2014

Can Lawyers Stay in the Driver's Seat?

Daniel G. Currell

M. Todd Henderson

CHICAGO

INSTITUTE FOR LAW AND ECONOMICS WORKING PAPER NO. 629
(2D SERIES)

Can Lawyers Stay in the Driver's Seat?

Daniel Currell and M. Todd Henderson

THE LAW SCHOOL
THE UNIVERSITY OF CHICAGO

January 2013

CAN LAWYERS STAY IN THE DRIVER'S SEAT?

Daniel Currell and M. Todd Henderson*

The law firm business is thriving, despite significant pain in the legal sector as changes take place. The continuing success of Big Law is in part because of its ability to adjust quickly to changes in demand by hiring and firing staff. But as Larry Ribstein saw, big changes nevertheless loom on the horizon. These changes will likely be driven by a series of specialized service providers who compete with law firms from a lower price point as Benjamin Barton points out in his article in this volume. If history is a guide, cheaper alternatives will evolve into higher-quality alternatives, at which point the law firms most invested in the status quo are likely to suffer greatly. While the significance of this disruption is often viewed in terms of how it will affect lawyers, in fact it should be assessed mainly from the perspective of consumers and society: does the quality of legal services rise or fall at any given price point?

While this is the correct question from a social standpoint, a related question of immediate interest to lawyers is this: will lawyers still be "in the driver's seat" of the legal sector when the dust settles? Or will they cede their leadership in the way that architects ceded leadership in the construction sector? Architects were once clearly at the top of the food chain in the building sector, but that is no longer the case. Developers and general contractors have a great deal more power and, it must be said, make far more money. Will traditional law firms cede control of major legal projects in the same way?

This is a radical question – but we believe it is not frivolous. Lawyers don't generally have sophisticated

* Executive Director, Legal, Risk & Compliance Practice, CEB, Inc.; Professor of Law and Aaron Director Teaching Scholar, University of Chicago Law School, respectively.

procurement, project management and commercial skills. These skills are important for managing complex legal matters, and there is a large and growing class of non-traditional legal service providers who are cultivating those skills. It could turn out to be more efficient for traditional law firms to focus on what they do best, which is far less than the work of managing every aspect of a legal matter – just as the work of an architect is much less than managing an entire building project. Architects supply a key intellectual input to a building project. By the same token, law firms could end up supplying a key intellectual input to a legal matter.

As Bill Henderson points out in his article in this volume, there are cultural and practical barriers to law firms – as currently structured – changing their model to adapt to the market. At a minimum, the traditional law firm model faces stiff competition in the decades to come. More radically, law firms may find themselves sidelined from some of the most important aspects of legal representations.

Yet if law firms cede their traditional leadership role, effects on their clients and society will not necessarily be positive overall. Because of this, we believe it is important to consider the implications of these changes on the education, licensing, and regulation of lawyers. The traditional law firm's ability to avoid the fate of other commoditized professionals will depend in part on how lawyers approach the content of their education, the design of their licensure system, and the regulation of their industry.

TABLE OF CONTENTS

"It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way . . .."[1]

I. INTRODUCTION

If you read the papers or any number of legal articles from the past few years, you'd think lawyers are in crisis. (Note, we didn't say "clients" or "society"; this is an important point to which we will return.) Larry Ribstein, whom we've come to honor in the way he would want, by taking him on, wrote three or four papers, plus a book on the subject.[2] His scholarship is just a fraction of the ink spilled in the past few years on the issues of the business model of law firms, legal education, and licensing. The economics of the legal profession has become a cottage industry among law professors, as has the coverage of law schools and failing law firms. The media has jumped on the bandwagon too. There was, for instance, enormous coverage of the recent failure of the law firm Dewey & LeBoeuf, one of the country's most respected firms.[3] The New York Times also ran several large, marquee stories on legal education, including a rather negative piece on the New York Law School.[4]

But is this really an existential moment for the legal profession? In an interview with the New York Times on the Dewey collapse, lawyer Michael Trotter,

[1] Charles Dickens, A Tale of Two Cities.

[2] See, Larry E. Ribstein, "The Death of Big Law," 2010 WISC. L. REV. 749 (2010); Larry E. Ribstein, "Practicing Theory: Legal Education for the Twenty-First Century," 96 IOWA L. REV. 1649 (2011); Larry E. Ribstein, "Lawyers As Lawmakers," 69 MO. L. REV. 299 (2004); LARRY RIBSTEIN & ERIN O'HARA, THE LAW MARKET (2009).

[3] For just a small sample, see, e.g., "Standoff Continues Between Dewey Retirees, Bankruptcy Estate", The American Lawyer, Oct. 11, 2012; "Dewey Defied Law of the Jungle", Wall Street Journal, Oct. 14th 2012; "Dewey Partner Plan: A New Remedy for Law Firm Bankruptcies?", Wall Street Journal blog, Oct. 15th, 2012.

[4] See, "An Existential Crisis for Law Schools", The New York Times, July 24th, 2012.

who has written two books on the legal profession, makes the case that the profession is doomed:

> There are now far more capable lawyers and law firms than there is work for them to do. The financial costs of legal services have gotten so high that most clients are determined to reduce them. Many legal services have become commodities that can be supplied by a large number of firms with sufficient quality to meet the needs of most clients in most situations, and corporate general counsel now know that they can get what they need at a lower cost if they force the major firms to compete for the work.[5]

When asked whether he'd recommend his grandchildren to become lawyers, his answer was a categorical "no." This was based on his view that the chance of making it to the top of the industry is low, and adding, "much of the work that's done [to try to get there] is not challenging or interesting work."[6]

Ribstein's work is also pessimistic at its core. In the piece most relevant to our short essay, *The Death of Big Law*, he applied economic insights to the current law-firm business model, and found it untenable in the face of various fundamental market pressures. These included the move away from partnerships and toward limited liability, globalization, and the growing role for in-house counsel. Looking past the short-term problems big law firms were experiencing during the Financial Crisis, he persuasively set out a vision for law firm work as involving greater investment in innovation, deploying new technologies, and offering new services

[5] http://dealbook.nytimes.com/2012/04/25/dewey-leboeuf-crisis-mirrors-the-legal-industrys-woes/

[6] Id.

under different organizational structures. The world Ribstein imagines is one in which the current law firm crisis forces legal professionals to play new roles, and then he describes how deregulation of the legal industry, in areas such as partnerships with non-lawyers, financing arrangements, and licensing, may be needed to achieve this end.

In this essay, we come at the issue from a slightly different point of view. We make several arguments. First, we provide some data suggesting the crisis is much less acute than it seems. Law as a business is thriving, despite the seeming seismic shifts going on beneath the surface. While there are problems looming on the horizon, and undoubtedly there have been lawyers and recent law graduates who have had their expectations dashed, it has never been more lucrative to be a big firm lawyer. This is in part because law firms have been especially nimble in the face of market pressure. The transition costs – hiring and firing – are very low, and therefore law firms can respond to less demand with higher rates. This bodes ill for competitors hoping to kill off big law.

Second, insofar as there is a crisis, it is one for those vested in the status quo rather than future lawyers, clients, or society. Innovation and change come to all industries, and what society generally cares about is the customer, not the producer. While industry insiders may have an interest in protecting this or that model of the profession, it isn't at all obvious that society should care one way or the other. That is – unless the changes make the quality of law worse. The only thing clients (and therefore society) care about is delivery of quality legal services at the right cost. The changes going on in the industry have not yet pushed the cost curve down as far as it seems may be possible, and we do not know the impact from the variety of changes yet on the quality of law. Given the difficulty of measuring the latter, there is great uncertainty about doing a social cost-benefit analysis. We have yet to see any persuasive argument that any given change in law costs or law firm models will make society better or worse off, but instead see just a lot of talk about how interest group X or Y will be impacted. This is not a very interesting conversation.

Third, there are, notwithstanding these first two points, profound changes to the legal market as it unbundles into discrete segments of products and services markets. The main forces driving this are technology and the transparency and ease of collaboration that technology facilitates.

Naturally, the technology itself creates new challenges – most obviously, there is now vastly more documentation (including potentially millions of emails) implicated in any given transaction or dispute. But the other side of that coin is technology's ability to facilitate – and, increasingly, to perform – the ordering and analysis of that documentation. All of that work used to be done in the vertically integrated law firm. Now we see the potential disintegration of what has to date been the vertically integrated law firm model.

But firms exist for a reason, as Ronald Coase taught us. They lower information costs; they reduce the cost of collaboration.[7] For an integrated firm structure to naturally come apart, collaboration *between* firms needs to get easier. Given the complexity of the data sets and information involved in legal work, this is no small matter. But collaborative technologies appear to be in their intermediate stages – the move to "web 2.0" gives us a glimpse of what is possible. If the unnamed masses can crowdsource the world's largest (and possibly most accurate) encyclopedia, it seems likely that an ecosystem of five or ten unrelated firms could crowdsource a complex transactional representation.

[7] Coase, Ronald, "The Nature of the Firm", Economica (Blackwell Publishing) 4 (16): 386–405 (1937).

Building an ecosystem of this kind can only happen, however, if there is a fair bit of transparency into the marketplace, and visibility into the work being performed within the ecosystem of firms. Technology has advanced the state of this visibility – even simple developments like LinkedIn and other social networks provide vastly better information about who the players are within any industry, how their work is structured, and what they might be good for. It's easier to build a team when you can evaluate all of the players.

As to visibility into work being performed – this is hard to do even in a traditional law firm. Which lawyers are pushing a project along? Which are shirking? It's easier to know if they work just down the hallway; harder to know if they are in the Los Angeles office and you are in New York. But new technologies allow contributors to see the progress of their collaborators in real time, following work as it progresses and constantly re-assessing next steps.

With the advent of these collaborative technologies, a firm structure could become irrelevant. Would two Wikipedia authors create better work from adjacent offices? Some legal services firms have made great progress in this area, stitching together very effective global teams within and across firm boundaries.[8] This ability – if it continues – could allow "virtual firms" to succeed by connecting professionals with very different skills to work on common projects. Like any collaborative enterprise, rules of engagement would be important, but durable commitments to the other players might not be.

Fourth, in light of this long-term change in industry structure, the crucial question facing the *legal industry* is whether lawyers will still be in the driver's seat when it comes to directing the course of complex client representations. For years, lawyers have not only

[8] Perhaps the best example – though surely not the only one – comes from a firm called NovusLaw. See http://www.novuslaw.com/Process-NovusC3.aspx.

been in the driver's seat; they have in fact performed and been paid for nearly all the services. Now, lawyers are a sort of prime contractor sitting atop a system of service providers who work at their direction. But it wouldn't have to be this way, particularly as the relative economic power of the different players shifts. To be specific, it could turn out that the parties earning the most in a representation become the most powerful players in crafting its strategy, and that those parties are not lawyers in the traditional sense.

If this suggestion sounds awfully unlikely, think of the architect's role in the production of a skyscraper. To be sure, architects and engineers occupy a respected position in the network of people and firms that make a skyscraper happen. But they earn nowhere near the majority of the money being paid out, nor do they control most of the resources involved. They are not in the driver's seat.

It wouldn't necessarily have to be this way. One can easily imagine a world in which the architect sits atop every project, calling the shots on how his vision is to be executed. Because this didn't happen, architects' services have been commoditized and, to be frank, they don't make much money in the scheme of things. The real money flows through and to the general contractor and the developer.

The question for lawyers is whether they should stay in the driver's seat, managing representations where fulfillment is run through many different parties, or if they will increasingly become a commoditized subcontractor of specialty services like most architects. Lawyers surely occupy a strong position today and could stay in the driver's seat on even the most complicated representations. But to do the work effectively, lawyers will need to develop procurement, project management and other skills not native to their planet.

Finally, we discuss briefly the implication of the lawyer as prime contractor on the education, licensing, and regulation of lawyers. The ability of lawyers to avoid the fate of other commoditized professionals is dependent on how lawyers approach the content of their education, the design of their licensure system, and the regulation of their industry. For society, what matters is an appreciation that ultimately this is irrelevant, unless a case can be made that the outcome meaningfully changes the quality or quantity of law at any given cost. It is important when considering the changes, however, to note that the people making the rules that will influence where lawyering is headed are lawyers, and therefore may not have the broader social interest in mind when writing the new regulations.

II. THE RESILIENCE OF BIG LAW

Most of the recent analysis of the changes impacting the legal sector is based on a perception that law firms are in trouble. In *The Death of Big Law*, Ribstein admirably tries to look past the recent Financial Crisis and its impact on law firm hiring to deeper trends in the industry, but he nevertheless uses the collapse of firms like Coudert Brothers and Brobeck, Phleger & Harrison to illustrate the fragility of the industry.[9] Ribstein identifies seven factors he believes threaten the survival of the traditional law firm model: (1) "the rise of in-house counsel"; (2) "reduced size and scale advantage"; (3) "increasing partner-associate ratios"; (4) "changing clientele"; (5) "limited liability"; (6) "increasing global competition"; and (7) "deprofessionalization of law practice."[10] While we agree that these factors (and more) are all relevant to the future of the legal sector, it is not at all clear from the data that law firms are in the immediate danger that Ribstein suggests.

Notwithstanding the fact that there was a recent downturn in hiring of law school graduates and many firms have closed or laid off lawyers, in many ways,

---

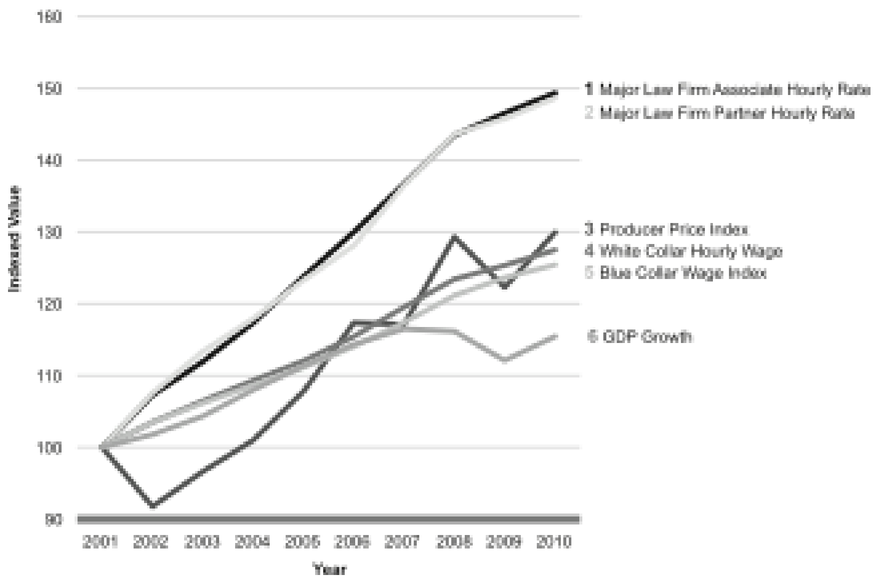
[9] Ribstein, Death of Big Law, *supra* note 2 at 771-773.
[10] Id at 760-770.

these are the best times ever to be a big firm lawyer. To be sure, it looks possible the legal sector is about to go through some very serious and painful changes. But the data do not support a claim that the recession has been particularly hard on lawyers. The most honest starting point for any analysis of the future of the legal profession is a recognition that law firms are doing very, very well and have been for the past decade.

It is commonplace to say that the current law firm model is unsustainable. But this just begs the question: unsustainable for whom? The big law model in widespread use today has been sustained for decades, and remains capable of producing millions of dollars in profits per partner even during economic hard times. The profits produced in the last decade exceed those that would have been hoped for in the 1990's, another prosperous time for lawyers. For instance, Figure 1[11] shows that the prices for services from big law outpaced other producer prices, white and blue collar wages, and GDP growth over the past decade, including during two significant recessions.

[11] All data is drawn from the 2012 Real Rate Report, a collaboration of CEB and TyMetrix. The law firm rate data is drawn from a database of several billion dollars of legal fees actually paid to law firms, and is not a reflection of the law firms' claimed rates or "rack rates", which are discounted for most clients. The report's full analysis is reserved for a group of private clients, but for an overview of the report, see: http://www.executiveboard.com/exbd/legal-risk-compliance/real-rate-report/index.page.

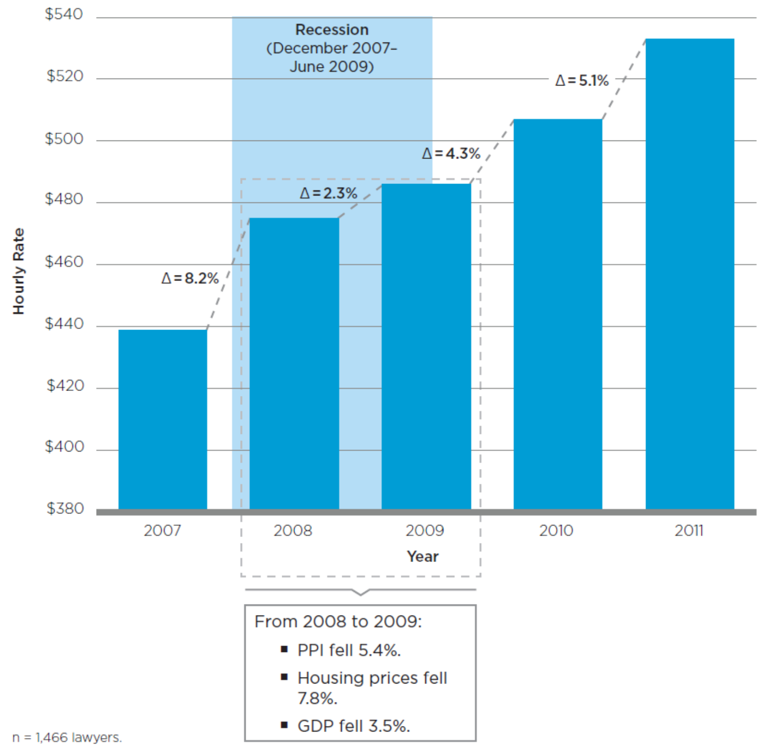
Figure 1: Selected US Price Indices
All price indices indexed to their 2001 level = 100



Ultimately, pricing is determined by supply and demand – particularly in a transparent market like this one – and supply and demand have been very kind to law firm owners lately, despite the major disruptions and changes in the rest of the economy.

There is no doubt that many participants in the legal sector have suffered significant pain. As Ribstein notes, many firms have failed. In addition, many recent graduates had difficulty finding jobs, especially at the height of the Financial Crisis. True, many law firm owners have become *former* law firm owners – downsized, forced out, or otherwise removed. But, not to be flip, that's business. In every other industry, Schumpeterian "creative destruction" is commonplace, and a sector's success or failure is usually assessed by how it performs for its customers and its owners. As Figure 1 above suggestions, big law firm owners have done awfully well for themselves in the last decade or so. Law firms are very successful businesses, and they have remained so through the recession. The data below in Figure 2 show this more clearly:

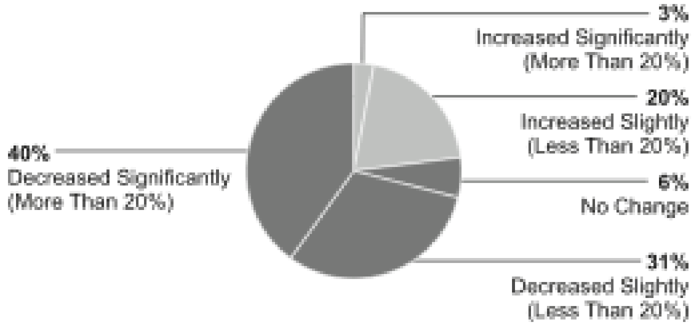
Figure 2 - Lawyers' Average Rates Through the Recession and Recovery



Lawyers' rates continued to climb while other economic indicators were very weak.

Although rates have increased, it is true that *clients have bought less of their services*. In 2009, companies *reduced* the amount they paid to law firms for the first time in a decade or more, as shown in Figure 3:

Figure 3 – Survey of 110 In-House Lawyers
"Compared to 2008, our spending on outside counsel in 2009 . . ."



But nevertheless, by quickly adjusting the supply of hours, law firms continued to grow their rates and in many cases increase their profits per partner and overall earnings. Revenue per lawyer shrank among AmLaw 100 firms only in 2008 and 2009, growing again in 2010 and 2011. By laying off lawyers and staff and otherwise controlling costs, most firms were able to stay very profitable in 2008 and 2009, and some firms had record earnings in those years.

Since then, the top 100 American firms have been growing and profitable – as measured by revenue per lawyer, profits per partner, salaries, and now even by headcount.[12] Law firms are growing again even as employment measures across the economy remain stagnant.

In this way, law firms are enviable businesses (at least for the owners), since they have the ability to shrink supply very quickly in response to reductions in demand. They can do this by laying off lawyers and staff – and frankly, they can shrink supply by working less and charging the same or more per hour for constrained output. In this way, the sticky wage problem or the sticky supply problem that plagues many busi-

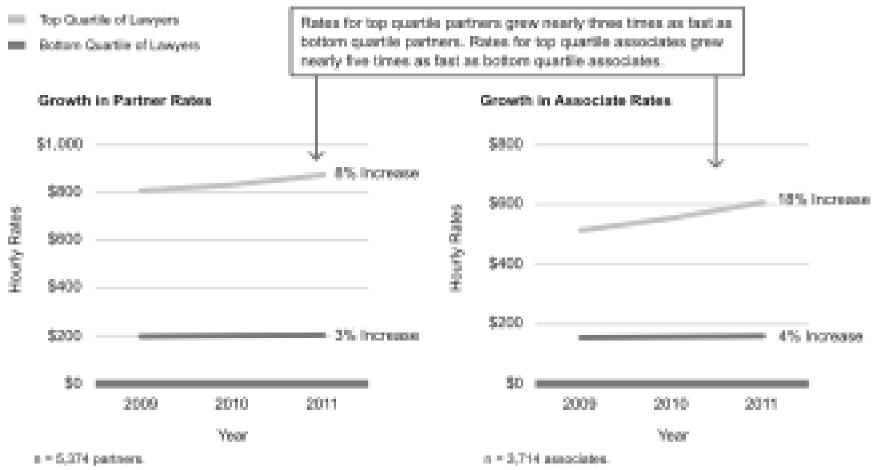
[12] "The AmLaw 100 2011", The American Lawyer, May 1st 2011, available online at http://www.americanlawyer.com/PubArticleTAL.jsp?id=1202550268433.

nesses may be easier for law firms to handle. Either way, supply and demand still explains what's going on, and so far the story hardly suggests an existential crisis for big law.

But the increasing demand for legal services has not been distributed as equally across firms as we have seen in the past. As shown on Figure 4 below, the billing rates for top performing lawyers have grown at dramatically faster rates than for lower performing lawyers. This could simply be a version of what economists call the "superstar effect."[13] If the costs of purchasing the best of a particular product or service fall over time, then consumers have less incentive to purchase the second best. One way in which costs for superstars may fall is if information technology or other changes in the cost of production make it easier for superstars to offer their services across a larger asset base. For instance, as the costs of listening to opera singers falls over time (starting with concerts-only, then limited access to records, and now to immediate online access to any singer), then the superstar effect predicts greater and greater returns to the top opera singers, and lower returns to their competitors.

[13] Rosen, S. 1981. "The Economics of Superstars." American Economic Review, 71(5): 845-858.

Figure 4 – Higher-Billing Versus Lower-Billing Lawyers



This is not necessarily a bad thing from a social welfare perspective. After all, we care about welfare gains to customers, as well as any welfare losses, as best we can calculate them, to lawyers who are less than superstars. We cannot know the optimal tradeoff here, and therefore it is difficult to condemn the trend shown in Figure 4. What society cares about is the quality of law at a particular price. And from just this data we cannot make definitive conclusions. It could be that the gains to customers from superstar lawyers outweigh the transition costs for the non-superstar lawyers. Or perhaps the structural changes to costs means that better lawyers (or even new legal services) will be more broadly available at lower cost than they would have been without a powerful superstar effect.

Critics, including Ribstein, believe the large firm model is doomed in part because the glue that holds partners together is weakening. Ribstein notes that the move to limited liability organizations means that partners have a lower incentive to monitor their colleagues. In addition, technology reduces switching costs for lawyers, and the superstars may use their power to leverage greater rents from competing firms.

The model for driving profitability in recent years has been to bring as many lawyers as possible onto a steady, big and elite platform of services, and to tie their billing rates to the overall rate scheme, as Bill Henderson's article in this volume discusses. In this sense, the economic rationale for big law is to act as a mechanism for tying the services of non-elite lawyers to those of elite lawyers, increasing the profit power of the elites. In other words, hourly pricing rarely reflects the value of the person billing out his or her time; it reflects the market's willingness to pay for the overall bundle of hours offered by the team working on any given matter.

This is easiest to see in city-to-city transfers of young associates. A fourth-year Big Law associate who moves from Madison to Washington, D.C. may as much as double her billing rate – but the move did not make her a better lawyer. Her rate doubles because her services are now tied to the services of more scarce and sought-after professionals with a distinctive knowledge set. If she moves back to Madison in two years, having gained two years of knowledge and experience in Washington, her billing rate is still going to be slashed by 50% or more. Her rate is not about her; it's about the people she is bundled with.

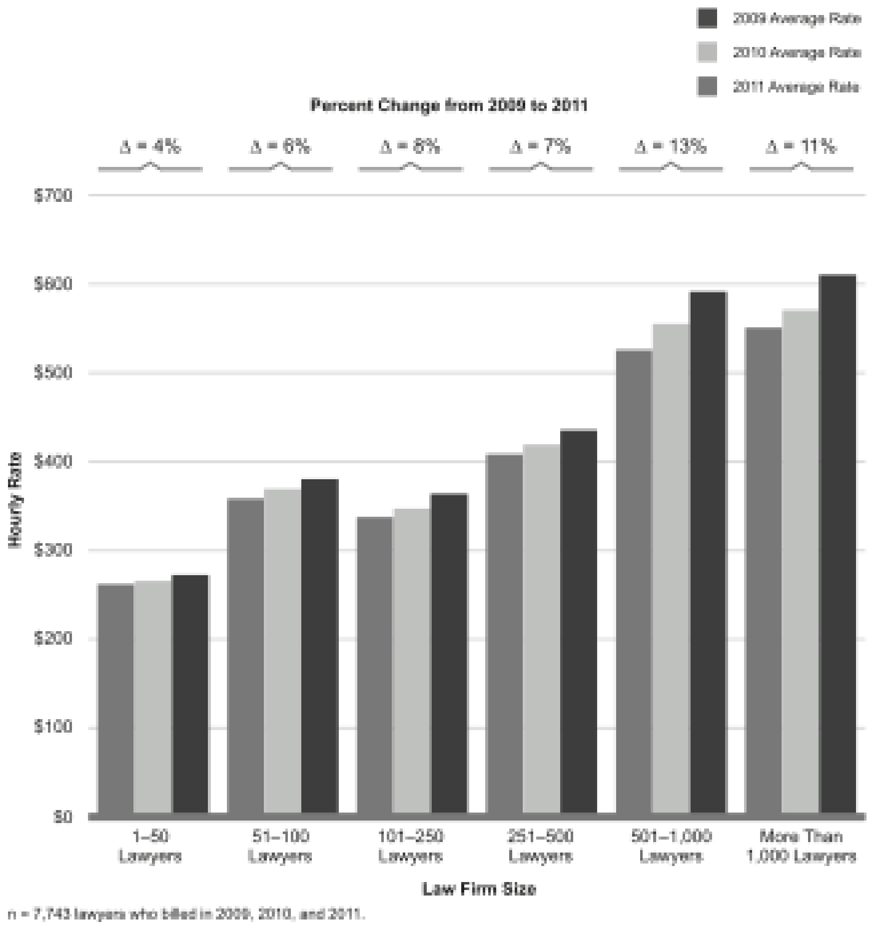
By the same token, the most sought-after partners are generally underpriced. In-house counsel will essentially admit this by noting how difficult it is to get their time – and that, when you can get their full attention, $1100 an hour is more than worth it. But as clients regularly experience, partner prices are essentially teaser rates that pull clients in, only for work to be performed by other partners and associates who bill at rates elevated by their association with the marquee partner. The fact is, that partner is not really available for very many hours to any given client; even at $1100 an hour, the market has more than cleared.

This leads to the inference that partners' "natural" rate – what they would charge if they were truly solo practitioners with no ability to bundle their services –

is probably much higher than the $1000 or so we see in America right now. This inference is supported by the one example that occurs in nature where truly elite lawyers must earn money exclusively from the sweat of their own brow: UK barristers. Because barristers are not allowed to affiliate with other lawyers in the way American lawyers do, they truly make their money only by billing their own time. Top barristers in London were billing at £1,000 *ten years ago*; current rates are higher. Having said that, top barristers don't appear to ultimately make as much money as many American big law partners – the pyramid model still delivers more profit.

Of course, it doesn't matter if the firm is a pyramid, a tower, or an hourglass. Where pricing is bundled, prices are only sensible when seen in the context of the bundle of tied services. Professionals that nobody has ever heard of (and may never meet) are tied to the services of superstar lawyers, and the effect is to raise the rates of every lawyer in their orbit. This way, the whole firm becomes more profitable and even the associates can be paid well. Some evidence for this model, which any lawyer understands intuitively as the current market model for big law, is presented in Figure 5 below.

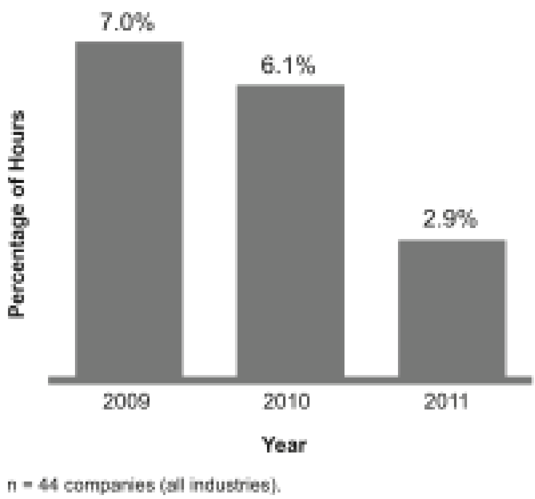
Figure 5 – Average Hourly Rates by Law Firm Size, 2009 - 2011



Although Ribstein and others may be correct that there will be an increasing number of big law firm flameouts, to this point the evidence is just anecdotal. At least for now, as Figure 5 shows, big firms continued to have more pricing power than small firms even in the wake of the financial crisis. And prices are very definitely still going up.

We do not want to sound blasé or overly optimistic, but the current law firm model, despite some recent evidence of weakness, seems to be thriving. Like any system, it is not indefinitely sustainable, because forces beyond the power of any individual lawyers will cause change. The reason we are all writing about this *now* is that there are good reasons to believe that the forces arrayed against the large law firm model are starting to act visibly in the sector. One small leading indicator – the ability of law firms to bill their least skilled people as part of the "platform" of services – appears to be declining, as shown on Figure 6:

Figure 6 – Entry-Level Associate Hours Billed as a Percentage of Total Lawyer Hours Billed per Client



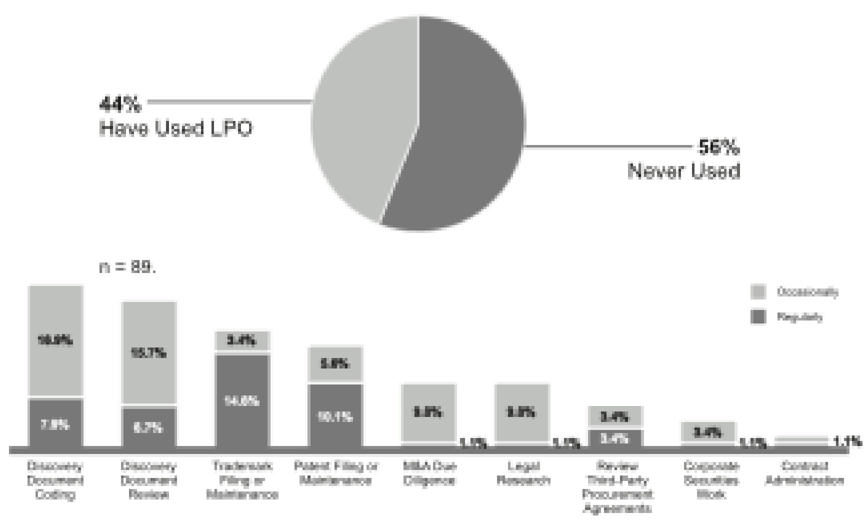
So while firms kept and even extended some aspects of their pricing power, they have lost some of their ability to force the full pricing structure onto clients. Put another way, clients are forcing firms to disaggregate their services and sell them more a la carte than in the past. Clients still pay a premium for what they purchase, but they no longer have to buy everything from one firm; they are unbundling the legal services suite.

As we discuss in the next part, we are seeing more experimentation with alternatives to the billable hour, legal process outsourcing, and other alternatives to the traditional model. All of this is facilitated by the ability to unbundle legal services. Even so, Big Law remains economically healthy; the death of big law that Ribstein proclaimed may happen, but for now its vital signs are strong.

III. THE FUTURE LEGAL SECTOR

Ribstein (and others) chart a fairly radical future for law firms and the legal sector. Before we offer our particular point of view on the future, we pause to note that the evidence suggests the change is more likely to be evolution rather than revolution. For instance, there are many startup firms offering legal process outsourcing (LPO), but in-house legal departments are adopting these services at an extremely slow rate. Perhaps this is because law is inherently a conservative field, but whatever the reason, companies (that is, clients) have been very slow to move. While legal process outsourcing has existed for well over a decade now – specialist e-discovery firms, contract administrators, and more – it is still true that even among public companies with in-house legal staff, uptake on these services is quite limited. It is still frankly easier to turn to a law firm for one-stop shopping, and the law firm incentive, at least so far, is to keep the work largely in-house. This is illustrated below in Figure 7.

Figure 7 – Percentage of In-House Departments That Have Ever Used Legal Process Outsourcing Providers for At Least One Task, 2012



As this illustrates, over half of the 89 corporate counsel surveyed in early 2012 indicated that they had never used any LPO for any reason. Our experience suggests that these are probably the smaller departments in the response group – they simply don't want to incur the coordination and oversight costs of managing a network of providers.

So, the potential savings are significant, but uptake of LPO services is limited. Fewer than 10% of counsel in this survey suggest that their companies "regularly" used an LPO for discovery tasks, even though discovery often accounts for the lion's share of legal fees in much American litigation. This response group was limited only to companies with at least 200 pieces of litigation ongoing during 2011 – so the LPO option was a real one, and in most cases it wasn't taken. One-stop shopping (hire a law firm, let them handle it) is still very attractive.

Ribstein's point that companies may grow their legal departments to insource some legal work and pull it away from law firms is right in principle – the numbers suggest that companies could save substantial money that way. But companies don't tend to. CFOs prefer to keep headcount low even if it means spending more on outside vendors like law firms.

The data in Figure 7 are a reflection of this: companies could make better use of LPOs, move towards unbundling the law firm service, and save money overall if they had more in-house staff. In other words, in-house staff don't just facilitate doing more work inside the company; they facilitate doing work outside the company much more efficiently by ensuring that the best provider is doing the work, and that won't always be a law firm.

But companies don't often staff this way, even though the potential savings are clear. Firms these days like to stick to their competencies, and those competencies rarely include the management of law firms and LPOs. They prefer to let someone else do the driving, and to date, this has always been law firms. As LPOs grow in size and capability, law firms won't necessarily be doing the driving forever.

Perhaps the slowness of even large clients in regularly using LPO services is just a version of Amara's Law: We tend to overestimate the effect of a technology in the short run and underestimate the effect in the long run. In other words, Ribstein's prediction of the death of big law is perhaps a decade too soon, but it could also be too modest if we project further forward. Whether technology will have the same impact on law that it has on other fields remains an open question, especially since lawyers are largely responsible for making the laws and rules that determine the fate of their industry. While perhaps futile in the long run, this power might forestall change for longer than possible in other industries. Law may therefore conform to Amara's Law, but with a slightly different shape of change over time than the internal combustion engine or speech synthesis.

With these preliminaries said, where do we expect the legal sector to move, sooner or later? We offer three relatively preliminary and somewhat ordinary observations.

The first big change we see coming is that products and services will continue their century-old migration away from one another – that is, a legal product (information) will be more easily separable from a legal service, such as analysis of a factual situation. Analysis will even become a product in some cases. This kind of disaggregation has happened in countless other industries. New companies (and in response, incumbent ones) have used technology, such as information technology, computers, organizational innovation, and process design, to disrupt prevailing methods of doing business by offering completely new suites of products and services. For example, Google took an activity as old as society—sifting through information, organizing it, prioritizing, and storing it—and turned it into a product. The new product – "search" enabled by a new technology, called a "search engine" – quickly became a commodity, although one that Google could profit from because of its enormous volume and the fact that it was slightly better than the next best alternative. Google is the superstar of search, and it uses its global reach to achieve enormous volumes of use, thus ensuring profit at even low margins.

Just as Google "productized" what would previously have been a service, some legal services are becoming commoditized and productized. The review of documents, the management of cases, the research of a legal issue, the design and application of basic legal documents, and other simple lawyer tasks are all now discrete industries in which many new startups are offering technology-based solutions to clients. These services were once bundled into the law firm platform – but now it remains to be seen if they stay bundled.

There are arguments for it remaining so, as a descriptive matter. Chief among these are the regulatory barriers Ribstein describes in *The Death of Big Law*. The current rules banning law firms from having non-lawyer partners, coupled with professional licensure and rules banning the unlawful practice of "law," defined very broadly, are significant impediments to innovation in the legal sector. Since lawyers preferring the status quo currently outnumber lawyers trying to upset it, and the latter is also not a more powerful interest group (yet), there is reason to believe these rules will persist for a while.

The key to changing the political calculation is to make the case that the lawyers (and others) opposing the status quo arrangements regarding lawyers are interested in improving the quality of law or the price of law for a given quality. The argument can be a tough one to make. Increasing access to lawyers, which lowering prices would presumably do, is not clearly a good thing. For it to be so, one would have to believe that lawyers and legal processes add social value beyond their social cost, which is not at all obvious. For instance, if one believes that litigation effectively and efficiently deters accidents, say by improving product design or disclosure about products, but that the optimal point of deterrence has not yet been reached, then lowering legal costs might work a social welfare improvement. But, on the other hand, if one believes the marginal benefit of lawyers is zero (because we are at the efficient point) or negative (because lawyers serve their own interests or impose costs that exceed the benefits), then lowering legal costs would be a bad thing.

There are numerous areas of law beyond litigation, however, and in these the case may be easier to make. In most transactions, lawyers serve the role of trying to increase the size of the total pie (or "surplus," as economists would say), as well as helping to divide it in the interests of their clients. It is in this transactional world where technological improvements can be of most obvious value, and therefore for regulatory barriers to be most sensibly removed. For instance, if everyone would be better off if everyone made wills, then lowering the costs of will making (at a given quality) would be a social improvement.

Or take a more complex example: mergers and acquisitions. Many academics and corporate observers believe the quality of corporate management (and therefore the quality of corporations) depends heavily on the discipline provided by a robust takeover market, what is called "the market for corporate control." Let managers know that they could be ousted after a takeover, and they will behave. A significant cost for any merger is the due diligence and approval process, which involves the review (by lawyers and others) of thousands of documents for both content and privilege. This process was once done by hand (with armies of contract lawyers) but is now increasingly done by technology. As the costs of diligence and approval fall, and undoubtedly new legal technologies can make them fall dramatically, then this lowers the total costs (that is, the sum of decision costs and error costs) of takeovers. This means more deals can be done at a given price, which increases the disciplining power of the market for corporate control.

On the other side, however, is the fact that all mergers today result in multiple lawsuits designed to frustrate their completion or get the best deal for shareholders, depending on one's point of view. Given this ambiguity, and the fact that cost reductions may make litigation cheaper as well, the net effect on social welfare may be zero or even negative. If more deals can get done but more lawsuits that simply transfer wealth to lawyers or impose costs on defendants are possible, then the benefits may be canceled out. Since the technology may work equally well for both transactions and litigation, the result is uncertain. Of course, if the quality of outcomes can be improved or law works faster (for a given quality of outcome), then the technology may be a social benefit. But these are large open questions that may be determined by one's prior beliefs about the value of lawyers in the first place. As such, it is hard to definitively see how the political calculation for reform plays out.

The second big change we see happening is that process efficiency will, as in so many industries, be the most sustainable competitive advantage for new legal technologies/firms. Cost arbitrage (locating in North Dakota or Gurgaon) can easily be replicated; new technology can be quickly shared or copied. But process advances are often extremely difficult to replicate, even when the code is known. Consider Wal-mart. The efficiency gains from the Wal-mart operations and logistics process accounted for an enormous amount of the total US productivity gain of the 1990s and 2000s. Few companies have been able to come close to matching Walmart's efficiency, even though they have tried to deploy similar process changes.

Another classic example involves the "lean" manufacturing process deployed by Toyota. Lean manufacturing is an organizational, informational, and manufacturing process that is relatively simple. For instance, individual workers on an assembly line are empowered to make suggestions for work improvements, often using notes placed in cubbyholes, or to innovate on their own initiative. Toyota and other Japanese auto manufacturers deployed these processes during the 1980s to gain enormous improvements in quality. Their "secrets" were set forth in great detail in the 1991 book *The Machine that Changed the World*,[14] and yet American auto makers were unable to replicate the results. It seems a firm cannot just decide to "go lean" on a complex process.

Legal representation (particularly for large matters) is a complex process, and it is far from likely that lawyers working within traditional law firms have the wherewithal to transform their operations – to "go lean." This opens the door for specialty firms who have deep competencies in a single process and its related technologies. A good example is NovusLaw, which specializes in document management, to develop process improvements outside of law firms as a separate service. NovusLaw has created processes and developed technologies and quality control programs to lower the costs of document review, management and analysis services. This type of specialization in process is something that law firms are unlikely to be good at – it is exceptionally hard to stretch a firm into a new industry, which is essentially what this shift in focus would do. Instead, we expect to see firms that are good at reforming complex processes to beat up law firms in this space extensively. Indeed, NovusLaw and many other LPOs were founded by non-lawyers with prior experience in business process outsourcing.

The third big change we see happening is that some entity will serve as a "prime contractor" for selection, coordination, management, and liability for these new technologies. The prime contractor is in the driver's seat - making choices about resource allocation, and sitting atop the economic food chain.

---

[14] *The Machine that Changed the World: The Story of Lean Production*, James P. Womack, Daniel T. Jones & Daniel Roos (1991).

In some fields, it seems as if the original professional has been able to serve in this new role. Medicine may be an example of this. Over the past few decades, a variety of new market participants have entered the medical area to offer new products and services. The rise of the nurse practitioner, the physician's assistant, massage therapists, physical and occupational therapists, nutritionists, MRI providers and a host of other medical technologists is a good example of this phenomenon. So too may be the development of new technologies that do the things that doctors used to do. But the doctor is generally still the primary gatekeeper between patients and these service providers or technologies. Based on licensure or reputation or perceived expertise, doctors have been able to capture much of the value of these new services. Doctors (or maybe hospitals) are (still, it seems) the quarterbacks of the medical sector: they call the plays. Unlike prime contractors, they may not profit directly from the services provided within the broader network of providers. But their position at the top of the network ensures that they will continue to do very well.

On the other hand, as noted above, architects seem to have ceded this central role to others. Other professionals, like developers and contractors, were able to take over the prime contractor role that could have been served by architects. The same might be said about big box or catalog retailers, like Sears. New entrants, like Amazon, deployed new technologies and processes, all of which were easily replicable in some sense, to overtake incumbents who held all the natural advantages in brand, customer loyalty, information networks, and so on. To be sure, Sears and K-Mart were just firms and not professions with the ability to use licensing to secure their advantage, but it remains to be seen how powerful this difference is. It did not seem to have worked for architects, although perhaps it has for doctors so far.

The result of all this is a market characterized by a series of providers that are coordinated by a prime contractor. The question for the legal industry is: who will the prime contractor be? Will law firms be able to play a significant role in the deployment of these new technologies or will they be marginalized? This is the question we take on in the next part. But it is important to reiterate that the question for customers, the economy, and the nation is: will the result serve us well? Whether lawyers are able to maintain their privileged position is utterly irrelevant from an efficiency or social welfare point of view.

IV. CAN LAWYERS STAY IN THE DRIVER'S SEAT?

So far we've argued that the market for legal services is surprisingly stable even in the face of big changes. We've also noted that big law firms are surprisingly robust in the midst of what seems to be a rapidly changing market. We've argued that the biggest likely change for lawyers is in the process of law, specifically the management of documents, as well as the commoditization of routine legal analysis and services. These developments are all part of the unbundling of the legal services suite. If the market fragments in this way, major representations will involve the services of multiple specialty providers instead of being housed in a single law firm. Among those many firms, who will be in the driver's seat?

There are several possibilities, which we only sketch briefly here. Clients could still go to a single law firm, which would then coordinate all of the activities of various service providers, whether they provide document review technology, legal research, analysis, or another function. One could say that this is the current default – clients go to a law firm, and the firm coordinates other service providers to the extent there are any. Historically this has at least included photocopying, court reporters, and other relatively low value-added services. In the last decade this has evolved to include things like legal research, document analysis and management, and other higher value-added work. But law firms still have little incentive to outsource those services under the prevailing model, meaning that LPOs are still used fairly infrequently.

Businesses with large or sophisticated in-house legal departments could coordinate their own legal matters – stitching together a network of LPOs, law firms and individual lawyers to serve their needs. This already happens in some cases, but it's still quite rare. With the exception of major financial services, pharmaceutical, energy and defense companies, in-house departments are very thinly staffed. Most in-house counsel spend very little of their time managing law firms, yet they know that this is a very important task that too often gets ignored.

As the legal market wakes up, gaps are starting to be filled by entrepreneurs. On the matter of helping corporate counsel to find and manage law firms, a recent example is a small company called AdvanceLaw.[15] AdvanceLaw helps companies that already have large legal departments to find and retain lawyers in mid-tier cities (e.g., Minneapolis or Sacramento) who can do the work of a Chicago or Los Angeles law firm more efficiently.

What's remarkable is that this service is needed at all. Does the general counsel of a Fortune 500 company really need help finding counsel in Minneapolis just so she can do the obvious thing and send her securities work there at half the cost of a Chicago firm? Because of high search costs, the difficulty and cost of oversight, and frankly the fact that in-house counsel are spread thinly across dozens of different activities, the answer is yes. This is an important observation, because it runs contrary to the general assumption in the legal market that clients will select and manage their own law firms – as though that were a fairly simple task.

[15] See www.advancelaw.com.

Put another way, management really *is* work, and it's hard work. The tasks of identification, selection, quality control and oversight of firms – those tasks are difficult and time consuming. And the proof is in the pudding: for many years, they have been hard enough to deter even relatively sophisticated clients from attempting to switch from their incumbent law firms to a new provider. The switching costs are high. Firms like AdvanceLaw exist to carry the burden of selection and oversight, and they are making good money to date because there *is* demand to shift work away from incumbent law firms in major cities towards smaller, cheaper firms in mid-sized markets.

We are hesitant to draw any firm or long-term conclusions at this point, but we offer some perspectives informed by our interactions with the various participants in the market.

It is very unlikely that, at least in the medium term, the prime contractor for legal services will be the client. In-house legal departments have not been built this way or shown the wherewithal to run legal matters in detail. Although seemingly very well positioned to serve as coordinator, in-house departments are currently more like Sears than they are Amazon. Their principal competency is inward-facing: they know their company better than any outside lawyer ever could, but they are weaker in facing outward to the market. LPOs have existed for more than a decade, and it is exceedingly rare for an in-house staff to coordinate external providers in a meaningful way.[16]

[16] To anticipate an objection: yes, there are rare instances of large in-house departments actively managing a slew of vendors. These examples are well-known because of the massive size and reputation of the departments involved – e.g., DuPont (in fact, see: www.dupontlegalmodel.com). But if there are about 5,000 companies listed on the NYSE and NASDAQ, perhaps 20-30 companies do something like this, and the rest do nothing of the sort. A more accurate picture of the market is this: most public companies do not have a single in-house lawyer. Of those who do, most have one or two lawyers total. A few hundred at the top of the market have a "legal department". Needless to say, most private companies have no in-house counsel at all.

In any event, there will never be a surfeit of in-house counsel. General counsel usually want more staff, and CFOs are allergic to headcount. The disagreement reliably ends there – in-house lawyers are added very slowly and only after needs arise.

While new firms may be formed to coordinate law firms and other legal service providers, they face significant barriers. For starters, because of profit sharing rules in the legal sector, firms like AdvanceLaw are extremely limited in what they can do and how they can get paid.

Beyond this, issues about expertise, confidentiality, and privilege will discourage the formation of these firms, as will the reluctance on the part of clients to add another cost layer, even if the net result seems to be an overall cost reduction on paper. For one reason, another layer means additional monitoring and other agency costs, which are likely to be quite significant for start-up firms trying to build a reputation for quality work. In addition, law firms, who would in this model serve an important subsidiary function – e.g., legal analysis – will likely resist sharing their client relationships with other providers for fear of poaching.

So from an expertise, trust, and regulatory (profit-sharing) perspective, law firms may be able to stay in the driver's seat here. In fact, they occupy a protected space. They can sit at the center of the growing field of specialist non-lawyers, and instructing them in their work, preserve the attorney-client privilege while providing the most value-added (and expensive, non-commoditized) pieces of work.

But there is a significant problem with this prediction. Law firms, as currently constituted, are terrible at management, coordination, project planning and execution, technology management and integration, and pretty much everything involved in stitching together the efforts of a diverse and unrelated collection of vendors to create a coherent service for clients. As anyone knows who has been through the experience, it is well-nigh impossible to take a services firm and turn it into a software firm – or to go the other way. Companies naturally develop around a set of competencies, and getting a firm to adapt to a new competency is hard. Adapting a firm to a whole new *industry* is nearly impossible without making that shift through acquisitions.

Law firms *could* choose to acquire LPOs and tuck them into the firm's service offerings. Profit sharing rules might make it hard for them to attract and retain the best talent in this part of the firm, though some creative entity structures could likely get around those concerns. But the fact remains that lawyers would need to develop a robust project management competency, and this is just not a part of the culture of big law.

In short, law firms are well positioned to serve as the prime contractor, but they aren't well positioned to be any good at it. If this is to change, then there are several aspects of legal education, legal licensure, and law firm management that will have to change as well. We consider these issues briefly in the next part.

V. FROM HERE TO THERE

The big problem with law firms serving as the prime contractor for a suite of legal services is that the kind of activities involved in managing a suite of specialist vendors are not a part of law firm culture, and appear nowhere in lawyers' training. Law schools are currently designed to teach individuals to learn law, to apply law to facts, and to offer advice in light of this legal analysis. Lawyers, at least at the law school the authors attended, are not taught to manage suppliers of legal technology. The comparative advantage of lawyers is the one they have as officers of the court, that is, knowing the law and applying the law to situations, business or otherwise. For the same reasons architects don't sit atop a dizzying roster of suppliers to manage everything to do with the construction of their buildings, lawyers may do poorly to sit atop a dizzying array of vendors to coordinate the execution of their legal strategies. There are important differences between these two examples, but the basic concern about lack of competency, inappropriate use of time and talents, and comparative advantage stands.

Of course, law schools could change. The next generation of lawyers could be taught these skills, and there have been some minor nods in this direction. Alternatively, there could effectively be two tracks within law schools, or perhaps within firms: those interested in "management" and those interested in "analysis." This is done in many fields, including in academia, where some scholars focus entirely on ideas and scholarship, while others get involved in "administration." The FBI uses this approach as well. All special agents work cases for the first several years, but then some are selected to become managers. This involves additional training to develop these management skills. From these analogs, one can imagine either law school providing a grounding in these skills for those interested in a future career in legal management, or firms providing them (as in the case of the FBI), or perhaps a supplementary education provided by law schools or business schools or some other schools for lawyers interested in legal management. (Here, the model could be something like the current executive MBA programs, which teach business people management skills at the mid-point of their careers.)

In any event, the traditional pyramidal structure of law firms (that is, a relatively small number of partners supported by a larger number of associates) may start to look more like a tower. As the data above in Figure 6 suggest, there is already pressure on the pyramid model, and the law firm as prime contractor would decrease further the viability of this model. This will require law firms to rethink their business model, but it isn't clear what the impact will be on profits. While partners traditionally made money by taking labor profit from their associates, they may be able to achieve the same result by marking up their subcontractors' services. In competitive equilibrium, it isn't clear that this will be a less profitable model.

The larger implication for law firms will be about how they develop and select partners. The current model of hiring a hundred associates, filtering them through many years, and then selecting ten partners from that group may be unsustainable in a world in which a law firm serves the role of prime contractor and engages in only more specialized legal analysis. One option would be to rely on the subcontractors to hire lawyers to serve support functions, and then choose from that pool. But the skills needed in these two areas are likely to be vastly different, making this a very unlikely option. Moreover, if technology is disruptive, the total number of lawyers necessary will fall, perhaps dramatically. (This is a big problem for the current model of legal education, which may produce too many lawyers, especially those who aspire to do the high-end analysis work that is likely to remain the domain of traditional lawyers.)

Another option for law firms is to simply be choosier about the associates they hire. This will not only impact law schools by reducing the demand for lawyers, but will also put pressure on the law school curriculum, on the evaluation law schools do of their students, and perhaps increase the need for specialty licensure.

On the latter point, some work has been done, including by Ribstein, on the issue of specialty licensure. It is, after all, somewhat odd that lawyers are subject to a licensing regime (the bar exam) that is completely different from that in other professions like doctors and stock brokers. For instance, the bar exam is a one-time test (usually taken at the end of law school); it is a general subject matter test taken by every lawyer; and it has extremely high pass rates. In contrast, in medicine, licensure examinations take place over time (including while in various stages of education and training), must be repeated with some frequency in re-accreditation exams, and, in addition to a general test, are tailored for specific specialty subject matters. Neurosurgeons and pediatric oncologists both take the multi-stage medical boards to become "doctors," but take separate boards, including every few years, to certify their competence in the particular fields. Stockbrokers utilize a similar, if somewhat less rigorous, approach to licensure.

Another version of this is the Canadian model of "articling," in which a law graduate spends about a year as an apprentice with an approved mentor learning about the law. This would not have to be as much a return to the 18th Century model of legal education as it may sound. If law firms are going to face pressure on their current business model, everything that happens before law firms take on new associates, whether it is law school, extra-law school education, apprenticing, licensing, and so forth, will likely become much more important. In light of this, it is natural to see law firm partners starting to push law schools into doing more practical skills training and filtering of students. Whether law schools have a comparative advantage here either vis-à-vis law firms or third party providers remains to be seen, but expect the pressure to intensify as changes wrought by technology increasingly makes the law firm pyramid more unsustainable.

We imagine that the move toward a prime contractor role for large law firms, as well as a new model in which legal work is allocated not to a single or select group of large law firms but rather a more nimble mix of providers, will put pressure on law schools and the ABA to adapt the licensure model. For example, law firms may demand ex ante certification of legal analysts in particular areas, like securities, mergers & acquisitions, bankruptcy, or complex civil litigation, instead of using the first few years of law practice as a learning tool and filter for associates. If firms become more towers than pyramids, they may try to have others, mainly law schools and bar programs, do some of the *ex ante* filtering and teaching for them.

In addition, the need for specialty licensure may be a sort of keep that is the last defense of the lawyer bastion. Getting specialty credentials, whether it is a license or a certification, may be a way for these lawyers to forestall competitive pressures on legal analysis. Such pressure may even explain the development of the alternative models used by doctors and stockbrokers.

Whether these pressures push back to impact law school curricula or increase opportunities for third parties, like BarBri or the Princeton Review, to offer law content is beyond our scope here. But one suggestion seems likely to us: if the legal profession continues to play the troll guarding the only bridge to the practice of law, the market will figure out how to build other, unprotected bridges. After all, the "practice of law" is a pretty narrow concept, and a great deal of legal service can be rendered without resorting to it. If the current regime doesn't change, it could emerge that lawyers have a shrinking piece of a growing overall pie.

And the pie will continue to grow. There is simply no reason to believe that overall expenditures on law will shrink in the foreseeable future. But while we believe the sector will grow, we are far less confident in our ability to predict how exactly that growth will take place, and how clients will be served under the new model. The evolution has begun, albeit slowly; it will definitely continue.

VI. CONCLUSION

In this essay, we've tried to make a few simple points. First, as the epigraph above suggests, times are not often easy to pigeonhole, and are, in any event, different things to different people. Along many measurable dimensions, these are the best of times for large law firms. The returns to owners of large law firms have never been better, despite the country suffering through the worst economic crisis since the Great Depression. This should point to the durability of the existing large law firm model, either because of its social value or because of the ability of lawyers, as rule writers, to rig the game to their favor. The durability is especially remarkable because, unlike during prior periods of macro-economic distress, law firms are facing incredible pressure from various entrants offering to unbundle the typical law firm product, by offering legal products, like document review and management, as well as legal services, like simple contract preparation. This should give pause to those who believe, like our dearly departed friend Larry Ribstein, that Big Law is dead.

Second, and notwithstanding the first point, there is abundant evidence that past is not prologue. The technological forces that are reshaping industries and creating new products and services, as well as unbundling existing providers of products and services, are as powerful in law as they are in the entertainment business, consumer goods business, securities business, and so on. Ribstein rightly predicted a sea change for big law, albeit perhaps falling victim to Amara's Law.

Third, we imagine the net result of this change will be the creation of a new role, what we call the "prime contractor," that involves two key features: (1)

carving out some protected space in which lawyers exercise their comparative advantage as legal counselors; and (2) profiting from the remainder of legal work by acting as a case facilitator/manager. The second role could involve choosing and monitoring suppliers, entering into joint ventures or partnerships, providing tailored value added services on top of basic technological platforms, or even vertical integration. While we are certain we cannot predict what the future will look like, we are confident large law firms are going to want to play some role here.

These leads to our fourth point, which is that to do so, the model for training and licensing/certifying lawyers is likely going to have to change, but not perhaps in the way that the current critics suggest. Rather than teaching lawyers how to think more like their clients, it might be as or more important to teach lawyers to be better managers of other suppliers of legal products. Lawyers will also inevitably be involved in the development of new technologies and legal tools, and there may be educational green space here as well. Our (very preliminary) guess is that firms will try to push much education and filtering out of the firm, but they will obviously do so only if they are saving money by doing so. If they "pay" for this one way or the other, then it may make sense to keep it in house. But if they can externalize the role the pyramid used to play onto others, for example, a government that subsidizes education, then this should be what we expect them to do more of.

Finally, all of this speculation is in a sense beside the point from a social welfare standpoint. A benevolent social planner shouldn't give a hoot whether law is delivered this way or that, whether law firms serve as the prime contractor or even if there is one, or whether law schools teach things that matter or not. What matters to society are the quality, quantity, and price of legal services. These things are in turn determined by the rules put in place that regulate lawyers, as well as the choices made by institutions like law schools, bar associations, and law firms. What is crucial to realize is that these institutions will have their own selfish incentives in mind when crafting rules, and these may deviate from the social optimum. It is far from obvious that Adam Smith's confidence about butchers and bakers obtains in a world in which lawyers have successfully used a cartel to restrict output and raise prices for hundreds of years. That said, we are not confident at this point about how the social welfare calculus cuts. In some sense, lower costs of law could be a good thing, while in other sense it could be a bad thing. As the future of Big Law and every other kind of law unfolds, if our essay conveys nothing else, we hope it conveys that the social question should be paramount – not the smaller matter of whether lawyers win or lose in the coming industry reshuffle.

Readers with comments should address them to:

Professor M. Todd Henderson
University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637
toddh@uchicago.edu

Chicago Working Papers in Law and Economics
(Second Series)

For a listing of papers 1–599 please go to Working Papers at http://www.law.uchicago.edu/Lawecon/index.html