American Lawyer* article that he expects the lines between law firms and ‘law companies’ --his description of Elevate and other evolved service providers-- will gradually blur. Brown posits that clients will determine the expertise required and where to find it, noting that it might come from more than one source.

The Reasons Behind the Growth of Law Companies

As the CLOC survey confirms, Elevate, Axiom, and other ‘law companies’ are answering consumers’ clarion call and the market void created by law firms. Law companies have a different DNA than law firms, one that is aligned with the digital age. They employ lawyers, but they are not lawyer-centric in delivering legal services. Technology, process, and a willingness to deploy ‘the right resource for the task’ also distinguish them from law firms (of whom they are a handful of exceptions, notably [Allen & Overy](#)).

Some additional distinctions between Liam Brown’s ‘law company’ and the traditional law firm include: (1) performance and reward structures that value output over input; (2) closer alignment with the financial and enterprise objectives of the consumer; (3) a corporate structure that takes a long-term, client-centric view over profit-per-partner; (4) continuous process improvement; (5) investment in technology; (6) focus on ‘the right resource for the task’; (7) compressed delivery time; (8) a continuous quest to use technology and process to automate tasks and gather ‘big data’ for benchmarking, predicting, and quantifying risk; (9) a transparent, 24/7/365 accessible connection with legal consumers; (10) supply chain management expertise; and (10) reduced cost.

Conclusion

The legal industry is undergoing a fundamental transformation. Law is no longer solely about lawyers; it is a three-legged stool comprised of law, technology and business. Law firms are no

longer the sole providers of legal services, nor are they arbiters of what is ‘legal’ or what requires a lawyer. The structure, economic model, and culture of law firms appears increasingly out-of-synch with a digital world. Consumers are dismantling the insular legal guild and embracing ‘law companies’—operating in the corporate and retail segments—that better serve the needs of consumers and society at large.

Law companies provide a much-needed client-centric approach to legal delivery. Their success will be determined by their ability to satisfy customer needs and expectations. And that will be measured by results, not profit-per partner.

What Are Law Schools Training Students For?

The legal profession and the trillion-dollar global industry are undergoing a transformation. The seminal elements of legal practice—differentiated expertise, experience, skills, and judgment—remain largely unchanged. The delivery of legal services is a different story altogether. New [business models](#), tools, processes, and resources are reconfiguring the industry, providing legal consumers with improved access and elevated customer satisfaction from new delivery sources. Law is entering the age of the [consumer](#) and bidding adieu to the [guild](#) that enshrined lawyers and the myth of legal exceptionalism. That’s good news for prospective and existing legal consumers.

The news is challenging for law schools, most of whom seem impervious to marketplace [changes](#) that are reshaping [what it means to be a lawyer](#) and how and for whom they will work. The National Advisory Committee on Institutional Quality and Integrity (NACIQI), a branch of the Department of Education, rebuked the American Bar Association (ABA) in 2016 for its lax law school oversight and poor “student outcomes.” Paul LeBlanc, a NACIQI member, concluded that the ABA was “out of touch with the profession.”

Law schools have made some strides during the past few years--experiential learning, legal technology, entrepreneurship, legal innovation, and project management courses, are becoming standard

fare. A far bigger—and more important step would be for the legal Academy to forge alignment with the marketplace. That would be a “win-win-win” for students, law schools, and legal providers/consumers. Students would be exposed to the “real world” and the skills, opportunities, and direction it is taking. The Academy would acquire context, use-cases, and an understanding of consumer challenges and needs—a strong foundation from which to remodel legal education and training, address the "[skills gap](#)," as well as to improve “student outcomes.” Legal providers/consumers would benefit from a talent pool better prepared to provide solutions to the [warp-speed pace](#) and complex challenges of business.

What Does It Mean To “Think like A Lawyer” Now?

Law schools have long focused on training students how to “think like a lawyer.” Their curricula were designed to: (1) hone critical thinking; (2) teach doctrinal law using the Socratic method; (3) provide “legal” writing techniques and fluency in the “language of law”; (4) advance oral advocacy and presentation skills; (4) encourage risk-aversion and mistake avoidance; (5) refine issue identification and “what ifs;” and (6) teach legal ethics. Practice skills were usually acquired post-graduation/ licensure by client-subsidized on-the-job-training.

Law schools still teach this way even as the marketplace has changed markedly, particularly during the past decade. Legal delivery is now a three-legged stool supported by legal, business, and technical expertise. Law is no longer solely about lawyers; law firms are not the default provider of legal services; legal practice is no longer synonymous with legal delivery; the legal buy/sell balance of power has

shifted from lawyers to legal buyers; lawyers do not control both sides of legal buy/sell; and the function and role of most lawyers is changing as digital transformation has made legal consumers—not lawyers—the arbiters of value. These changes are affecting what it means to “think like a lawyer” and, more importantly, what skills “legal” skills are required in today’s marketplace.

Legal knowledge was long the sole requisite for a legal career; now it is a baseline. “Thinking like a lawyer” today means focusing on client objectives, thinking holistically—not simply “like a lawyer,” understanding business, melding legal knowledge with process/project management skills, and having a working knowledge of how technology and data impact the delivery of legal services. Lawyers no longer function in a lawyer-centric environment—now, they routinely [collaborate](#) with other legal professionals, paraprofessionals, and machines. Thinking like a lawyer means understanding the client’s business—not simply its “legal” risks. It also means collaborating with others in the legal supply chain, ensuring that the “right” resources are deployed to drive client value, working efficiently, capturing intellectual capital, using data, and advancing client objectives.

Legal performance is shifting from input--hours and origination-- to output-- outcomes and results that drive client value. Lawyers must be attuned to the complexity and [speed](#) of business. They must render counsel that considers not only legal risk but also other factors such as brand reputation, regulatory, financial, etc. They must provide multi-dimensional, holistic, timely, and actionable advice. *This* is what the marketplace construes as “thinking like a lawyer.”

What Should Law Schools Train Students For?

Most law schools continue to train students for traditional practice careers, even as more “legal” work formerly performed exclusively by law firms has been disaggregated and is now increasingly sourced in-house, to [law companies](#), and to “legal” service providers from other disciplines—notably, the [Big Four](#). “Practice” careers are shrinking, and that means that law students and those in the early and mid-stages of their careers must learn new skills to qualify for the jobs that will replace them.

[Deloitte](#) projects that [39%](#) of all legal jobs will be automated within a decade. Many of those positions are currently filled by law firm associates who, through labor-intensity (read: high billable hours) and premium rates sustain the [traditional partnership model](#). That model is changing; law firms are hiring fewer newly-minted lawyers and only a small fraction of BigLaw associates make partner. Legal buyers are balking at paying premium rates for non-differentiated “legal” tasks. For many law grads, “gigs” are replacing full-time jobs, and the average lawyer can expect double-digit job changes during her/his career. “Knowing the law” is now a baseline that must be augmented by new skills that are seldom taught by law schools—data analytics, business basics, project management, risk management, and “people skills” to cite a few.

Why are most law schools slow to revamp curricula—even as many have spent tens of millions on new buildings that drive no value to students? And why is the Academy detached from other stakeholders in the legal ecosystem? There are many explanations for the disconnect between the legal Academy’s training and the market-

place's needs: the [ABA's protectionism](#) of the profession (read: dues-its dues-paying lawyer members); faculty indifference; focus on the profession, not its interplay with the industry; unwillingness to embrace pedagogical change; a narrow, anachronistic, self-serving interpretation of "scholarship," ranking fixation, a monolithic, undifferentiated approach to legal education/training, and an absence of meaningful performance metrics and accountability. Law schools have begun to pay the [price](#) for stasis—declining enrollment, fiscal pressure, migration of talent to other professions/business, and a torrent of negative press. What's to be done?

Law Schools Should Focus on Consumer Needs and The Skills Required to Satisfy Them

Businesses have different cultures, hiring criteria, target markets, and performance metrics—why not law schools? Most academics would respond, "The goal of business is profit—that's very different than an educational institution." Perhaps, but in today's world, profit is derived from customer satisfaction—a positive experience, a satisfying outcome, and value. Most law schools are receiving failing grades when measured by these criteria. They should, as Mary Juetten suggests in a recent article in the [ABA Journal](#), focus on outcomes. For Ms. Juetten, that includes adding metrics, going beyond substantive law, more practical experience (a/k/a experiential learning), doubling down on dispute resolution mechanisms, and finding solutions for the access to justice crisis by aligning tech products to material marketplace needs (use-case). Let's hope the ABA takes note of her recommendations.

There is no one-size fits all answer to the training issue, and that's

part of the problem. Law schools have largely undifferentiated curricula and train as if grads from all law schools are preparing for similar careers. That flies in the face of past, present, and future reality. A small band of elite, brand-differentiated law schools (“T-14”—perhaps 20) continue to prepare the bulk of graduates for “practice” careers at similarly brand differentiated law firms, in-house legal departments, law companies, as well as high-level Government, academic, and judicial careers. For the other 170 or so U.S. law schools, it’s a different story—but by no means a bleak one. There is enormous opportunity to train students to better serve law’s “retail” segment. Tens of millions of new legal consumers would enter the market if there were more new, efficient delivery models that better leverage lawyer time utilizing technology, process, data, metrics, and a client-centric business structure. So too are there opportunities for grads of non-elite schools trained in data analytics, project management, knowledge management, and a plethora of other “business of law” positions—many of which have yet to be created.

All law schools should provide grads with: a command of doctrinal law “basics” including legal ethics; critical thinking; people and collaboration skills; business, tech, and data analytics basics; marketplace awareness; a learning-for-life mentality; and an understanding that law is a profession and a business. Law schools must also train students to be client/customer centric. This is far more important than the “lawyer-centric” approach of the past. Students must graduate with a grasp of what legal consumers expect of lawyers; what skills are necessary to satisfy those expectations; and what additional/ongoing training will be necessary to drive client value? A law school diploma is no longer the end of one’s formal education—it is a baseline in a lifelong process. This presents a

challenge and opportunity for law schools to be the principal source of that ongoing training.

Conclusion

Law schools must become better aligned with the marketplace. It's consumers—not lawyers-- that now decide how and when lawyers are deployed. This is a path previously traveled by physicians, accountants, and other professions. Service professions—like businesses--must *serve* the needs of consumers. Those needs are not static. That's why law schools cannot remain static and must adapt more fluid curricula to meet the needs of legal consumers, not their own.

There Is Nothing “Alternative” About New Model Providers--Especially the Big Four

Thomson Reuters will soon release its second biennial “Alternative Legal Service Study.” The [inaugural study](#) popularized the “alternative legal service provider” (ALSP) moniker to describe a new breed of “legal” providers with different economic models, structures, expertise, and DNA than traditional law firm partnerships. The study separates ALSP’s into different categories: captive and independent legal process outsourcers (LPO’s), managed legal services, staffing companies, and “accounting and audit firms.” The latter group refers principally to the Big Four, the collective name given to Deloitte, Ernst & Young, PricewaterhouseCoopers, and KPMG, the world’s four largest professional services networks. Each operates under a unified brand that ranks at or near the top of the [most respected](#) global professional service providers, has 9-12X revenues of the world’s top-grossing law firms, and employs thousands of attorneys--not to mention many more legal professionals. Not all ALSP’s are created equal.

What is most significant about ALSP’s—especially the Big Four—is that they are reshaping the boundaries of “legal” services and providing the expertise, skills, experience, and tools required to [satisfy clients/customers](#). In the case of the Big Four, they also provide “brand security” derived from long, deep-rooted relationships with the corporate C-Suite. All this is emblematic of a changing legal industry-- the by-product of the complexity and speed of business, shifting consumer needs, new skillsets and elevated expectations of

providers, and new buy dynamics. Law is morphing from a lawyer-centric [guild](#) to a [customer-centric](#) marketplace.

The genesis and evolution of ALSP's is unmet legal consumer demand for value-driven, efficient, cost-effective, data-reliant, predictive, proactive, interdisciplinary solutions to customer challenges. Law firms have largely continued to focus on legal expertise—practice-- even as legal delivery--the business of law-- has become a three-legged stool supported by legal, business, and technological capability. ALSP growth reflects two key market trends: (1) an opportunity for tech and process-enabled, well-capitalized, corporatized, digital, client-centric delivery models to provide managed “business of law” legal services with augmented expertise, efficiency, value, and measurable results that law firms have typically failed to deliver; and (2) growing willingness of legal consumers to engage a new suite of providers for tasks/matters traditionally the province of law firms. Leading ALSP's are agile, [proactive](#), fluid, able to scale, aligned with consumers, and constructed to deliver at the [speed of business](#).

The Big Four Are in The Law Business No Matter How They Are Characterized.

Many in the legal profession mistakenly describe the Big Four as “accounting firms.” That is how they began, but they long ago crossed the cultural and expertise divide separating accounting from other professional services—law included. The [Big Four](#) are continuing to redraw traditional professional boundaries by leveraging their global imprint, deep C-Suite ties, interdisciplinary expertise, depth, breadth, technological and process prowess, vast

war chests, digital transformation expertise, training capability, corporate structures and economic models--global brand with member firms maintaining separate balance sheets-- to provide consumer-centric, value-driven delivery of services.

The debate is no longer whether, when, or how the Big Four will vie for legal market share—it's how dominant they will become and the threat they pose to law firms. A cadre of elite firms that handle a disproportionate share of “bet the company” premium work is not presently facing this threat--other firms are. There is a wealth of evidence that all Big Four members are “all in” the global legal market. For example, each has secured an “alternative business structure” (ABS) license, enabling them to own and manage entities that engage in regulated practice activities in the UK, Wales, and beyond. In [Singapore](#), a strategically important, dynamic market, each Big Four member has recently begun to [practice as law firms there](#), competing directly with global and local firms. The Big Four collectively employ approximately 10,000 attorneys globally, providing “boots on the ground,” with expertise in a range of practice areas including tax, immigration, corporate, litigation support, regulatory work, and labor/employment. These areas overlap with existing core practice service/product lines. The Big Four are also leveraging their world-class technological and process expertise to provide managed services in the legal space. Nicholas Bruch details this in an informative piece [here](#).

The Big Four's leadership have been explicit about their legal market intentions. Cornelius Grossman, EY Global Legal Leader, said of the recent [Riverview](#) tie-up: “This acquisition underlines the position of EY as a leading disruptor of legal services; it will provide a

springboard for current EY legal managed services offerings and bolster the capabilities that we can help deliver for EY clients.” Piet Hein Meeter, his Deloitte counterpart, provided a similar assessment: “We are building capabilities to deliver seamlessly across borders as a truly global legal service provider. The innovative, technology-enabled and integrated nature of our services will disrupt the legal market as a whole.”

The Big Four are not taking on Big Law by replicating its model-- stress cracks in the [partnership model](#) are already visible. They are instead focused on areas of unmet legal consumer need, leveraging—and supplementing as necessary-- their existing resources to adapt them to “legal” consumers. Many of those consumers are existing clients looking for integrated, interdisciplinary solutions to complex business challenges—a natural fit. Law firms continue to provide “legal” answers while the Big Four offer holistic business solutions.

The Big Four are by no means the only ALSP’s--“[law companies](#)”-- to impact the legal marketplace, though they are clearly the largest. Axiom has nine-figure annual revenue. UnitedLex has inked \$1.5B of multi-year legal work during the past 18 months. Thomson Reuters has been a legal managed services leader for years and is currently engaged in legal transformation initiatives with 4 of the top 10 global market cap companies. Other law companies are making an impact, too.

What Do Clients Want from Legal Service Providers?

Legal buyers—not lawyers—are now calling the shots. What do

they want? One way to answer that question is to know what they are most concerned about. Deloitte's [Future Trends for Legal Services](#) report provides insight into the question. Research conducted from CEO's, CFO's, and General Counsel revealed four key corporate challenges listed in descending order: (1) doing more with less; (2) global compliance; (3) the speed of business; and (4) using technology appropriately. These responses all play to the strengths of the Big Four and other [law companies](#), not traditional law firms. An even better way to know what consumers want is to hear directly from them.

Bill Deckelman, EVP and GC of DXC Technology, has already [laid the foundation](#) for a client-centric legal delivery team. He entered into a blockbuster [managed services agreement](#) with [UnitedLex](#) and its customer lifecycle platform (CLM), the largest such agreement in legal industry history. It's working. Deckelman says DXC has "reduced internal contracting costs by over 35% in the first year and increased speed to final contract." He foresees additional benefits going forward. Mayer Grashin, Litigation Counsel of CDK Global, echoes many of Deckelman's observations when describing CDK's long-standing enterprise managed services agreement with Thomson Reuters Managed Legal Services. Grashin cites the "relentless focus on process refinement," speed, expertise, and cost-effectiveness of the managed legal services TR provides. "Disaggregation is a vital component of our strategy; a stand-alone legal service provider with a dedicated, process-oriented team of professionals, collaborating seamlessly with our in-house and outside counsel, delivers a better ROI, saves time, significantly reduces cost, and measurably improves the quality of our legal outcomes." Law firms continue to increase their [marketing budgets](#) and focus

on what they sell. Top ALSP's invest in learning the buyer's business, risk profile, culture, competition, key challenges, and path forward. Their focus is on client needs, not what they sell. They also doubling down on training. Deloitte, for example, invested approximately \$350M in "Deloitte University," a sprawling, state-of-the-art global learning center/hotel dedicated to training/retraining Deloitte personnel, advancing client interests, promoting thought leadership, and leveraging institutional knowledge to better serve clients. Other Big Four members, as well as Thomson Reuters, UnitedLex, Axiom, and a handful of other leading law companies are also making hefty training investments designed to train what DXC General Counsel [Bill Deckelman](#) calls "digitally-minded professionals." This is not to imply that law firms are not investing in training—some are. But most law firm training relates to practice activities, not the integration of process and tech with practice.

The different [structural and economic models](#) of ALSP's and partnership-model law firms matter. ALSP's are generally corporate; this enables investment and promotes a long-term view. The law firm partnership model, in contrast, effectively discourages investment and promotes a "future is now" mindset because older partners rarely retain a residual economic interest upon departure. In an age where agility and constant learning are critical, many law firms are holding on to the remnants of the past while ALSP's are building for the future. Firms seem to be resisting the future; ALSP's are proactively aligning with legal consumers to shape it.

Conclusion

The forthcoming Thomson Reuters Study should be an interesting read. Anecdotal evidence indicates: (1) ALSP revenue is increasing; (2) the breadth and depth (complexity) of the work they handle is expanding; and (3) they are widening service and product offerings.

A final note: it's time to retire the "alternative legal service providers" descriptor. My vote is "law company." There is nothing "alternative" about the Big Four and a growing list of diversified legal service providers. As lawyers say, "*res ipsa loquitur.*"

Law Is a Profession and an Industry—It Should Be Regulated That Way

Law is a profession and an industry. Lawyers in the U.S., the world’s largest legal market, regulate both. Regulation of the practice of law and the business of law should be bifurcated. Let lawyers regulate practice and independent business professionals oversee the industry. Conflation of the two is detrimental to the profession, the industry, and society.

The ‘Profession’ and The Industry’

The legal ‘profession’ refers to [lawyers](#)—their training, licensure, ethical responsibilities, client obligations, and other practice-related matters. The profession is about the zealous, ethical representation of individual clients. Lawyers also enter into a social compact to represent society by defending the rule of law. Legal practice is the differentiated legal expertise, judgment, and skills possessed by some—but not all—lawyers. Regulation of the profession should ensure adherence to ethical and practice standards on behalf of individual clients and society at large.

The ‘industry’ describes the inter-disciplinary, tech-enabled, one trillion-dollar global business of delivering legal services. The business of law is about using technology and process to identify and automate repetitive tasks, ‘productize’ routinized functions, streamline efficiency, promote transparency and diversity, compress delivery cycles, and provide legal buyers with ‘more for less’

within acceptable risk parameters. Legal delivery is an amalgam of legal, technological, and process expertise and deploying the appropriate resource—human and/or machine—to a task/matter/portfolio. Regulation of the industry should provide flexibility to structure delivery and economic models that align providers with legal buyers, enhance competition, and promote innovation. The objectives of industry regulation should be to promote competition, encourage innovation, and allow formation of delivery models that enhance access to and improve delivery of legal services.

The Changing Role of Lawyers

Legal practice was once synonymous with legal delivery. Law was about legal expertise and nothing else, so lawyers were well-suited to define and enforce practice standards. The global financial crisis and remarkable advances in technology changed the way goods and services are bought and sold. Even the insular, staid, conservative, self-regulated legal industry could not immunize itself from these powerful socio-economic forces.

The post-crash, tech-enabled business community engaged in serious belt-synching and adopted a ‘more with less’ mantra. This impacted the delivery of legal services in several ways: (1) disaggregation accelerated—‘legal’ work migrated from law firms to corporate legal departments and non-law firm providers; (2) legal buyers—not lawyers—determined what a ‘legal matter’ is and when, from what delivery and economic models, and at what price lawyers are required; (3) corporate legal departments and [law companies](#)—unlike firms—operate with corporate structures and performance standards/reward systems that promote a long-term view by pro-

viding stakeholders with residual equity and reward outcome, not input; (4) the myth of ‘lawyer exceptionalism’ has been debunked and so too has the hegemony of law firms; and (5) legal delivery requires not only legal expertise but also technological and business acumen.

[Technology](#) has played a significant role in altering legal delivery. [Machines](#) are not replacing lawyers, but technology is casting a bright light on what tasks require licensed attorneys, the expertise and level of experience needed, the appropriate provider, the resources—human and/or machine—they collaborate with, and the price. Many legal services have morphed into products, and delivery is about efficiency and measurable outcome, not labor intensity and hours billed or origination. Lawyers are not being marginalized, but their hegemony over all facets of ‘legal’ work is. What is and is not legal practice is secondary to the expertise required. The default answer is no longer lawyers. This begs the question: what does it mean to be a [lawyer](#) now?

The American Bar Association ([ABA](#)) describes a lawyer as: “a licensed professional who advises and represents others in legal matters.” This description raises more questions than it answers and fails the ‘void for vagueness’ standard. It sidesteps several key issues: (1) what is a ‘legal matter’? (2) Who makes that call? (3) when are lawyers required? (4) what differentiates a lawyer from other resources—human and machine—in the legal supply chain? (5) why can’t most individuals and small businesses afford lawyers? (6) is there a difference between the practice of law and the delivery of legal services? (7) is the legal profession the same as the legal industry? and (8) what purpose do lawyers serve?

Self-regulation by lawyers conflates practice and delivery. This has a negative impact upon tens of millions denied access to legal services, existing legal consumers, and society. State Bars—especially voluntary ones that rely upon dues-paying lawyers for subsistence—have repeatedly slapped law companies like LegalZoom and Rocket Lawyer with unauthorized practice of law (UPL) claims. Not only have these UPL actions largely failed, but they also overlook the consumer perspective as well as the exceedingly high customer satisfaction ratings of the providers. Sometimes-- contrary to what most lawyers are trained to believe-- [‘good is good enough.’](#)

The Value of Independent Regulators: The UK Bifurcated Model

The UK, the world’s second largest legal market, faced many of the same challenges as the US in the early years of the new Millennium—an access to justice crisis, widespread consumer dissatisfaction with lawyers, lack of competition, and a self-regulated legal industry that functioned as a monopoly. The Government authorized a two-year independent, no-holds-barred review of the legal industry conducted by Sir David Clementi, a banker and CEO of an insurance conglomerate. ‘The Clementi Report’ became the backbone of the Legal Services Act of 2007 (LSA) that produced re-regulation of the legal industry. Acting on the findings of Clementi, the Government determined that the self-regulated legal industry operated as a guild that failed to serve the public adequately. The LSA created the Solicitors Regulatory Authority (SRA) to oversee the business side of the legal industry, leaving regulation of practice matters to The Law Society. The centerpiece of the SRA’s re-regulation was its creation of ‘alternative business structures’ (ABS). This abolished the long-standing prohibition of

‘non-lawyers’ from owning, operating, or investing in law firms. ABS, already in effect in Australia for nearly a decade, kick-started competition, new delivery models, investment in the legal industry, and, most importantly, provided consumer with more and better delivery options.

The U.S. has three times declined to follow the UK example during the past two decades. Voluntary State Bars have led the opposition, citing compromise of lawyer independence as the principal objection to re-regulation. Not only are the alleged ‘conflicts’ already at play, but also the record of self-regulation leaves much to be desired. Regulatory stasis means: unnecessary impediments to amelioration of the access to justice crisis, widespread consumer dissatisfaction, reduced competition and innovation, and further erosion of public confidence in the rule of law. The remarkable rise of the Corporate Legal Operations Consortium (CLOC), the steady migration of work from law firms to in-house departments and law companies, the legal supply chain, the increasing role of procurement in legal buy decisions, and law’s accelerating digitization indicate that *de facto* re-regulation of the corporate segment of the legal industry is well underway. The retail segment is in dire need of regulatory reform that recognizes that many ‘legal’ needs can be satisfied in a variety of ways that diverge from the traditional lawyer-centric approach. The Supreme Court’s decision in [North Carolina State Board of Dental Examiners](#), and the [Justice Department’s](#) recent warning shot at state bars that think they are immune from antitrust claims just because they are an arm of their state supreme courts suggest that current regulations are on shaky legal foundations.

Conclusion

The legal profession has been subsumed by the industry. Law is following the path of other professions-turned-industries, notably medicine that morphed from small practices to the healthcare industry. Just as physicians practice within the healthcare industry, so too will lawyers cease practice from the cocoon of their self-regulated [guild](#). Lawyers should not be left to regulate the legal industry on their own.

Lawyers are part of a legal supply chain that is populated by other professionals, paraprofessionals, and machines. They routinely collaborate with the very ‘non-lawyers’ they have fought so hard to keep out. There’s no going back. Consumers want solutions to business challenges, not legal tomes. Answers to those challenges are no longer derived solely from legal expertise housed in law firms. Solutions increasingly come from different provider sources with different skillsets that collaborate with law firms, effectively rendering moot regulatory prohibitions. It’s time to put an end to the work-around charade and craft regulations that better serve consumers and the rule of law.

The core tenets of legal practice—confidentiality, conflict avoidance, etc.—have changed little over time, even as new challenges arise. Lawyers are well-suited to regulate themselves. But the business of delivering legal services in an increasingly corporatized, digitized, inter-connected, complex world requires outside regulators whose focus is on consumers, not lawyers. Regulation should encourage new delivery models, investment capital, and innovation that promote access and elevate legal buyer satisfaction.

The legal industry has the resources to better serve consumers and society. Bifurcation of legal regulation will advance these important objectives and preserve the fundamental characteristics of legal practice.

Too Many Legal Awards—Too Little Legal Buyer Satisfaction

Law is staging its own version of “every kid gets a trophy.” Its award season is longer than baseball’s, and the list of award categories rivals the Oscars. Every week, all over the globe, the legal industry throws gala dinners to celebrate its “innovators,” “visionaries,” and “pioneers.” These gatherings afford attendees a chance to dress up, schmooze with peers, feel important, and convince themselves that their industry is performing splendidly. Legal providers are hearing “Celebration” while for buyers it’s “I can’t get no satisfaction.”

Legal consumers are not handing out many plaudits to law firms. A [2017 study](#) of the British legal market commissioned by LexisNexis and Judge Business School at Cambridge University contains a stark finding: “There is unambiguous evidence of a significant and persistent disconnect between law firms and their clients.” The disconnect has resulted in a steady migration of work from firms to corporate legal departments as well as a growing client receptivity to service providers and other “alternative” (now mainstream) sources for legal services. That’s not only the pattern in the UK but also in the US and globally.

The LexisNexis survey cites four persistent causes of the client/firm disconnect: (1) clients want *solutions* and law firms offer advice; (2) law firms strive for perfection while clients generally want a “good enough” solution; (3) law firms fail to provide cost and

time predictability—they have not invested in business staples such as project and process management capability and (4) a knowledge gap. A stunning 40% of respondents in the Lexis-Nexis survey noted that *senior partners* of panel firms lacked more than a basic knowledge of their businesses. That underscores a more fundamental challenge confronting lawyers: they must offer more than legal expertise. Legal buyers want answers to business challenges—at the speed of business. That means legal and business expertise—supported by technology and process—is required. That’s not the model that traditional law firm partnerships are built on.

The [2017 Georgetown Report](#) cites the “erosion of the traditional law firm franchise,” a euphemism for “clients don’t need large law firms to handle many legal tasks.” The [2018 Report](#) concludes that the internal steps law firms have taken to preserve profit-per-partner (PPP) have failed to address chronic, systemic deficiencies. The Report concludes that “Too many law firms are still fighting the last war “applying old fixes to new market conditions.” Law firms are spending more on [marketing](#) but remain largely unresponsive to client demands for “faster, better, cheaper” solutions that: (1) solve business problems; (2) with better customer service; (3) deploying the right resource to the task; (4) commensurate with its value and risk; and (5) capturing intellectual capital and data that can be leveraged. Why? Increasing marketing budgets, handing out more awards, and chanting “innovation” creates a (false) impression of client-centricity. These moves are buying time for senior partners who are well into the back nine of their careers and generally disinclined to invest in the firm’s future that offers them no financial return. But they are not scoring points--or solving deficiencies--with clients. The recent [wave of associate increases](#) by

Milbank and scores of other firms that followed is evidence of law firm tone-deafness to clients.

Problem Solving and Consumer Perspective Are What Counts

Law's obsession with awards and innovation has eclipsed focus on solving its major challenges: (1) expanding access to legal services to the tens of millions of individuals and businesses presently unserved; (2) improving the delivery of service to existing legal consumers and garnering their satisfaction and loyalty; (3) preserving the rule of law by safeguarding democratic institutions; and (4) delivering pro bono services to those in need. Solving these challenges requires a long-term approach that is inimical to the short-term mindset of most law firms. It requires a new organizational, economic, talent management, and reward model. Most of all, it inverts provider focus from "what works for us?" to "what works for the consumer? Awards and claims of "innovation" provide instant—if not illusory—gratification but do not address these underlying industry challenges.

There is a correlation between the proliferation of legal awards and the industry's overheated use of the word "innovation." Self-congratulation and buzzwords do not change the widely held consumer perception that legal delivery--especially BigLaw-- is [out-of-synch with business](#). It's not just the exorbitant cost of legal services that vexes buyers; it's also law's asynchronous culture, structure, economic model, protracted delivery cycle, cost unpredictability, one-dimensional expertise, that has legal buyers looking for alternatives to "the usual suspects." Add to that law's failing grades on diversity, equal-pay-for-equal services, client-driven

metrics, and one can readily understand why there's flat demand for law firm services in a steadily expanding market.

Legal providers would be wise to address delivery deficits and the roots of consumer discontent rather than fixate on “innovation.” That means focusing on what legal buyers want rather, not what they can sell. Improvement and investment in customers—not innovation as an end unto itself—is what matters. Successful companies invest in customer-focused resources—people, technology, infrastructure, data, and customer relations—to satisfy customers and forge relationships that become assets. “Customer-centric approach” is not a buzzword; it is commitment to process, investment, performance metrics and constant improvement that creates value for consumers. It's hard work.

Too Many Claims of “Innovation” and Too Few Answers

Law is enamored of innovation, perhaps because it has been devoid of it for so long. Innovation is a term that is widely used but lacks a common definition. The experts seem to agree on four seminal elements: (1) it is a process; (2) where ideas are turned into solutions; (3) that add value; and (4) from the customer perspective. Nick Skillicorn, a leading blogger and consultant, defines innovation as “Turning an idea into a solution that adds value from a customer’s perspective.” Innovation is constructed from the consumer perspective--what do they want that they cannot obtain from existing service or product providers that creates value for them? Law firms take an inverted approach—what can we sell to clients that does not require us to materially alter our delivery structure or economic model? This approach is “anti-innovative.”

Corporate legal departments—many of whom initially had law firm mentalities and operated that way—are now thinking more like the businesses they represent. In-house counsel play a [dual role](#) of corporate defender and business partner. They are members of the business while adhering to legal ethical and practice standards. They are business experts with a legal background. This is similar to a new breed of well-capitalized, tech and business savvy alternative legal service providers (ALSP's a/k/a law companies)—United Lex, Axiom, Integreon and others including the Big Four—are forging innovative approaches to legal delivery designed to suit customer needs. In each case, the delivery model was constructed de novo, starting with "what do buyers of our services need and how can we make that happen?"

Customer Satisfaction is the By-Product of Innovation

Many firms have chief innovation officers (CIO's) and innovation departments. What does that mean? And why, if there is such a proliferation of "innovation" are legal consumers dissatisfied and aggressively seeking providers with new delivery models, inter-disciplinary expertise, measurable results, and scalability? Short answer: "innovation" starts with the customer perspective—not the provider's—and applies new ideas that drive value to customers. Very few law firms come close to doing this. Most continue to offer undifferentiated services, raise rates, scour the market for big-book laterals, and expand marketing budgets. This is neither a "customer-centric approach" nor is it "innovation." Legal providers—especially traditional partnership model firms—would be wise to view the marketplace from the customer perspective. What does that look like? Legal buyers want rapid, risk-assessed, responsive answers to business challenges from experts with relevant experi-

ence that rely on relevant data and an understanding of their business to craft strategies. Legal providers that can deliver actionable solutions on a consistent, cost-effective and scalable basis will achieve customer satisfaction and loyalty. Whether that process results from improvement of existing practices or innovative new ones is of little moment. It's customer satisfaction that matters.

Conclusion

Legal consumers, not lawyers, are driving the bus now. They are the judges of performance. Lawyers can continue to hand out awards and liberally designate peers as “innovators.” But if clients are not satisfied, the moniker is an oxymoronic punchline, not a recognition of excellence.

Law Is Lagging Digital Transformation—Why It Matters

A recent [survey](#) by KPMG confirms digital transformation is a key strategic priority for CEO's. It is also time sensitive—85% of enterprise decision makers think they have a [two-year timeframe](#) to make significant inroads on their digital transformation before sustaining adverse financial impact and/or lagging the competition. A McKinsey [report](#) reveals the upside of digital transformation-- data-driven organizations are 23 times more likely to acquire customers; six times as likely to retain customers; and 19 times as likely to be profitable as a result. CEO's, in the words of Jerry Reed, have got “a long way to go and a short time to get there.”

The Legal Industry Is Not Prepared For Digital Consumers

How prepared are corporate legal departments to support their client organizations' digital initiatives? Not very, according to Gartner—only 19% of in-house legal teams are well positioned to support enterprise digital efforts. Law firms fare even worse; the [2018 Georgetown Report](#) concludes “most are still fighting the last war.” The Big Four and a handful of law-based companies—notably [UnitedLex](#) and [LegalZoom](#) (retail segment)—have crossed the digital divide and are positioned to capture greater market share. What about the vast majority of legal providers for whom digital transformation is not even on the radar screen? How will they competently engage with and compete for digital clients/customers? Short answer: not well.

The legal industry’s overall lack of digital awareness and preparedness is a serious problem that is seldom discussed. Legal providers instead tout their “innovation,” “client-centricity,” and “cutting-edge technology. Repetition of these buzz words-no matter how frequent or strident-does nothing to advance digital readiness. Understanding what digital transformation is, its transformative effect upon businesses, and its focus on consumers is a start.

Digital Transformation Is More Than Tech—It’s About New Customer-Centric Paradigms

Digital transformation is a holistic business paradigm shift that impacts a company’s people, activity, process, and culture. It is technology-enabled and data-driven, but those are the means-not the objective-of the process. Digital transformation involves harnessing data to create business insight that changes the operations/delivery capability of the company. This enables it to connect with consumers in different ways that include providing easier access, more choice, transparency, predictability, speed, and cost-effectiveness. By applying machine learning and artificial intelligence (AI) to large datasets, businesses can identify previously unknown correlations among data, providing them with enhanced capacity to predict outcomes, optimize delivery, mitigate risk, and tailor solutions to consumer demands and expectations. Automation enables businesses to act upon and scale these insights.

Digital transformation is much more than platforms, AI, and data. The human element is paramount at all levels. To achieve digital transformation, a business must engage in cultural change that involves collaboration, new skills, a more holistic approach to prob-

lem solving, diversity, cultural awareness, constant improvement, lifelong learning, and an agile workforce. Digital transformation also demands “soft skills” essential to complex problem solving, cultural change, and the agility required to keep pace with the ever-accelerating [speed of business](#) and pace of change . End-to-end [customer experience](#) optimization, operational flexibility, and innovation are key drivers and goals of digital transformation.

They produce new revenue sources and an expanded customer base. All this requires a cultural change within an enterprise—and its business partners. Change management—convincing people to accept, adapt, and engage in constant improvement and training in anticipation of and response to change—is perhaps the biggest hurdle in the process.

Technology enables new models and paradigms; human beings adopt or reject them. Digital transformation is enabled by technology, but its success depends upon the willingness and ability of humans to operate differently. It means taking on enterprise-wide change to evolve an organization’s business and operating models, as well as the way its people work –integrating the front and back offices as well as enterprise silos. It also involves integrating people as well as high volumes of data to predict, influence and respond to customer behavior--all with the objective of better advancing consumer outcomes and improving the customer experience.

If CEO’s Are Focused On Digital Transformation, Why Aren’t Their Legal Providers?

There is no easy or single answer to this question. There are, however, several explanations for the legal industry’s digital diffidence:

(1) lack of awareness; (2) focus on the immediate demands of the job, not the “big picture;” (3) an internal focus, not a client-centric one (i.e., what we sell, not what consumers need); (4) cultural stasis--systemic resistance to change and the new leadership, skills, roles, economics, investment, and socialization that it requires; (5) a short-term mentality; (6) no financial pain (yet); and (7) few legal buyers are demanding it. These factors are especially prevalent among law firms because of their [structure](#), [economic model](#), [culture](#), and growing [divergence](#) with corporate legal departments.

The Gartner findings on in-house digital unpreparedness will likely change soon—especially among larger corporate legal departments. One reason is C-Suite pressure. A growing number of in-house teams are no longer exempt from the standard operating procedures of the enterprises they serve. Many are mandated to integrate with the business and that means, among other things, to function at the speed of business; to harness data for internal operations and customer knowledge; to be proactive, not reactive; and to provide holistic, interdisciplinary solutions, not legal recommendations. Data is replacing conjecture; customer satisfaction is paramount; and in-house teams are increasingly provider-agnostic *provided that* the source delivers expertly, efficiently, measurably, consistently, collaboratively, and cost-effectively.

The cultural transition to digital transformation will be easier for in-house teams than law firms, because corporate teams “know” the client better—its culture, politics, leadership, risk tolerance, business, and challenges. Many corporate counsel already have dual roles -- [guardians and business partners](#). Evolved in-house lawyers operate as business partners with law degrees; they have transitioned from the traditional—and narrower—mindset of most

lawyers and go well beyond dispensing legal advice. They do not see the world as "lawyers and 'non-lawyers'" and have a different mindset about non-licensed legal professionals. In-house department status is not derived from business origination but by expertise, experience, delivery capability, and value to the consumer. They are also less proprietary about their work—sourcing it to a more expert, efficient, cost-effective provider that advances client/customer outcome is a win, not—as firms often view it—lost revenue.

Digital transformation will also be an easier climb for [law companies](#) than firms. Law companies have corporate structures and economic models more closely aligned with business than traditional law firms. They have responded to a market void caused by firms' laggard adoption of technology, process, "right-sourcing" of tasks, and value-driven, client-centric delivery. This explains their revenue growth, expanded breadth of services/products, and infusion of institutional capital. Law companies have a DNA that is well-suited to the digital age.

DXC's in-house legal team and UnitedLex recently pulled off the legal industry's first "post-digital realignment." Bill Deckelman, [DXC's](#) General counsel, is a staunch advocate of legal digitalization, and his in-house team was an early adopter DXC's enterprise digital transformation. A legal department in the vanguard of such change is rare, but that was just the beginning.

Deckelman's blockbuster managed services agreement with UnitedLex, the largest such agreement in legal history underscores the fluidity of the digital marketplace. Deckelman and UnitedLex CEO Dan Reed agreed to transition/rebadge hundreds of DXC's legal

team employees to UnitedLex, leveraging UnitedLex’s expertise, depth, global delivery capability, financial backing, and technology -- notably its customer lifecycle platform (CLM). Deckelman says the move “reduced our internal contracting costs by over 35% in the first year and also increased speed to final contract.” He sees other benefits resulting from the implementation of the company’s Digital Transformation Plan, including “training ‘digitally-minded’ professionals that produce higher quality work product, increased speed-to-market, even lower cost to deliver, and data and metrics-driven management capabilities.”

Deckelman’s alignment with Reed and UnitedLex illuminates law's evolution in several ways: (1) the ascendancy of law companies; (2) a collaborative, provider-agnostic, customer-centric approach to optimizing return derived from legal services ; (3) the fluidity of providers in the digital age; and (4) the impact collaboration between digital collaborators can have for the ultimate consumer as well as the providers themselves and its divergence from law’s traditional law firm as sole source model.

Conclusion

The legal industry should put digital transformation on the front burner if for no other reason than that’s what’s cooking with legal consumers. McKinsey’s eye-popping findings on the impact for those that “go digital” are compelling. So too are the results of the DXC-UnitedLex deal and others that will follow. Still, many in the legal industry—especially partners that have enjoyed an especially prosperous 2018--will think, “Why bother with digital transforma-

tion—I'm doing just fine." Duly noted, but this year's bounty does not presage future success as it once did,

Business is going digital. That's an opportunity for legal providers with enlightened leadership, expertise, resources, delivery capability, agility, scale, capital, cultural flexibility, willingness to collaborate, and customer-centricity. For others, it might be the end of the legal world as they knew it.

How Will Legal Education and Training Keep Pace with Change?

Ferris Bueller famously quipped, “Life moves pretty fast.” Imagine what he would say now ...The pace of change is accelerating at warp-speed, buoyed by technological advances, communication, and globalism.

Dell Technologies authored a [report](#) by 20 tech, business and academic experts projecting 85% of jobs that will exist in 2030 have yet to be invented. Dell issued a [statement](#) that "The pace of change will be so rapid that people will learn 'in the moment' using new technologies such as augmented reality and virtual reality. The ability to gain new knowledge will be more valuable than the knowledge itself."

Many lawyers might think this does not apply to them, but think again.

Deloitte released a 2016 [report](#) on the legal industry predicting “profound reforms” over the next decade. Several factors were cited including: automation, the rise of millennials in the workplace, and changing client demands. Deloitte projected a 39% loss of legal sector jobs. That will be offset by new positions in data analytics, legal technology architecting and design, risk mitigation, and other yet-to-be-identified fields. Consider that Deloitte has the world’s largest market share of *legal* services. The “profound reforms” are already underway.

Clients- Not Lawyers-Are in Control Now

The transition of law from lawyer-centric, provincial, labor-intensive [guild](#) to a customer-focused, global, [digitized](#) industry requires new skillsets and training. Technology and business are now tools of the legal trade and legal education and training have lagged the marketplace. Clients are under intense pressure to “do more with less,” and they are applying that standard to legal delivery. They demand efficient, predictive, cost-effective, accessible, scalable, and agile delivery of legal services. “Knowledge of the law” alone is insufficient for all but a handful of elite lawyers. “Practice” is narrowing as “the business of delivering legal services” is expanding. The latter requires a suite of new skillsets—project management, data analytics, business basics, technical agility, and collaboration, among others—that have yet to become standard fare in legal training. Bill Henderson, a leader in aligning the Academy with the marketplace, sums up the state-of-play: “Legal education and the legal profession are at an inflection point where traditional models of education and practice no longer fit the shifting needs of the market.”

The Skill Gap

The reconfiguration of legal delivery and the skills now required has created a widening gap between demand and the supply of qualified labor. Most law schools continue to focus on doctrinal law and how to “think like a lawyer.” Their curricula are light on practice skills, marketplace changes, and business of law skills. Law schools prepare students for practice careers even as the [data](#) shows an accelerating market shift from law firms (practice-centric) to law companies (business/tech-centric).

Jae Um wrote a [piece](#) examining the human resource challenges--the skills, knowledge and experiences that people need to realize innovation (change)—and the structural and cultural barrier legal innovation teams confront accessing the talent required. Ms. Um shines a light on the legal industry’s “skill gap” and provides a candid assessment: “high-caliber professionals with the necessary specialized business and technical skills are in short supply.”

The challenge confronting the industry is how to identify, mine, train, deploy and scale talent to fill the gap. The solution is a two-step process that involves: (1) augmenting legal expertise with additional skills focused on technological application and process/project management (as well as data analytics, collaboration, personal branding, and a learning for life mindset); and (2) economic, organizational, and cultural parity among legal professionals. If this sounds like a heavy lift, it is. Fortunately, there are a handful of training programs and international law schools that are paving the way for the legal industry’s future whose contours are being shaped.

LawWithoutWalls (LWOW)

[LawWithoutWalls](#) is a part-virtual experiential learning program designed for practicing and aspiring lawyers. LWOW, powered by the University of Miami Law School and ably led by Michele DeStefano, uses team building, mentorship, and an interdisciplinary approach to forge collaborative relationships for participants. LWOW has a three-pronged mission: (1) create innovations at the intersection of law, business, and technology that solve real problems and address market needs; (2) hone skills in what Ms. Destefano calls

the “Lawyer Skills Delta” in her latest [book](#); and (3) improve the lawyer-client dynamic and promote collaboration.

LWOW provides participants with skills required of today’s lawyers and legal professionals—teamwork, communication, leadership, mentoring, project management, innovation, cultural competency, business planning, technology, and networking. The program’s hands-on, “real-life,” collaborative approach to problem solving and holistic solutions is ideally tailored for today’s marketplace. LWOW has provided a dynamic experience to approximately 1,000 students from 30 law and business schools around the world. Its legal mentors are drawn from the legal Academy, business, technology, and entrepreneur ranks. LWOW has conducted its program domestically and internationally, fostering a global perspective and network for participants. It has teamed with an impressive array of law firms, in-house legal departments, law schools, and global corporations to create an “everyone wins” response to the industry’s skills gap; participants acquire skills and sponsors acquire actionable knowledge and access to candidates with relevant skillsets.

The Institute for the Future of Law Practice (IFLP)

The Institute for the [Future of Law Practice](#) (IFLP) in the words of co-Founder Bill Mooz, is “a partnership between all members of the legal ecosystem—corporate law departments, law firms, alternative legal service providers, and legal academics—to help modernize legal education and dramatically upgrade the skills of the next generation of legal professionals.” Mooz and Bill Henderson laid the foundation for IFLP at the University of Colorado and Indiana Law

Schools where they staged a series of “legal boot camps,” exposing students to inter-disciplinary real-life problem solving with an emphasis on augmented skills (beyond knowledge of the law”). The results were terrific, causing them to expand the breadth, scope, and resources by creating IFLP.

Henderson ascribes characteristically pragmatic reasons why law schools cannot go it alone where traditional models of education and practice no longer fit the shifting needs of the market: (1) legal practice requires an integration of law with problem-solving methods that are not legal in nature (e.g., data, process, project management, technology, and team-based collaboration); and (2) approaches to these new requirements are a work-in-progress being forged in the marketplace, not in the halls of academe. IFLP does the heavy-lifting for them.

IFLP has created a modularized curriculum that is available to law schools, enabling them to create new course offerings in areas that complement their traditional curriculum without incurring the research and development expense and time-lag. IFLP currently works with four law schools (Northwestern, Colorado, Indiana, and Osgoode Hall in Toronto) and has plans to expand domestically and internationally. Its interdisciplinary faculty, “mixed classrooms” of law students and mid-career professionals, and focus on augmented skills is, like LWOW, ideally suited to bridge the skills gap.

A handful of foreign law schools are already structuring their curricula to provide solutions to the skills gap. [Bucerius](#) (Germany) of-

fers “legal” training that is equal parts law, business, and technology. Little wonder it is attracting students and collaborating with thought leaders from around the globe. [IE Law School](#) (Spain) provides an intensive focus on technology in content and learning methods to foster an entrepreneurial mindset among students. It teaches augmented legal skills necessary to bridge the talent gap and exposes students to business-related areas. Like Bucerius, IE takes a global approach, preparing graduates for the emerging [global legal community](#).

American law schools are somewhat hamstrung by the [ABA’s control](#) of legal licensure and legal education. The ABA’s recent rule change that encourages experiential learning, is encouraging, but the organization remains beholden to its dues-paying members—the profession—not the industry they serve. Legal education/training must be geared to satisfy the demands of consumers—and those in need of access to legal services, not the narrower profession. Professional training is a baseline, but it must be augmented by industry training. That’s because the industry is quickly subsuming the profession, and delivering legal services requires not only lawyers but also an array of other experts and resources.

Conclusion

Law’s skills gap is the byproduct of the [culture war](#) between lawyers and the broader legal industry. Lawyers are having a difficult time embracing the profession’s transformation from profession to profession-within-an-industry. Doctors traveled that path decades ago as medicine morphed from “medical practice” to “healthcare services.” Both professions are *service* businesses, and

the methods and tools to deliver those services are changing rapidly. Legal education and training must “mind the gap” and respond to the needs of the society its students serve.

Goodbye Guild-- Law's Changing Culture

‘Culture’ describes the values, philosophy, shared objectives, and member interactions—internal and external. Corporate culture, at its best, aligns the interests of the enterprise with customers and imbues workers with a collective mindset. That is crucial to brand building and market differentiation. Legal culture is something quite different.

Legal Culture Is All About Lawyers

Legal culture was forged by white, middle-aged lawyers for their peer group. Law’s ethos is insular and its composition is homogeneous. That is manifest pre- and post-licensure. Legal culture is rigid, hierarchical, pedigree-centric, internally-focused, cautious, reactive, and rewards input, not output. It relies on self-regulation to preserve the status quo and to guard against outside competition.

Legal culture promotes ‘lawyer exceptionalism’ as justification for its guild-like operation and hubris to perpetuate it. Diversity is conspicuously absent from the legal ecosystem, especially at its highest ranks. Lawyers are trained to be ‘right’, risk-averse, and to identify problems, not to be reasonable, weigh risk/reward, and fashion solutions. Law creates its own standards of excellence that are based upon ‘reputation’ and the assumption that certain schools and firms—more than metrics or client satisfaction—confer and maintain it. Most lawyers believe it’s better not to make a mistake than to be creative in solving a problem. Lawyers are not

trained or encouraged to be innovative; legal culture enshrines *stasis* and caution. Legal culture see things through its own prism; it divides the world into lawyers and ‘non-lawyers.’ And it takes great pains to preserve that separation rather than to align lawyers with their clients.

The legal profession commits to dual representation of individual clients *and* society. The access to justice crisis—the inability of the overwhelming majority of individuals and small organizations to secure legal representation due to high its high cost—evidences law’s failure to honor its social compact. *Pro bono* representation is generously provided, yet most people view lawyers as greedy, socially detached, mercenary, and arrogant. Lawyers often use language designed to distinguish themselves from others rather than plain-speak that forges connections. That’s ironic for a profession that counts persuasion as a tool of the trade.

Lawyers typically have a not-so-beneficently paternalistic attitude towards clients. They justify their guild and its long-time monopoly over legal service by ‘protecting’ the public from ‘the unauthorized practice of law.’ That’s laudatory in theory but not in contemporary practice where alternative tools, delivery models, and process exist to deliver certain types of ‘legal’ service outside the traditional law firm model. The frequent penalty flags thrown at retail upstarts like LegalZoom, Rocket Lawyer, and AVVO are not so much about protecting the public from unscrupulous, illegitimate providers as they are about protecting lawyers from competition, thereby maintaining traditional legal culture and its monopoly. No wonder so many people hate lawyers.

Law Schools and Firms Embody Legal Culture

Traditional legal culture operates as a club. It has narrowly tailored membership criteria designed to preserve homogeneity. The club operates principally for the benefit of its officers-- those that have 'paid their dues' and have forcefully advocated on behalf of maintaining club exclusivity. The parallels between the structures, reward systems, stakeholder profiles, and current state of law schools and law firms—laws cultural bulwarks-- are striking. That's not surprising since they have long had a symbiotic relationship whose purpose is to preserve the guild.

The Academy's officers and stakeholders are its administration and tenured faculty. Full-time faculty are accorded unbridled freedom to engage in whatever 'research' they choose with no regard for its relevance or materiality to legal education and students. Publication is the core tenure criterion. The Academy rewards input, not output. Most full-time law faculty have little or no practice experience, and limited—if any—knowledge of the marketplace. They are happily oblivious to the scrum of client representation and the efficient delivery of legal services. The courses they teach generally vary little from year to year and generation to generation. This has been of no moment because law school enrollment soared from the 1970's until the global financial crisis in late 2007. Law schools cashed in on demand and steadily increased tuition cost—a 400% increase during this timeframe. In the process, law schools became big profit centers, enabling them to operate as independent, cash-rich fiefdoms within the University. That has changed in recent years, of course. But law schools apparently did not receive the memo.

Partners are stakeholders of law firms and have dictated the terms of legal service to clients. Law firms rode the wave of client geographic expansion and resultant increased demand for legal services, growing rapidly in size, geographical reach, and partner profitability. Law firms became large, undifferentiated ‘big box stores’ that sold legal knowledge to a captive market. Like law schools, firms were the only game in town, and they made sure to keep it that way. The decades between the ‘70’s through 2007 were the legal guild’s golden age.

The traditional law firm partnership model provided great freedom within the firm; its decentralized management structure allowed partners to operate as tents in the bazaar. Partners were generally left to their own devices; firm management was consumed by hawking business, opening new offices, and convincing prized laterals to sign on. Origination was—and remains-- the firm currency; partners with big books of business operated as if they ran their own shop. Law firm culture—like law schools—was about stakeholders having a “me,” not “we” attitude towards the institution and those it served. The legal ethos, then, is antithetical to corporate culture that sustains it. But that’s changing

A New Legal Culture Is Being Forged By ‘Non-Lawyers’

Law’s insular culture is being reshaped by outside forces—consumers. Legal buyers—like the rest of us—have been profoundly affected by advances in technology, globalization, and the effects of the global financial crisis. These powerful transcendent social forces have created a new client attitude and way of conducting business. They have transformed the way people communicate,

buy and sell goods/services, and work. Self-regulation long served as law's seawall to protect it from outside change, but regulation is no match for this 'perfect storm' whose impact extends well beyond the legal industry.

Customers—not lawyers— have tapped into these forces and are in charge now. They have effectively re-regulated legal delivery by driving change from the consumer side—especially in the corporate segment of the legal market. Corporate legal consumers—notably in-house legal departments—have become its largest providers (<http://legalmosaic.com/2016/05/23/corporate-counsel-consumer-becomes-provider-the-sequel/#more-1082>) A recent article in [Corporate Counsel](#) cited an ALM Intelligence and Morrison & Foerster GC Up-at-night Resource Center [report](#) that in-house legal departments now handle approximately 75% of legal work. Legal service providers—tech and process savvy providers that deliver legal services but do not 'engage in the practice of law,' have a 2% market share that is expected to grow significantly. This is not simply a cost cutting play; it is a refashioning of legal culture by those that consume its services. Law is not about lawyers anymore, and the emergent legal culture reflects this.

The New Legal Culture Is Designed for Consumers

What, then, are the characteristics of the new legal culture? The answer to that question is found by analyzing the structures, reward systems, operations, and ethos of top corporate legal departments and service providers. They are transforming the delivery of legal services by separating core legal tasks- 'practice'- from the means, resources, and tools required for its efficient delivery-the business of law.

Elite in-house departments and service providers have several common traits that are recasting legal culture: (1) alignment with clients that includes deep knowledge of the enterprise; (2) harnessing technology and process to separate ‘legal practice’ from the delivery of legal services; (3) viewing ‘legal service’ as a process where opportunities to automate tasks and harness ‘big data’ are proactively pursued; (4) use of performance metrics; (5) output- result-eclipses input- billing, origination, etc.; (6) technology and process are tools that integrate the legal supply chain and allow clients real-time access to progress as well as an opportunity to collaborate; (7) legal service is an element of providing business solutions, not an end unto itself; (8) use capital to invest in technology and resources designed to promote alignment and efficiency; (9) an enterprise- not transactional- approach to problem-solving; (10) competency and experience-based focus over pedigrees; (11) diverse workforce; (12) attaches equal importance to legal, technological, and process expertise in legal delivery; and (13) melds legal expertise into other differentiated skillsets to solve major challenges that raise legal issues.

Conclusion

Legal culture is undergoing a fundamental transformation, one that will not happen overnight. Law schools (like law firms) have been slow to read the tea leaves. They have largely failed to reshape their curricula to produce graduates that are practice ready for a marketplace that demands much more than a knowledge of doctrinal law. Unfortunately for students, this process will take time and will require fundamental changes in criteria for faculty hiring, advancement, and responsibilities. Law schools must take a far more holistic, inter-disciplinary approach to legal education and provide

competency based training to prepare graduates for a rapidly changing marketplace that demands new [skills](#).

Law firms as we know them will be recast and have a corporate culture. The practice of law—the core elements of what lawyers *should* do—will intersect with the business of delivering legal services. This will derive from a culture that is diverse, agile, highly knowledgeable of clients’ business, constantly promoting improvement by evaluation of performance—internal and external—and accessible to the tens of millions that desperately need legal services but presently lack access or the means to engage it. The new legal culture is shaped by client expectations, not by the legal guild.

New Business Models- Not Technology- Will Transform the Legal Industry

New business models are the key to innovation, not new technology. That's the conclusion of a recent *Wall Street Journal CIO* [article](#) that draws from business guru Mark Johnson's new [book](#) "Reinvent Your Business Model." Johnson offers several cogent observations on business transformation: (1) a business model is "a representation of how a business creates and delivers value for a customer while also capturing value for itself, doing so in a repeatable way;" (2) successful business models have four interdependent elements—customer value proposition, profit formula, key resources, and key processes; (3) most successful new business models come from startups, not well-established companies; (4) new technology alone, no matter how transformative, is not enough to propel a business forward; (5) the new business model, enabled by technology, is key to an organization's success or failure; and (6) many successful companies are risk averse and reluctant to venture into "white spaces" (new opportunities) that require new business models and skillsets.

How does the legal industry align with Johnson's observations? Does it matter whether the business model-not technology-is the prime driver of transformation? Short answers: not well and yes.

Law Is Focused on Technology, Not Consumers

Legal technology is a good news/bad news story. The good news is that technology's utility as a tool to help solve law's wicked problems—notably the democratization of access to and improvement of the delivery of legal services—is now widely recognized, if not applied. That has had a profound impact on the labor-intensive, lawyer-centric delivery of legal services. Technology has fueled the disaggregation of “legal” tasks and has morphed legal delivery from the sale of legal expertise to legal expertise leveraged by technology and process—the business of law. There is a “legal tech” frenzy across the globe; it is often difficult to separate the hype from the reality. Artificial intelligence (AI), blockchain, enterprise platforms, and software will not replace lawyers, but these tools *will* change how, when, for whom, and at what price they are engaged. It also means that “knowing the law” is a baseline, not an end-game for lawyers. It must be augmented by additional skills-- business basics, analytics, project management, “people skills,” and collaboration, among others.

Law's preoccupation with technology diverts attention from its real value: to enable new business models to better align with and serve customer needs. Law's focus *should* be on its objectives—what can lawyers/legal providers do to solve the industry's wicked problems and what kind of business structures would facilitate that? This requires a cultural shift within the profession, an appreciation that law is an industry of which the profession is a part but by no means the whole. It also demands that legal consumers—not lawyers—are the focus of legal services business models.

Technology is not a panacea for consumer challenges. To be meaningful, technology must be relevant to a material client use-case. Legal tech holds tremendous potential, but its efficacy is a footnote to the culture it operates in and the business models from which it is deployed.

Tech alone will not drive legal transformation; new business models will. Those models will extend management and compensation parity beyond licensed attorneys to tech and business professionals. Failure to do that has a chilling effect on the impact of technology and process.

The Sunset of The Law Firm Partnership Model and The Rise of The Customer-Centric Paradigm

The law firm partnership model, long the industry standard, has become [misaligned](#) with customers' value proposition. It worked well when law was solely about lawyers and when law firms sold one thing: legal expertise. Firms had a virtual monopoly of that expertise and dictated the terms of client engagement. They created a pyramidal economic model with senior partners at its apex. The structural foundation was cemented by eager associates for whom access up the ladder was created by high billable hours premium rates. The firm provided client-subsidized on-the-job training, the client's "investment" in the relationship. There are visible stress cracks at the foundation of the partnership pyramid, and those in the middle no longer see a clear path to the top. Most significantly, there is a marked divergence between law firm and client valuation of service. That has created a market opportunity for customer-

centric providers with new business models and new skillsets that address unmet customer demand.

Legal buyers- not firms- are driving industry change by disaggregating “legal” work, separating the practice of law from the delivery of legal services, using data, embracing diversity, and hiring legal professionals with process, project management, technological, business, and other skills necessary to deliver legal services efficiently and cost-effectively. Demand for law firm services has been [flat for six years](#) even as the overall demand for legal services has steadily increased. The delta can be explained by the failure of law firms to adapt to changing consumer expectations; the partnership model that discourages re-investment, especially among older partners; new skillsets; new delivery options (including the [Big Four](#)); and a growing willingness of legal buyers to source “legal” services to legal service providers with new business models.

Law firms—except a cadre of elite, brand-differentiated firms that handle a disproportionate share of the highest value matters—are confronting a rapidly changing marketplace. Most pay lip service to “innovation,” but few are focused on creating transformative business models to respond to elevated client pressures and expectations. Many law firms are beginning to experience an economic impact. Most remain undifferentiated, and only a handful have taken steps to reconfigure their business model and embrace digital transformation. Law firms must rethink their economic/business model, value proposition, (lack of) alignment with clients, hiring practices, resources, strategic partners, supply chain collaborators, and delivery capability.

New Models Are Changing the Global Legal Marketplace

New legal delivery models have already made an impact in the “people law” and corporate market segments. Here are a few new model [law companies](#) that are changing the contours of the legal industry. Each has identified and responded to unmet customer needs-- deploying technology, process, and capital to scale them; focusing on net promoter score (NPS), not profit-per-partner (PPP); and engaging in constant improvement and reinvestment of human and technological resources.

LegalZoom has serviced more than 5M customers including more than 1.5M small and mid-sized businesses. LegalZoom’s business model focuses on the access to justice crisis and provides accessible, just-in-time, affordable legal resources with different degrees of lawyer involvement ranging from “self-serve” documents to full-blown attorney engagements. The company has an enviable NPS that has been achieved by focusing on customer satisfaction, not technology alone. LegalZoom is a tech-enabled law company deeply committed to providing a positive customer experience that is accessible, efficient, and affordable. It has stringent quality control and performance processes that track outcomes and customer experience.

UnitedLex launched as a legal process outsource company (LPO) and has since morphed into a law company that provides an array of legal business services across the globe. UnitedLex, like LegalZoom, created a business model focused on unmet consumer needs. It recognized that law firms are strong in practice expertise but lack the technological, process, project management, and niche

expertise (cybersecurity, data analytics, litigation support) to deliver legal services efficiently, cost-effectively, collaboratively, and expertly. The company has grown enormously in recent years and has booked nearly \$2B of “legal” work within the past 18 months.

Axiom is another law company that created a new business model designed to address unmet customer need. The company launched as an agile, lower-priced but high-quality alternative to the traditional law firm model, stripping out cost escalators from the incumbent model and shifting risk to its institutional clients, most of whom have in-house legal departments. Axiom has significantly increased its technological and process capability in recent years and now operates as a global legal service provider. Its corporate structure and access to capital enable it to invest in resources required to meet customer needs.

Burford Capital is a litigation finance company created to fill another unmet market need—capital deployment to transform litigation from a liability to an asset class. Burford has had an enviable track record, providing customers and shareholders with strong returns while “levelling the playing field” in large commercial litigation.

These and other new model law companies share several characteristics. Each identified unmet consumer need; overcame regulatory obstacles; marshalled necessary expertise--not limited to legal acumen; utilized technology; fashioned rigorous processes; “educated” the marketplace; raised considerable capital; created corporate structures; hired diverse workforces; and focused on customer

satisfaction. Each company transformed legal delivery by creating a culture, structure, and scalable economic model aligned with its customers and attuned to their rapidly-changing challenges.

Conclusion

Law has a gold-rush mentality—tech companies are desperately trying to locate and mine tech’s silver bullet that will “disrupt” the legal industry. The marketplace “gold” is not technology; it is designing business models that deliver impactful customer solutions consistently, scalably, efficiently, cost-effectively, collaboratively, transparently, and measurably.

The traditional law firm business model is not in synch with legal buyers. It is too slow, inefficient, costly, undifferentiated, lawyer/law-centric, and lacks the diverse expertise required to render holistic solutions to complex, multi-faceted business challenges. Effective deployment of technology will ameliorate some law firm deficits, but it is not a substitute for a reconfigured business model premised on addressing unmet consumer needs. Customer-centricity is more than a buzz word. It is the essence of legal services delivery in the digital age.

What Law Can Learn from Baseball—Value Extraction, New Skillsets, and Culture Change

Law and baseball share much in common. Each is self-regulated, rooted in tradition, operated as a guild for generations, big business, highly profitable—especially in major markets, and increasingly beyond reach of most potential consumers except corporates. Both have dual identities; law is profession and business; baseball is sport and business. Each has played that duality to its advantage. Baseball is exempt from antitrust laws because the United States Supreme Court has repeatedly characterized it a “sport,” not a business. Law is regulated by lawyers that thwart competition, relying on the false pretense that it is solely a profession and not the huge business that it is. Both industries have had insular, self-perpetuating cultures. Each is becoming more specialized, competitive, global, and data driven. And each has new ‘players’ with new skillsets that are redefining the industry.

New Players in the Lineup

Baseball is no longer solely about ballplayers. Players take the field, turn double plays, and spit tobacco juice over the dugout rail. But MBA’s, data analysts, and lawyers—not ex-ballplayers— now determine who, when, and at what price players suit up. A new breed of baseball *cognoscenti* handle the business of the game. They are as much a part of baseball—and equally big stars-- as front-line pitchers and sluggers.

Law is no longer solely about lawyers. Like baseball, it has a new cast of delivery experts tasked with deploying the appropriate resources to optimize value in the delivery of legal services—among other ‘business of law’ tasks. Legal operations professionals, as they are often called, have business and technological expertise as well as knowledge of how ‘practice’ intersects with delivery. They are playing increasingly pivotal roles in the legal industry. This is creating cultural friction with practice-centric traditionalists for whom data analytics and other new skillsets are a threat to the traditional ‘brute force,’ labor-intensive partnership model now in its [sunset](#).

The ascent of legal operations is also creating changes in delivery structure, economics, and law’s power structure. An accelerating migration of work to corporate legal departments as well as stand-alone [law companies](#) like Elevate, UnitedLex, and Axiom provides consumers with new delivery options. That has attracted the renewed focus of the Big Four accounting giants and other global, multi-disciplinary professional service companies that vie for ‘legal’ work *except* differentiated (regulated) practice activities.

Baseball has rounded the base path in melding ‘sport’ with business. Law is taking a wide turn around first in the process. It’s worth taking a closer look at how baseball has crossed home plate in its structural and cultural transformation and what’s holding up law.

Moneyball—Finding Unicorns with Data Analytics

Baseball experienced two transformative events in the early years

of the new millennium. Neither had anything to do with on-field play. One involved the publication of a book, and the other was the Boston Red Sox hiring a 28-year-old General Manager with no baseball playing or coaching experience. The confluence of these events is as much a baseball watershed as Babe Ruth's home run orgy that led to the construction of Yankee Stadium.

Michael Lewis's publication of *Moneyball* in 2003 and, later, the Brad Pitt/Jonah Hill screen adaptation not only changed fan perception of 'our national pastime' but also became an enormous crossover sensation. It created an eponymous revolution not only in baseball management but also in business. 'Moneyball' is part of our vocabulary, extending well beyond the foul lines of the diamond. It refers to challenging established management orthodoxy and looking beyond conventional metrics to uncover undervalued assets. It is synonymous with innovation and iconoclasm-- doing 'more with less.' It also involves mixing data with gut in decision making and introducing new management profiles/skillsets into the process.

Billy Beane, a former ballplayer turned General Manager of the Oakland A's, disrupted baseball purists and big-market, bigger payroll teams by building a consistent, small-market winner with discarded, low-budget players. Beane and his Yale-educated assistant GM mined undervalued talent with data analytics and metrics overlooked by others. Beane eschewed traditional baseball statistics and focused instead on overlooked ones that he believed better predicted performance and impact. Beane was the archetype for 'doing more with less' years before that term became a staple of business-speak.

Law and Theo Epstein—A New Superstar with Different Skillsets

Billy Beane was the hero of *Moneyball*, but he was neither the archetypal general manager of the movement nor its greatest success. That distinction goes to Theo Epstein whose impact on the game is arguably as profound as Ruth's. Epstein applied a mix of legal, business, and data analytics skills to the front office that revolutionized the game. Most players and front-office executives questioned his hire because of age, absence of baseball credentials, and Ivy League background. Those doubts were erased when Epstein architected the Red Sox to a World Series triumph, erasing the 86-year 'Curse of the Bambino.' Epstein had a larger budget than Beane, but other big-market executives did too. Epstein demonstrated that he could influence a franchise more than even a star player--baseball was no longer just about ballplayers.

Baseball was quick to recognize Epstein's success (repeated with the Cubs where a 108-year World Series drought was broken). Epstein ushered in a whole new breed of front office talent. Young, professionals with Ivy League backgrounds and little or no baseball playing experience became the front office norm. Business, legal, and data analytics became as integral to winning baseball games as star players.

And this begs the question: how are law's Beanes and Epsteins and why have they not been accorded the free rein and status of star practitioners and rainmakers? What's Really at Issue is the Soul of the Industry and Who Runs It.

A similar cultural clash is playing out in the legal industry where many lawyers still regard ‘non-lawyers’ as interlopers, unworthy of an equal seat/voice at the management table. Data analytics is perceived by many as a threat to professional judgment and another sign of ‘The Death of Lawyers.’ They cite their experience as the bedrock for advising clients in an increasingly data-driven world. That’s not a winning argument anymore, especially with corporate clients. As in baseball, gut is now augmented by data analytics and a new suite of personnel and resources that promote more informed, accelerated, and cost-effective decision making and delivery.

The practice of law is shrinking; the delivery of legal service is expanding. Law, like baseball, is witnessing a new division of labor. It is also experiencing a power shift from those that practice to those that deliver legal services--the business of law. Medicine and baseball provide analogs.

Legal culture is the biggest impediment to industry disruption. Change is not being driven from within the profession but by consumers. Clayton Christensen’s theory of ‘disruptive innovation’ is being played out in the retail segment of the legal marketplace. Well-capitalized, tech and process savvy providers like Legal Zoom and Rocket Lawyer are redefining the delivery of ‘retail’ legal services, providing access to millions of new customers. LegalZoom has already serviced more than four million customers, including more than a million small and mid-sized businesses. The company is providing consumers with a range of service/product options, easy access, and aggressive pricing. LegalZoom has a dazzling consumer satisfaction record. That success has not come without a

fight; the company has successfully defended several unauthorized-practice-of-law actions by State Bars.

The retail market segment is changing despite lawyers, not because of them. The same is true in the corporate market segment; consumers are driving the bus and holding the legal industry to business standards. The C-Suite is putting pressure on General Counsel to operate more efficiently not only with legal suppliers but also internally. Lawyers no longer control both sides of the legal buy-sell dynamic; procurement and CFO's are increasingly involved in legal buying decisions. And as in-house counsel spend more time as business collaborators and less as defenders/guardians, the pressure to be efficient in legal delivery mounts. That is what is fueling the growth of law companies, the Corporate Legal Operations Consortium (CLOC), and other companies and organizations with the expertise and skillsets to respond to the C-Suite mandate.

Legal culture is slow to embrace change but technology, data analytics, and other [interlocking competencies](#) of legal operations (artfully articulated by CLOC) are now as much a part of the legal industry as trial lawyers and tribunals. Data is substituting for 'reputation,' projection, and anecdotal precedent in legal decision making. It is mined and analyzed to optimize legal service delivery by cutting cost, accelerating delivery time, and mitigating risk by enabling more informed decision making. Law, like baseball, is witnessing a new breed of 'stars,' and it's time they are accorded equal voice and status with practice leaders.

Conclusion

The delivery of legal services is now an inter-disciplinary, collaborative process that involves legal, business, and technological expertise. The legal ‘profession’ is becoming subsumed by the legal industry. The faster lawyers embrace collaboration with the industry’s new players—human and machine—the stronger the profession will be. Those that continue to resist will be ignored by consumers.

General Counsel: Guardian and Conscience of The Company

I was recently invited by the ABA to address a group of General Counsel on “Lawyers as Guardians of Business Integrity and Conscience of the Company.” The topic was chosen because of a spate of high-profile scandals and regulatory imbroglios that resulted in no small part from the failure of GC’s to discharge the guardian/conscience role.

General counsel—and large corporate departments-- are law’s petri dish. They are reconfiguring the boundaries and expanding the expectations of what it means to be an effective corporate lawyer. Ben Heineman, Jr., an in-house pioneer who helped redefine the GC role—and corporate legal departments-- during his years at General Electric, remarked that GC’s play ‘offense and defense. He was referring to their dual, often-conflicting roles as enterprise defenders and business partners. Successful negotiation of the two demands superior judgment, persuasion, integrity, and *chutzpah*—all hallmarks of great lawyers.

From Roadie to Rock Star: What a Long, Strange Trip It’s Been for GC’s

As recently as the 1990’s the General counsel was the lawyer equivalent of roadie to the law firm partner rock star. The GC fraternity—and it *was* a men’s club—was populated by large firm alumni whose in-house role included overseeing work sourced to law firms. Most of the heavy-lifting was done by firms, and a good

chunk of it often went to the GC's former firm. General counsel also attended Board meetings and commonly oversaw regulatory compliance. U.S. Senator Chuck Grassley excoriated Tenet Healthcare's GC for this: "Apparently, neither Tenet (nor its General Counsel) saw any conflict in her wearing two hats as Tenet's General Counsel and Chief Compliance Officer...It doesn't take a pig farmer from Iowa to smell the stench of conflict in that arrangement."

A Trinity of powerful macroeconomic forces—globalization, technology, and the global financial crisis changed the way corporations conduct business and accelerated the metamorphosis of the GC role into what it is today. Corporate legal departments, long the largest consumers of legal services, are now its biggest providers. This seismic shift in market share was initially regarded as labor arbitrage. In fact, the migration of work from firms to corporate departments and service providers was the initial phase of a paradigmatic shift that has recast how and by whom legal services are provided. The law firm partnership structure, built on input—hours and origination-- yielded to the corporate delivery structure of in-house departments and providers built on output—performance and results. General counsel no longer regarded firms as the default provider and migrated more and increasingly complex work in-house and/or to “corporatized” service providers that leverage technology and process to reduce cost, mitigate risk, compress delivery cycles, create “big data,” and routinize tasks.

Law firms deployed a ‘brute force’ delivery structure, assigning phalanxes of generalists to address ‘legal issues.’ In the new paradigm, tech and process enabled corporate legal departments and

service providers deploy legal specialists, supported by lower-cost resources, to respond to business challenges. GC's are at the epicenter of this change, operating at the intersection of law, business, and technology. Leading corporate departments and service providers—unlike traditional partnership-model law firms—are not lawyer-centric. Lawyers work side-by-side with other professionals—technologists, process/project management experts, and others. 'Legal operations'—a holistic approach to the delivery of legal services and the business of law, has emerged as a powerful industry force and an integral component of corporate legal departments. GC's provide oversight not only for the *practice* of law but also *the delivery of legal service*. In large departments, the delivery function is often led by the Chief Operations Officer (COO's a/k/a 'legal ops' who works closely with the General counsel.

The GC Portfolio: Complex, Diverse, and Novel

Today's GC's have diverse portfolios that include: primary responsibility for an expanding percentage of the enterprise's legal work; overseeing the practice and business elements of legal delivery; managing a legal supply chain (internal and external); participating as business partners with the senior corporate management team; balancing the corporate guardian function with advancing enterprise objectives; mitigating and responding to various enterprise risks including cyber-security, crisis management, social-media oversight, compliance, brand protection and other existential threats; and aligning the legal department with the enterprise and beyond. No wonder GC's are well-paid, highly regarded professionally, and the focus of so much attention.

Both the 'defensive' and 'offensive' GC roles are nuanced and multi-dimensional. For example, 'playing defense' means not only re-

sponding to problems but also averting them; GC's must be proactive and reactive. They are tasked with identifying and deploying meaningful metrics, data analytics, and predictive tools to promote early detection of potential risks. GC's are also charged with adapting benchmarks that measure results, efficiency, spend, and other legal delivery components. GC's are also on the front line of process improvement to routinize tasks, capture institutional knowledge, and integrate the legal department with other silos within the enterprise. GC's are collaborators, integrators, and business advocates; they are not just lawyers anymore. Their performance is measured not only internally but also by how effectively they advance enterprise objectives ('play offense').

The defender role is especially challenging because business has become larger, more complex, multinational, and multicultural. GC's oversee many different business units, geographies, regulatory schemes, practice areas, technologies, compliance rules, and supply chains that often conflict with one another. To be a good defender, the GC must know the business (and its multiple units) as well as understand the personalities charged with managing them. This requires intellect, people skills, and the ability to use persuasion as a tool for reaching consensus within the parameters of legal and ethical conduct.

The GC must lead by example, encouraging the legal team to be collaborative, understand how technology affects legal practice and delivery (many State Bars require this as an element of professional competency), and appreciate that legal practice and legal delivery are related but distinct. These skills are not taught at law school or learned at large firms. So how does one acquire them with all

the immediate fires that must be put out? The simple answer is that many of the new skills must be learned on-the-fly, online, in executive training courses, and from experts and thought leaders.

Cost and Conscience

No consideration of the GC role would be complete without mention of cost and the pressure to ‘do more with less.’ GC’s manage a large, geographically-dispersed, full-service legal practice. They are under enormous pressure from the C-suite to rein in legal spend when demand for legal services is increasing. They are also accountable for results and protecting the corporate brand. Here’s where their dual role as business operator of legal delivery comes in. GC’s must be equally adroit managing the practice and delivery of legal services. Here's where the challenge and opportunity intersects. To achieve more with less, GC's must reimagine how to marshal and allocate resources—internal, external, and hybrid—to achieve optimal results, mitigate risk, and contain cost. This is a worthwhile initiative, one best undertaken with few-- if any-- preconceived notions of outcome or past practice.

Conscience is also an important component of the GC role. Championing diversity, encouraging the enterprise to act ethically and responsibly, adherence to the law and high ethical standards, devoting resources to pro bono activities, ‘re-educating’ the corporate legal team, and defending democracy and the institutions supporting it are all important aspects of the General counsel's role as the standard bearer for the corporate conscience. The GC must lead by example, serving as a pillar of strength, fairness, and credibility within the department, the enterprise, the community and beyond.

The GC should exchange best practices and "lessons learned" with peers at other companies. GC's should be active members of the legal/business ecosystem, providing thought leadership and 'giving back' to the broader legal community. Forging partnerships with law schools and young lawyers, ameliorating the access to justice crisis, and defending the rule of law are three of many 'conscience areas.'

Conclusion

General counsel are the bellwethers of the legal profession. They are part lawyer/business operator/data analyst/process/project manager/ethicist/supply chain manager/therapist/entrepreneur/and pioneer. The entire legal ecosystem should closely monitor the GC role as it casts a light on the roles, skillsets, demands, and opportunities lawyers will confront in the new marketplace.



Mark A. Cohen writes, speaks, teaches, and consults on the global legal market. His perspective is drawn from in-depth, diverse experience during a forty-year career in the field. The first twenty-five years were spent as a practicing civil trial lawyer and the past fifteen have focused on the business of law and improving access to and delivery of legal services.

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