The University of New Hampshire Law Review

Volume 16 | Number 2 Article 28

3-20-2018

Facilitating Meaningful Change Within U.S. Law Schools

Patrick H. Gaughan

Facilitating Meaningful Change Within U.S. Law Schools

PATRICK H. GAUGHAN*

ABSTRACT

Despite the widely recognized challenges and complaints facing U.S. legal education, very little is understood about how law schools can adapt faster and better. This Article uses institutional theory, behavioral economics, and psychology to explain why change has proven so difficult for U.S. law schools. Next, using institutional entrepreneurship, the Article explains the theoretical steps necessary to overcome the institutional resistance to change. The Article then discusses the characteristics of opportunities that are most likely to better meet the needs of law students while also providing sustainable benefits to the individually innovating law schools. Using management theory, the Article then proposes a seven-step change process model to enable individual law schools to systematically overcome institutional resistance, formulate unique strategies, and actually achieve meaningful change.

CONTENTS

I. INTRODUCTION 244

II. ALTERNATIVE EXPLANATIONS FOR ORGANIZATIONAL RESISTANCE TO CHANGE 248
- *A. Behavioral Economics and Psychology* 249
- *B. Institutional Theory and Institutionalization* 252

III. ENVIRONMENTAL SHOCKS, CARRYING CAPACITY, AND INDIVIDUAL LAW SCHOOL PERSPECTIVES 258

IV. ACHIEVING DISTINCTIVE AND MEANINGFUL CHANGE 261
- *A. Enabling Change Through Institutional Entrepreneurs* 261
- *B. The Characteristics of Meaningful Opportunities—VRIO* 266
  1. Valuable 270
  2. Rare 271
  3. Inimitable 273

* Patrick H. Gaughan is an Associate Professor of Law at the University of Akron. He earned his B.A. from Columbia University; M.B.A. from Trinity College, Dublin; J.D. from the University of Virginia; and his D.B.A. (International Business) from Cleveland State University. The author would like to thank Martin H. Belsky, William S. Jordan, III, Christopher J. Peters, Tracy A. Thomas, and the participants in the Fall 2017 Northeast Ohio Faculty Colloquium for their valuable comments on earlier drafts of this article. Any and all defects are solely the author's.

4. Organization....276
C. Law School Strategic Planning....276

V. A LAW SCHOOL CHANGE PROCESS MODEL....282
A. The Participants....282
1. The Dean....283
2. The Entire Law Faculty....283
3. The Conveners Team....284
4. The Internal Leveraging Team (Innovators)....285
5. The External Leveraging Team (Catalysts)....286
B. The Stages of a Change Process Model....286
1. Stage 1: Initiation....288
2. Stage 2: Convening....289
3. Stage 3: Identify & Refine Opportunities for Leveraging....295
4. Stage 4: Obtaining Team Agreement On Prioritization and Recommendations....299
5. Stage 5: Update and Integrate Strategy in Light of Prioritized Opportunities....300
6. Stage 6: Implement and Monitor....301
7. Stage 7: System Reset and Repeat....301

VI. CONCLUSION....302

I. INTRODUCTION

Consider a world in which law school enrollment plummets twenty-nine percent over a six-year period and the reduced levels are viewed as "the new reality for legal education."[1] Some law schools become so desperate for students that they no longer even require applicants to take the LSAT.[2] Or consider another situation where, ten months after graduation, only seventy-three percent of law school graduates are employed full-time in long-term jobs that either require bar passage or consider a J.D. to be an advantage.[3] Or

[1] Karen Sloan, *Number of Students Enrolling in Law School Basically Flat*, NAT'L L.J. (Dec. 15, 2016), http://www.nationallawjournal.com/id=1202774844249/Number-of-Students-Enrolling-in-Law-School-Basically-Flat?mcode=0&curindex=0&curpage=ALL [https://perma.cc/34CE-8AMP].

[2] Sarah Randazzo, *Law Schools Say: Please Come, No LSAT Required*, WALL ST. J. (Dec. 6, 2017), https://www.wsj.com/articles/law-schools-say-please-come-no-lsat-required-1512556201 [https://perma.cc/N35U-MM9K].

[3] *ABA Legal Education Section Releases Employment Data for Graduating Law Class of 2016*, AM. BAR ASS'N (May 11, 2017), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_a

consider a situation in which the quality of recent law graduates is so low that the average Multistate Bar Exam Score reaches its lowest level *ever*.[4] For the first time ever, within a period of about one year, three ABA accredited law schools effectively announce that they are closing.[5] Unfortunately, these situations constitute the current reality—and U.S. law schools are in the middle of it.

For decades, numerous authors have bemoaned the state of U.S. legal education.[6] Each has made constructive suggestions about what U.S. law schools should do about it.[7] Some have focused on teaching techniques and

---

dmissions_to_the_bar/statistics/2017_employment_data_2016_graduates_news_release.authcheckdam.pdf [https://perma.cc/4EJA-KCAF].

[4] Derek Muller, *February 2017 MBE bar scores collapse to all-time record low in test history*, EXCESS OF DEMOCRACY BLOG (Apr. 7, 2017), http://excessofdemocracy.com/blog/?month=april-2017&view=calendar [https://perma.cc/2SUW-MMD2].

[5] The first two ABA law schools to announce closure in 2017 were Whittier Law School and Charlotte Law School. *See* Sonali Kohli, Rosanna Xia, & Theresa Watanabe, *Whittier Law School is closing, due in part to low student achievement.* L.A. TIMES (Apr. 20, 2017), http://beta.latimes.com/local/education/la-me-edu-whittier-law-school-closing-20170420-story.html [https://perma.cc/BQ82-98G9] (announcing the school's apparent shutdown after a series of problems); Elizabeth Olson, *For-Profit Charlotte School of Law Closes*, N.Y. TIMES (Aug. 15, 2017), https://www.nytimes.com/2017/08/15/business/dealbook/for-profit-charlotte-school-of-law-closes.html [https://perma.cc/N2D7-JTVP]. The third ABA law school to "effectively" announce that they were closing is Valparasio Law School when they announced that they were "suspending admissions" and exploring "alternative possibilities." Andrew Clark, *Valparaiso University law school stops admissions*, INDIANAPOLIS STAR (Nov. 16, 2017), https://www.indystar.com/story/news/2017/11/16/valparaiso-university-law-school-admission-suspended/872130001/ [https://perma.cc/8L95-68CZ].

[6] *See, e.g.*, Paul D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, 41 DUKE L.J. 741, 786–92 (1992) (discussing several ways that academization has affected legal education); Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, The Public, and the Legal Profession*, 44 CAL. W. L. Rev. 219, 220–21 (2007) (arguing that law schools are flooding the job market with lawyers lacking practical skills); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992) (criticizing the lack of cohesion between legal education and the culture of law firms); Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211, 211–12 (1948) (describing several problems with the traditional "case teaching" method in law schools).

[7] *See, e.g.*, Richard E. Redding, *The Legal Academy Under Erasure*, 64 CATH. U. L. REV. 359, 363–64 (2015) (arguing for specific reforms tied to practical skills training); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV.

subject matter.[8] Some have focused on legal scholarship.[9] Some have focused on clinical education and access to justice.[10] Yet others have focused on how to improve the recruiting of historically underrepresented groups.[11] Some have even recommended completely redesigning U.S. legal education.[12] Even though U.S. law schools have responded to many of these

---

705, 707–08 (1997) (arguing that more mentoring by law professors would combat many ethical issues faced by new lawyers).

[8] *See, e.g.*, Brent E. Newton, *The Ninety-five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55, 140–41 (2012) [hereinafter Newton I] (critiquing problems in law school curricula, teaching methods, and student assessments); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 611–13 (2010) (calling for more practical training in law schools in response to needs of legal job market).

[9] *See, e.g.*, Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 148–49 (2010) [hereinafter Newton II] (arguing that law schools must less on professors' scholarship); Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 YALE L.J. 1113, 1117–19 (1981) (providing examples criticizing legal scholarship); Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1327–29 (2002) (assessing the current state of law school scholarship).

[10] *See, e.g.*, Deborah L. Rhode, *Access to Justice: An Agenda for Legal Education and Research,* 64 J. LEGAL EDUC. 531, 548–50 (2013).

[11] *See, e.g.*, Meera E. Deo, *Looking Forward to Diversity in Legal Academia*, 29 BERKELEY J. GENDER L. & JUST. 352, 354–55 (2014) (providing overview of diversity in legal academia and the underrepresentation of women of color); Charles R. Lawrence III, *Minority Hiring in AALS Law Schools: The Need for Voluntary Quotas*, 20 U.S.F. L. REV. 429, 430–31 (1986) (calling for law schools to open more positions for minority professors); Daria Roithmayr, *Barriers to Entry: A Market Lock-in Model of Discrimination*, 86 VA. L. REV. 727, 728–32 (2000) (analyzing underrepresentation of minorities in legal academia from a monopoly standpoint); Richard H. Sander, *A Systematic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367, 410 (2004) (analyzing the effects of affirmative action policies on African American law school applicants); Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1, 10 (1997) (comparing outcomes for minority students with or without affirmative action policies).

[12] *See, e.g.*, WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 194–202 (2007) (providing examples and recommendations for a new integrated legal education); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 1–5 (2007) (advocating for long overdue reforms in legal education); David R. Barnhizer, *Redesigning the American Law School*, 2010 MICH. ST. L. REV. 249, 309–10 (2010) (discussing how competition will force law school reform); Paul Campos,

suggestions, their responses typically have been small relative to the dramatic changes occurring across society. As a result, the perceived value of a U.S. legal education has continued to deteriorate.

To date, most commentators have assumed that U.S. law schools (and law faculty) are intentionally resistant to change.[13] However, it is possible that U.S. law schools are otherwise inhibited from quickly and distinctively adapting. This prospect presents some intriguing questions. What is the origin of this apparent inability of U.S. law schools to evolve faster and more distinctively? Even more fundamentally, what can be done to address these conditions to facilitate meaningful change within U.S. law schools?

In looking to answer these questions, the present Article begins by focusing on two complementary theoretical explanations. One explanation is based upon behavioral economics and psychology.[14] Among other things, this approach focuses on decision-making within the context of individual and group psychology.[15] Another explanation is based upon sociological institutional theory, and focuses on the institutionalization of law and legal

---

Perspectives on Legal Education Reform: The Crisis of the American Law School, 46 U. MICH. J. L. REFORM 177, 222–23 (2013) (arguing for reforms of unsustainable law school costs); Newton I, *supra* note 8, at 140–41 (arguing for systemic reforms in law schools).

[13] *See* Barnhizer, *supra* note 12, at 252 (assuming a conscious choice to change in stating that "[t]he challenge is whether law schools will adapt to the changing environment through intelligent strategic choice or ignore the dynamics of change."); Newton I, *supra* note 8, at 56 (describing law school "intransigence" in response to calls for reform); STUCKEY ET AL., *supra* note 12, at 1 (assuming voluntary choice to change "if legal educators step back and consider how they can most effectively prepare students for practice."); *see also* Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 520 (assuming a cognitive decision resulting from a law school culture that "discourages faculty from investing the time and intellectual resources necessary to make . . . reforms work").

[14] *See generally* Richard A. Posner, *Rational Choice, Behavioral Economics and the Law*, 50 STAN. L. REV. 1551, 1558 (1998) (interpreting an economic analysis of law to show its connections with psychology).

[15] Although beyond the scope of the current paper, the distinction between institutional theory and behavioral economics is surprisingly subtle. According to Christine Oliver, *Sustainable Competitive Advantage: Combining Institutional and Resource Based Views*, STRATEGIC MGMT. J., 697, 699 (1997), "[i]nstitutional theorists emphasize the extent to which firm behavior is complaint, habitual, unreflective, and socially defined." *Id.* In contrast, behavioral economics modify the rational assumptions of classical economics in favor of "assumptions of 'bounded rationality,' 'bounded willpower,' and 'bounded self-interest.'" Posner, *supra* note 14, at 1553. Therefore, both institutional theory and behavioral economics reject purely rational decision-making by focusing on particular limitations.

education.[16] Incorporating both of these explanations, this Article argues that individual U.S. law schools actually *can* adapt faster and better. However, this requires U.S. law schools to address internal challenges while also pursing externally-focused, distinctive, and meaningful change. Within this context, the last Section of this Article proposes a change process model for U.S. law schools to overcome embedded institutional and behavioral resistance to change.

To be clear, the present Article does not place blame on anyone. It also does not recommend any universal survival strategy for all U.S. law schools. Given the different stakeholders, resources, and market positions of various U.S. law schools, there is no "one size fits all" solution. Instead, this Article focuses on how to improve law school decision-making processes to better establish a meaningful external market focus, and formulate unique and valuable strategies. It all begins by applying behavioral economics and institutional theory, and ends with a process intended to facilitate uniquely meaningful innovations by individual law schools.

II. ALTERNATIVE EXPLANATIONS FOR ORGANIZATIONAL RESISTANCE TO CHANGE

Ordinarily, most people assume that human beings—including law faculty—are completely rational. This certainly aligns with the well-established assumptions of classical economics. This perspective "assumes that a person [or entity] can perfectly process available information about alternative courses of action, and can rank possible outcomes in order of expected utility . . . [and then] choose the course of action that will maximize [the] expected utility . . . ."[17] Most recommendations for change in U.S. law schools clearly assume these capabilities.[18] However, are they correct?

Critics of classical economics have long questioned whether the assumption of rationality overstates its case and "exaggerates actual human cognitive capacities."[19] For these critics, a "richer model . . . would look to psychology to develop a more realistic view of cognitive processes, and also look to sociology to obtain a more accurate picture of social influences on

---

[16] W. RICHARD SCOTT, INSTITUTIONS AND ORGANIZATIONS 2, 48–49 (David Whetten et al. eds., 2001) [hereinafter SCOTT I].

[17] Robert C. Ellickson, *Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics*, 65 CHI.-KENT L. REV. 23, 23 (1989).

[18] *See generally* Barnhizer, *supra* note 12, at 252; Newton I, *supra* note 8, at 56; STUCKEY ET AL., *supra* note 12, at 1; Sturm & Guinier, *supra* note 13.

[19] Ellickson, *supra* note 17, at 23.

human behavior."[20] This is exactly what the present Article attempts to do. The Article first looks at behavioral economics and psychology to explain distortions in individual and group decision-making.[21] The Article then looks at institutional theory to examine how social structures, interactions and pressures shape—and sometimes dictate—organizational behavior.[22] As applied to U.S. law schools, both approaches provide insight into the mechanisms that may be distorting the ability of individual law schools to adapt faster and better. Collectively, they also suggest some solutions.[23]

A. Behavioral Economics and Psychology.

Behavioral economics "is [classical] economics minus the assumption that people are rational maximizers of their satisfactions."[24] In this way, behavioral economics diverges from classical economics by recognizing that individual decision-makers are often subject to significant limitations. These limitations are based upon psychology and often explain why individuals or groups deviate from the traditional expectations of classical economics. These key limitations are: bounded rationality; bounded willpower; and bounded self-interest.[25]

The first assumption of behavioral economics is bounded rationality. Actually, a better name would be "bounded cognitive capacity." Bounded rationality refers to the widely recognized limitation "that human cognitive abilities are not infinite."[26] Humans do not have limitless cognitive abilities, energy, or memory.[27] As a result, people are often forced to use various coping mechanisms.[28] These often lead to deviations from strictly rational decision-making.

For instance, due to bounded rationality, law faculty members would not be expected to easily make decisions that: consciously and fully comprehend the complexity of changes in society; then reconcile these changes with the demands of the legal profession; then propose solutions that meet the requirements of legal education; and then figure out how the faculty

---

[20] *Id.*; *see also* Arthur Allen Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451, 470–74 (1974) (contrasting Posner's theory with psychology and sociology).

[21] *See infra* Part II.A.

[22] *See infra* Part II.B; *see also* Oliver, *supra* note 15.

[23] *See infra* Part V.B.

[24] Posner, *supra* note 14, at 1551–52.

[25] *See, e.g.*, Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471, 1476–77 (1998); *see also* Posner, *supra* note 14, at 1553–58.

[26] Jolls et al., *supra* note 25, at 1477.

[27] *Id.*

[28] *Id.*

member's individual law school can establish a distinctive and valuable approach for the external (student) market. The cognitive requirements are simply too high. As such, bounded rationality alone may provide a significant explanation for the absence of more adaptive behavior by U.S. law schools.

The second assumption of behavioral economics is bounded willpower. Bounded willpower refers to the tendency of people to pursue convenient, short-term, gratification even where this clearly undermines achieving more rationally important long-term goals.[29] Recognition that bounded willpower exists is shown whenever a person decides to take short-term precautions in order to achieve more important long-term goals. For instance, many people join Weight Watchers in order to successfully reduce the consumption of food and ultimately lose weight. These people recognize the need to avoid the temptation of eating unhealthy foods, but also understand that their own bounded willpower will not stop them from consuming too much unhealthy food. Additional steps are therefore necessary—like joining Weight Watchers. The rational thoughts are present but the short-term will is often lacking.[30]

One example of how bounded willpower might present challenges to law faculty would be in limiting the extent to which a law school decides to pursue unique and innovative programs. For law faculty, bounded willpower could certainly play a role in deciding whether to pursue bold, distinctive, changes versus only making changes sufficient to "kick the can down the road." In the current environment for legal education, few people would rationally expect minimal adaptation by law schools to be sufficient to achieve long term goals—like survival. Prompt and decisive approaches are certainly more likely to serve the long-term interests of both the individual law school and the faculty in general. However, bounded willpower suggests that minimally sufficient adaptation avoids the tougher task of having to confront—and sometimes renegotiate—the expectations and relative value of faculty contributions. For instance, rather than having to definitively resolve such issues as the relative role and value of academics versus practitioners in legal education, it is far easier for law faculties to pursue less ambitious goals. As such, bounded willpower undermines the ability of law faculty to resolve the tougher issues and pursue more ambitious change.

In similar fashion, bounded willpower also presents issues as to the extent to which an individual law school can sustain a focus on external market opportunities. As a practical matter, the unbridled pursuit of external market opportunities presents an unknown threat to the established relationships across law faculty. Consequently, rather than truly making a transition to a sustained market-led focus, bounded willpower would suggest

---

[29] *Id.* at 1479.

[30] *Id.*

that law faculty would focus on making incremental internal improvements in curricular offerings—even though an external market-led approach would be more ambitious, distinctive and responsive.

The third assumption of behavioral economics is bounded self-interest. This assumption is less relevant for present purposes. Bounded self-interest refers to the common recognition that most people care about more than just themselves. Consequently, individuals tend to pursue utility functions that extend beyond mere self-interest.[31] As applied to law faculty, bounded self-interest is probably the clearest example of why the assumptions of classical economics are at least partially erroneous. Factually speaking, the objective manifestations of most law faculty would suggest that they deeply care about society, the profession, their students, and the law. Unlike the other bounded limitations, bounded self-interest would militate in favor of meaningful law school adaptation—not against it.

Combining these assumptions, behavioral economics provides a relatively straightforward explanation for the resistance of law faculty to change. Both bounded rationality and bounded willpower are limited by the prospective complexity and consequences of decisions. Under the circumstances, it is completely understandable why law faculties might tend to maintain an internally focused status quo bias. The behavior is understandable even if not strictly rational.

In sharp contrast, the vilification of law faculty by some critics rests upon the belief that the resistance to change is actually part of a self-centered, rational, power play by law faculty.[32] For example, some critics claim that:

> [T]enured law professors . . . [rationally] seek to serve their professional and economic interests at the expense of their students' best interest, [rationally] have captured law schools and the American Bar Association's (ABA) accrediting process . . . . [Law professors have also rationally demanded] increased faculty sizes and salaries, and their focus on scholarly work . . . [that] only diverts professors from their teaching responsibilities. Law faculties [rationally] instituted allegedly self-serving practices, such as hiring

---

[31] Jolls et al., *supra* note 25, at 1479.

[32] *See, e.g.*, Redding, *supra* note 7, at 365; *see also* BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS, 44–51 (2012) [hereinafter TAMANAHA I] (discussing problems with law school professors being overpaid for doing less work); Campos, *supra* note 12, at 186 (discussing how law school faculty's demands have driven up tuition costs).

> scholars instead of professionals who can provide practical lawyering skills training to students.[33]

As tempting as it might be to throw tenured law faculty under the bus, behavioral economics suggests that these criticisms may be overstated. Objectively, there may be greater room for corrective action.

For instance, to date, suggestions to improve law schools have only rarely included mechanisms to mitigate the inherent faculty uncertainties present in prospective change.[34] However, where there is "uncertainty regarding the distribution of gains and losses from reform,"[35] the behavioral economics literature recognizes that a status quo bias will likely exist. More specifically, "there is a bias toward the status quo (and hence against efficiency-enhancing reforms) whenever some of the individual gainers and losers from reform cannot be identified beforehand."[36] This insight alone suggests that focus on decisional processes and results—as proposed by this Article—should go further toward achieving meaningful change than simply explaining *what* law schools should do. Greater attention should be paid to *how* law schools can achieve it.

In summary then, behavioral economics would suggest that status quo bias can become more manageable by addressing (or minimizing): cognitive issues (related to bounded rationality), short-term priority and convenience issues (related to bounded willpower), and individual uncertainty presented by aggressive organizational change.

B. Institutional Theory and Institutionalization

Like behavioral economics, new institutional theory (from within sociology) also focuses on the limitations of decision-making. However, institutional theory generally focuses on the interaction of institutional structures and relationships to explain the resulting anomalies. In this regard, both behavioral economics and institutional theory are complementary to

---

[33] Redding, *supra* note 7, at 361–63.

[34] A mechanism to address uncertainties inherent in change is incorporated in the model proposed in the current article. *Cf.* John C. Weistart, *The Law School Curriculum: The Process of Reform*, 36 DUKE L.J. 317 (1987) (stating that "[t]here is an appearance of great ferment in discussions of the American Law School and its curriculum. Proposals for reform abound . . . . Only a few of the proposals put forth to date are merely fanciful . . . . Curriculum planning, however, takes place in a world of restraints and costs. Despite the obviousness of this point, it has received little attention in the present discussion.").

[35] Raquel Fernandez and Dani Rodrik, *Resistance to Reform: Status Quo Bias in the Presence of Uncertainty*, 81 AM. ECON. REV. 1146, 1146 (1991).

[36] *Id.*

each other. Both can be used to explain, and potentially address, the failure of law schools to adapt faster and better. Indeed, both assume limitations on the cognitive capabilities of decision-makers. While behavioral economics relies upon psychological foundations, institutional theory relies upon sociological foundations.

In the beginning, "old" institutional theory focused on the processes by which organizations sometimes *consciously* and *rationally* deviate from their stated goals.[37] In this regard, "to institutionalize" means "to infuse with value beyond the technical requirements of the task at hand."[38] In old institutionalism, "issues of influence, coalitions, and competing values were central, along with power and informal structures."[39] Put differently, old institutional theory assumed the existence of conscious, rational, reasons for organizational behavior.

Beginning in the late 1970s, "new" institutional theory developed.[40] New institutional theory (and subsequent versions) recognizes that organizational behavior is not always determined by conscious "technological imperatives" and "resource dependencies."[41] Ultimately, organizations are subject to institutional forces that consist of "[r]egulative systems, normative systems, and cultural-cognitive systems."[42] Together, these three pillars of institutionalism "form a continuum moving 'from the conscious to the unconscious, from the legally enforced to the taken for granted.'"[43] In many ways, new institutional theory is an organization-level analogue to "groupthink" theory (where the primary concern of individuals is

---

[37] *See* SCOTT I, *supra* note 16, at 21 (discussing how institutional theory originated in economic theory in the late nineteenth century as a challenge to "the conventional canon that economics could be reduced to a set of universal laws"). It was not until the 1930s or 1940s that sociology adapted the concepts to more closely analyze the behavior of organizations. *See generally* Philip Selznick, *Institutionalism "Old" and "New"*, 41 ADMIN. SCI. Q. 270 (1996) (analyzing the history of older to newer institutional theory).

[38] PHILIP SELZNICK, LEADERSHIP IN ADMINISTRATION: A SOCIOLOGICAL INTERPRETATION 17 (1957); *see also* W. Richard Scott, *The Adolescence of Institutional Theory*, 32 ADMIN. SCI. Q., 493, 493–94 (1987) [hereinafter Scott II] (providing historical background on Selznick's institutional theory research).

[39] Royston Greenwood & C.R. Hinings, *Understanding Radical Organizational Change: Bringing Together the Old and the New Institutionalism*, 21 ACAD. MGMT. REV. 1022, 1022 (1996).

[40] SCOTT I, *supra* note 16, at xix.

[41] W. Richard Scott, *Approaching Adulthood: The Maturity of Institutional Theory*, 37 THEORY & SOC'Y 427, 427 (2008).

[42] SCOTT I, *supra* note 16, at 51.

[43] *Id.* (citation omitted).

"conformity to group values and ethics" sometimes at the expense of task-conscious decision-making).[44]

Pursuant to new institutional theory, some organizational decision-making results from taken-for-granted institutionalized assumptions and industry-wide (field-level) pressures.[45] As such, institutionalization is "a social process by which individuals [within organizations] come to accept a shared definition of social reality—a conception whose validity is seen as independent of the actor's own views or actions but is taken for granted as defining the 'way things are' and/or the 'way things are to be done.'"[46]

In fact, new institutional theory recognizes that "[m]any formal organizational structures arise as reflections of rationalized institutional rules."[47] New institutional theory defines "rationalized institutional rules" as those that are cloaked in apparent legitimacy without critical evaluation (or re-evaluation) of their relationship to the organization's stated goals. In this way, rationalized institutional rules function as "myths which organizations incorporate, gaining legitimacy, resources, stability, and enhanced survival prospects [without being directly linked to better serving the organization's stated goals]."[48] Of course, this raises the rather fundamental question of how once independently-thinking and competitive organizations ever permit themselves to be subject to such collectivist institutional control. How can this happen?

According to new institutional theory, as entities increasingly coalesce into a field, individual organizational perspectives and activities naturally tend to align with the collective group. As aptly stated by DiMaggio and Powell:

> Once disparate organizations in the same line of business [such as individual law schools] are structured into an actual field (as . . . by competition, the state, or the professions),

---

[44] *See generally* Marlene E. Turner & Anthony R. Pratkanis, *Twenty-five Years of Groupthink Theory and Research: Lessons from the Evaluation of a Theory*, 73 ORG. BEHAV. AND HUM. DECISION PROCESSES 105–06 (1998) (defining "groupthink" and analyzing its effects on decision-making processes).

[45] Technically speaking, "field" and "industry" are not equivalent. According to Paul J. DiMaggio & Walter W. Powell, *The Iron Cade Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 152 (1983), a "field" is broader than "industry." However, for the current purposes, the distinction is not considered significant.

[46] Scott II, *supra* note 38, at 496.

[47] John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 340, 340 (1977).

[48] *Id.*

> powerful forces emerge that lead them to become more similar to one another.[49]

In this regard, an institutional "field" is a community of organizations or individuals that "directly interact with one another or are influenced by each other in a meaningful way."[50]

As a field evolves, constituent organizations tend to increasingly align and incorporate common meanings in reference to each other. In the process, organizational focus tends to shift from competitively serving the needs of the external market to simply integrating the organization into the collective expectations of the field.[51] Individual competition evolves into group compliance. This integration is achieved to greater or lesser extent through pressures that can be coercive, normative, or result from the inherent uncertainty of the given task.[52] Over time these pressures provide the foundations for "institutions" that seek to reinforce and substitute inter-organizational alignment for individual organizational innovation.

To some extent, U.S. legal education is a great example of how the institutionalization of a field can progress. At the time of the American Revolution, the training of lawyers was distributed across unregulated, individual, apprenticeships.[53] There were no requirements for formal legal education. However, over time, some requirements for legal apprenticeships became more formalized. Eventually, students recognized some apprenticeships as being better than others. This led some of the individual apprenticeships to grow and transition into practice oriented private law schools.[54] The field of legal education began to coalesce. Next, the establishment of the field of legal education attracted additional participants in the form of offerings by some liberal arts colleges.

By the early nineteenth century, the established colleges began to absorb the practice-based law schools into the emerging educational institutions.[55]

---

[49] DiMaggio & Powell, *supra* note 45, at 148.

[50] Royston Greenwood, Roy Suddaby & C.R. Hinings, *Theorizing Change: The Role of Professional Associations in the Transformation of Institutionalized Fields*, 45 ACAD. MGMT. J. 58, 59 (2002).

[51] *Id.*

[52] Technically, the sources of institutional homogenization are coercive isomorphism, normative isomorphism and mimetic isomorphism. However, for current purposes, these terms-of-art were deemed to be unnecessary. *See* Eshani Beddewela & Jenny Fairbrass, *Seeking Legitimacy Through CSR: Institutional Pressures and Corporate Responses of Multinationals in Sri Lanka*, 136 J. BUS. ETHICS 503, 506 (2016).

[53] ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 3 (1983).

[54] *Id.*

[55] *Id.* at 5.

By the 1850s, "[l]aw was becoming a boom industry."[56] As the century progressed, even though most lawyers were still being trained "on-the-job," law schools claimed to offer a more "systematic, academic experience designed to upgrade the intellectual quality of law and lawyers and thus enhance their professional status."[57] Not coincidentally, the new law school offerings responded to calls "for a more rigorous training and more systematic bar examinations."[58] Standardization spread. By the late 1890s, increasingly, the admission to the bar for most states required some type of formal legal studies and passage of a bar examination.[59] As the field of legal education expanded, institutional forces also increased.

As might be expected, over the ensuing decades, the institutional pressures on legal education continued to increase. However, there was still variance in the form of legal studies.[60] The duration of legal studies also varied.[61] But once Harvard emerged as the leading U.S. law school "almost all [other] university-affiliated schools were only too anxious to emulate its developments."[62] The institutionalization of legal education progressed even further.

Consequently, although by the early 1900s there continued to be battles between the doctrinal focus of Harvard, and the practical focus of others, the alignment of legal educational organizations continued to increase.[63] With the help of the ABA Committee on Legal Education and Admissions to the Bar, the further institutionalization of U.S. legal education was well on its way.[64]

By 1952, the U.S. Department of Education had become the national agency responsible for the accreditation of U.S. law schools.[65] In turn, the U.S. Department of Education delegated most accreditation issues to another institution: the Council of the Section of Legal Education and Admissions to

---

[56] *Id.* at 22.

[57] *Id.* at 24.

[58] *Id.* at 25.

[59] *Id.*

[60] *Id.* at 36–37, 39.

[61] *Id.* at 36–37.

[62] *Id.* at 39. As a practical matter, it should be noted that the emulative aspect of law school institutionalization likely perpetuates the hierarchical "pecking order" among schools while also providing institutionalized, isomorphic, pressures. Consequently, even though institutionalized, it would not be surprising to find meaningful innovations within leading law schools eventually percolating down to other law schools.

[63] *See* STEVENS, *supra* note 53, at 39.

[64] *Id.* at 93.

[65] STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS v (AM. BAR ASS'N 2015-2016).

the Bar.[66] Although technically independent, the Council was (and still is) related to a section of the ABA—yet another institution. Today, the Council has a network of affiliate organizations/institutions to which most U.S. law schools belong. These include: The Association of American of Law Schools (AALS); Clinical Legal Education Association (CLEA); Law School Admission Council (LSAC); National Association of Law Placement (NALP); and National Conference of Bar Examiners (NCBE).[67] Even if these institutions do not have express regulatory power over U.S. law schools, they still play important normative roles.[68] Each has membership requirements and provides a peer-mechanism for institutional alignment—even where the individual law school might have divergent interests.

Of course, in addition to the external institutional pressures listed above, law schools also must navigate internal pressures. As noted previously, institutional pressures "are transported by various carriers—cultures, structures, and routines—and they operate at multiple levels."[69] Thus, institutional pressures can be internally conveyed by individual faculty—in addition to the external pressures transmitted by way of peer organizations, professional associations, and regulators. In this way, whether intended or not, various taken-for-granted assumptions regarding the proper approach to legal education are routinely internalized into law school decision-making.

Making matters even more problematic is that the taken-for-granted assumptions in institutionalized fields are not completely devoid of any collective validity. In fact, many of the institutionalized assumptions were once completely valid but are often now outdated. As such, the taken-for-granted assumptions often simply represent a field-wide consensus established long-ago regarding such things as:

- the proper scope of legal education;
- the proper ways of educating law students; and
- what constitutes the practice of law.

In regard to each of these topics (and many more), institutional theory would posit that legal education has "become defined by shared systems of

---

[66] *Id.*

[67] Council Meetings, ABA Section of Legal Education and Admissions to the Bar, Meeting held at Loews Santa Monica Beach Hotel, Santa Monica, California, AM. BAR ASS'N (Mar. 9–11, 2017), http://www.americanbar.org/groups/legal_education/about_us/leadership/council_meetings.html [https://perma.cc/E2GY-HDST].

[68] It is asserted that the forces are actually both normative and mimetic. However, for the current purposes, it is not deemed necessary to delve more deeply into the distinction between these types of institutional forces.

[69] SCOTT I, *supra* note 16, at 48.

meaning."[70] Law schools are deeply embedded in their own institutionalized networks of beliefs, cultural schemes, and conventions[71]—even while the external environment has called for change. Unfortunately, due to the institutionalization process, the ability of individual law schools to meaningfully adapt has been buried under the convergence of multiple institutions throughout the field of legal education.

Moreover, notably absent from any of the institutional mechanisms is any means to rapidly reevaluate and update the ingrained assumptions. There is little, if any, institutional consideration about the continuing validity of the foundational assumptions. There also is little awareness of how individual law schools can provide uniquely superior value to identified groups of potential law students. As a result, the taken-for-granted assumptions persist even if *some* of them no longer *completely* align with the stated purpose of the individual law school or goals of their potential law students. For these reasons, institutionalization often results in industry-wide stasis and organizational resistance to change.

III. ENVIRONMENTAL SHOCKS, CARRYING CAPACITY, AND INDIVIDUAL LAW SCHOOL PERSPECTIVES

As previously explained, both behavioral economics and institutional theory provide ample explanations for why some organizations resist change. As part of both approaches, otherwise rational and caring decision-makers can steadfastly rationalize a staunch defense of the status quo or only agree to incremental change. For these individuals, there is little imperative to embrace distinctive and meaningful change. However, this can needlessly lead to catastrophic consequences when the external environment suddenly is subjected to a dramatic shock.

As an initial matter, a dramatic change in the demand for legal education does not impact all U.S. law schools equally. Changes that could be fatal to some law schools (like Whittier, Charlotte, and Valparaiso) are likely to be minor inconveniences for others. As such, for some law schools, the best approach truly might be to simply do nothing. These lucky schools can simply wait for the incremental industry-wide collective adaptation to spread across the entire field of legal education. In the very least, this approach conveniently utilizes existing relationships and mechanisms. Presumably, given the relative lack of law school mobility in rankings,[72] this approach

---

[70] *Id*.

[71] Hans Hasselbladh & Jannis Kallinikos, *The Project of Rationalization: A Critique and Reappraisal of Neo-Institutionalism in Organizational Studies*, 21 ORG. STUD. 697, 698 (2000).

[72] *See generally* David C. Yamada, *Same Old, Same Old: Law School Rankings and the Affirmation of Hierarchy*, 31 SUFFOLK U. L. REV. 249 (1997).

would also reinforce the status quo. Under these circumstances, some lucky individual law schools might justifiably scoff at the prospect of pursuing individual, distinctive, change. However, for other law schools, the failure to adapt could have significant negative consequences.

As explained previously, *all other things being held equal,* institutionalization simply enables all organizations within a field to align and win (even if some stakeholders are sometimes not afforded optimal value or opportunities). As long as the external environment essentially remains the same, extreme institutional pressures simply remove the need for constituent organizations to meaningfully compete or pursue distinct advantages. Indeed, even if the external environment does change, some lucky individual organizations will likely persist—even if their entire industry has otherwise completely collapsed!

For example, the U.S. railroad industry is frequently referenced for collapsing due to its own failure to adapt to external environmental changes.[73] During the late 1800s, the railroads were considered indispensable to the U.S. economy as a driver of commerce through transportation.[74] Had the U.S. railroads simply defined their industry broadly—as transportation—they easily could have developed and controlled U.S. industry as it developed into new forms. But the railroads did not do that. They failed to keep up with the external market changes and the railroad industry ultimately collapsed.[75]

The indictment of industries like the railroads was concisely summarized by Theodore Levitt in his classic 1960 Harvard Business Review article[76] as follows:

> Every major industry was once a growth industry. But some that are now riding a wave of growth enthusiasm are very much in the shadow of decline. Others which are thought of as seasoned growth industries have actually stopped growing. *In every case, the reason that growth is threatened, slowed or stopped is not because the market is saturated. It is because there is a failure of management*.[77]

Undoubtedly, Professor Levitt was correct. Ultimately, industry collapse is caused by the failure of organizations to adequately respond to the changing demands of the external market. But even where an entire industry does collapse, there usually are at least some organizational survivors. Despite the

---

[73] Theodore Levitt, *Marketing Myopia*, HARVARD BUS. REV. 26, 26 (1960).
[74] *Id.*
[75] *Id.* at 27.
[76] *Id*.
[77] *Id*. at 26 (emphasis added).

collapse of the U.S. railroad industry, the four largest U.S. railroads today still have revenues in excess of $9 billion dollars per year.[78] Given that U.S. legal education is currently nowhere near systemic collapse, it is easy to see that some U.S. law schools (and law faculty) might rationally reject calls for individual distinctive change.[79]

So, if there is nothing inherently wrong with some institutionalized organizations refusing to individually evolve, why should any individual U.S. law school seek to spend time and energy pursuing distinctive meaningful change? The answer is given in that a dramatic shock has occurred to U.S. legal education. Consequently, a disequilibrium currently exists in the carrying capacity of legal education. Individual U.S. law schools now face a rather fundamental choice as to whether or not they should try to change. Stronger organizations enjoy the luxury of time and do not face any serious threats to their survival. However, weaker law schools face a time-sensitive imperative. Overall, if few U.S. law schools meaningfully adapt, then the new environment will most certainly result in a decrease in the carrying-capacity of U.S. legal education. Over time, survival of the fittest will mediate the market adjustment to the new, lower, carrying-capacity equilibrium.

In contrast, if some otherwise weaker U.S. law schools are able to distinctively and meaningfully adapt, then the impact on the carrying-capacity of U.S. legal education is far less obvious. Carrying-capacity could even increase if the adapting law schools successfully communicate enhanced value to new groups of potential law students, or to old groups of law students in newly valued ways. It all depends upon how uniquely successful the adapting U.S. schools are in pursuing, achieving, and maintaining meaningful differentiation.

More specifically, the individual benefits of adaptation accruing to specific law schools will be affected by the extent to which the particular adaptation is valuable to the market as well as distinctive relative to other organizations within the field. If everyone adapts in the exact same generic fashion, the benefits of any innovation will be spread across all organizations within the field. The individual benefits will be minimized as they are spread across the established organizational pecking order. However, individual law

---

[78] Robert Wright, *The Biggest North American Railroads*, FIN. TIMES (Aug. 22, 2011), https://www.ft.com/content/ba1227d4-ccd8-11e0-88fe-00144feabdc0 [https://perma.cc/D8MR-PMHR].

[79] Another way to look at this is to identify two schools of thought. As noted by Frank H. Wu, "[o]ne insists that law schools are fundamentally fine . . . . Another contends that the educational program leading into legal practice is fundamentally flawed." Frank H. Wu, *Reforming Law Schools: A Manifesto*, 46 TOL. L. REV. 417, 417 (2015). The position of the current article is that both are correct—depending upon the individual school.

schools that provide distinctive value to the market will uniquely enjoy the benefits. As such, the extent of individual organizational benefits resulting from successful innovation will depend upon two things:

1) the extent to which the organizational innovation is perceived by potential students as offering improved value over existing alternatives (both within and beyond legal education); and
2) the extent to which other organizations within the field are able to meaningfully adopt and copy the new innovation.

In sum then, there is nothing inherently wrong with some law schools deciding not to individually adapt. For some lucky law schools, this represents a perfectly reasonable course of action. For others, the failure to quickly and meaningfully adapt to the changed environment may lead to the failure of the organization. Fortunately, successful individual adaptation has benefits beyond mere survival. For individual law schools that successfully (and quickly) adapt in meaningful and distinctive ways, the schools will enjoy an improved comparative competitive position—regardless of their current rank or condition. In the very least, the concept of "carrying capacity" strongly suggests that weaker U.S. law schools should be aggressively pursuing distinctive adaptation—rather than waiting. The theoretical foundations for accomplishing this are discussed in the next Section.

IV. ACHIEVING DISTINCTIVE AND MEANINGFUL CHANGE

Having clarified the fundamental choice (and consequences) facing U.S. law schools, this Section discusses the theoretical aspects of distinctive and meaningful change. First, the Section explains how institutional entrepreneurship enables change both within the institutional and (by extension) behavioral contexts. However, merely achieving *any* change does not assure that the changes will necessarily create any distinctive benefit for the individual organization. Consequently, this Section also examines the characteristics of resources that are most likely to provide sustainable, unique benefits for an individual school. Finally, this Section examines the use of strategic planning to assure the alignment of potentially distinctive opportunities with the values, missions and resources of an individual law school and the external market.

A. Enabling Change Through Institutional Entrepreneurs

Institutional entrepreneurship (within Institutional Theory) is defined as the "activities of actors who have an interest in particular institutional arrangements and who leverage resources to create new institutions or to

transform existing ones."[80] The change efforts can focus broadly across an entire field or focus narrowly within an individual institutionalized organization. In either instance, institutional entrepreneurship is about figuring out how to navigate incumbent forces to facilitate organizational change. This can include sources of both institutional and behavioral resistance to meaningful change.

Although institutional entrepreneurship can be used across an entire range of potential institutional circumstances, the steps and configuration necessary to be successful will heavily depend upon the nature and complexity of relationships involved (both individual and organizational), as well as the relevant institutional pressures. Consequently, there is no universal roadmap. The specific steps necessary to be successful are goal- and context-dependent—perhaps even within an individual law school. Nonetheless, the basic concepts are the same. The challenges, steps, and parties may vary widely.

For these reasons, institutional entrepreneurs often start to pursue change by pre-determining viable paths and configurations of resources by which institutional change is more likely to occur. To the extent that the prospect of potential change can be improved by being presold to key individuals, institutional entrepreneurs are likely to begin by constructing "chains of action" "with at least some pre-fabricated links."[81] These links channel "action through the shape and organization of those links" rather than by predetermining the ends to which they are put.[82]

Applying these same concepts to the concerns of behavioral economics, institutional entrepreneurs can also seek to configure decision-making in such a way as to minimize concerns caused by bounded rationality and to increase the collective willpower to achieve meaningful change.

For instance, if a particular initiative is going to require a change in state law to be successful, institutional entrepreneurs start by: determining how a bill is submitted; which committees are likely to be involved; which legislators will play a key role in bringing the bill to vote; which legislative support personnel would likely make recommendations regarding passage; whether any lobbyists are likely to support the bill; and whether the governor is likely to veto the bill if it is passed. Once the "chains of action" have been determined, the institutional entrepreneurs would proceed to personally meet all of the individuals—even before a proposed bill has been drafted—in order to better determine the links that are most likely to enable a favorable result. Only after these chains of action have been established would the

---

[80] Steve Maguire et al., *Institutional Entrepreneurship in Emerging Fields: HIV/AIDS Treatment Advocacy in Canada*, 47 ACAD. MGMT. J. 657, 657 (2004).

[81] Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 AM. SOC. REV. 273, 277 (1986).

[82] *Id.*

institutional entrepreneurs actually start to draft and advocate for a particular bill. To the extent possible, the bill would be "pre-wired" for success—if not also "pre-sold."

Similarly, institutional entrepreneurship can help individual law schools configure their own chains of action—without "[pre]determining the ends to which they are put."[83] For individual U.S. law schools seeking meaningful and distinctive organizational change (within existing ABA standards),[84] the primary mechanism for such pre-fabricated links will inevitably involve the law faculty. It is therefore critical to engage law faculty at the very beginning. It is critical to determine whether there is sufficient faculty support for pursuing distinctive change. It is also critical to provide a theoretically sound model that empowers institutional entrepreneurs to pursue meaningful opportunities.

As a practical matter, this may be as easy as simply giving this Article to law faculty for their consideration. However, it may also require additional preparation. Faculty may face bounded rationality challenges or otherwise have questions or reservations. Only after achieving a consensus supporting meaningful change, can institutional entrepreneurs start to assemble discrete teams to ultimately recommend specific options. Of course, in order to explain how the overall process can work, it is also necessary to describe the techniques that can be used to successfully achieve the intended changes.

Three fundamentally different resource mobilization techniques have been identified for institutional entrepreneurs to successfully enable institutional change. Although each can be applied as an isolated approach, the techniques also can be utilized in concert. According to Dorado, these three approaches to resource mobilization are: convening, accumulating, and leveraging.[85]

The first technique, convening, is a process usually used for solving complex social problems.[86] Convening is based upon the creation of a

---

[83] *Id.*

[84] Because of the likely speed and urgency that is required for some U.S. law schools to meaningfully adapt to the changed external environment, this article is expressly limited to change occurring within existing ABA Accreditation requirements. Industry-wide changes (such as changes to the ABA Accreditation requirements) would inherently require a greater degree of cooperation and coordination across U.S. law schools and various related institutions. Ordinarily, this might be expected to result in delays.

[85] Silvia Dorado, *Institutional Entrepreneurship, Partaking, and Convening*, 26 ORG. STUD. 385, 390 (2005). By way of disclosure, Dorado's 2005 article actually discusses three separate dimensions (resource mobilization, agency, and opportunity) to discuss "industrial change profiles." However, present article only focuses on resource mobilization. This dramatically reduces the scope and complexity of the current article.

[86] *Id.* at 390.

collaborative initiative that is *not* focused on advocacy of any individual project. "Instead, it involves convincing [participants] of the desirability and viability of collaborating to jumpstart the development of a solution to a problem."[87] Convening requires "politically skilled actors" who are instrumental in "bridging unaware, unsure or skeptical actors to explore the possibilities of cooperation."[88] The success of institutional entrepreneurs engaged in convening depends upon:

> (1) the credibility they have among the parties involved, (2) their familiarity with the problem being addressed, and (3) their position as a balanced or unbiased party. They are also quick to appreciate the beneficial impact of mutual exchange, proficient at scanning the environment surrounding the collaboration, and skilled in appraising the consequences of contemplated future actions.[89]

Given the professional and collegial nature of many law faculties, convening should be a key resource mobilization technique. Rather than trying to tell faculty what should be done, convening constructively engages law faculties to collectively help formulate solutions to an agreed-upon change opportunity. In the process, convening provides a mechanism to address, to the extent possible, complexity and commitment issues.

Given the previously discussed impact of institutionalization on law school governance, the selection of one or more credible Conveners from within the law faculty is likely to be crucial to obtaining full faculty engagement and legitimacy for pursuing meaningful solutions. At the same time, in order to increase the likelihood of identifying the most innovative opportunities for distinctive meaningful change, it is clear that convening alone is unlikely to be sufficient.

Although convening will provide engagement and legitimacy, the law faculty as a whole is unlikely to be the most qualified to identify and recommend external market opportunities. Optimal opportunities for change will generally be identified by those who maintain an external market-focused perspective. This is fundamentally different from the typical perspective of large portions (but certainly not all) law faculty. After all, few law faculty have ever studied marketing. Even faculty with extensive private practice experience probably have little knowledge regarding the needs (or recruiting) of current law students. To maintain a market-based view, it will be necessary to empower (and possibly educate) a group that naturally has an external customer-led focus. Additionally, it will be necessary to use one of

---

[87] *Id.* at 390–91.

[88] *Id.* at 391 (quotations omitted).

[89] *Id.*

the other two resource mobilization techniques within a broadly defined convening resource mobilization process—either accumulation or leveraging.

Of course, within the traditionally collegial atmosphere of legal education, most law schools would tend to select approaches with which they are already familiar. As a result, most law schools would naturally tend to select accumulation as the preferred means of pursuing change. As the name suggests, "[a]ccumulation implies that support and acceptance emerge as the uncoordinated actions of countless actors probabilistically converge."[90] Accumulation is based upon slowly developing a consensus across a field.[91]

An example of accumulation, cited by Dorado, was the emergence of radio sponsorship advertising as the means by which radio transitioned from merely being point-to-point to being a major force in mass communication.[92] Originally, there was no plan to create radio sponsorship to support mass communication. Instead, consensus gradually emerged as single-purpose operators of radio stations realized that they could achieve better outcomes by sponsoring radio programming rather than owning and operating their own stations.[93]

As applied to U.S. law schools, accumulation would be appropriate where significant, but causally ambiguous, changes to standards would be desired. For instance, if a specific law school thought that it might be appropriate to create an express exemption from bar passage requirements for schools whose students overwhelmingly come from underprivileged backgrounds, there would almost certainly need to be sustained discussion about the importance of economic diversity in the bar versus the purpose of having minimum bar passage requirements. The success of the initiative would require building a consensus across multiple institutions from bar examiners to the ABA.

Unfortunately, the use of accumulation is too closely aligned with a staunch defense of the status quo. The slow pace of accumulation can provide an illusion of meaningful organizational change while really just drifting. Therefore, the reliance upon accumulation presents special challenges when trying to respond to an environmental (market) shock.

Just as with institutional forces in general, the accumulation resource mobilization technique relies upon a web of interconnections across the entire field (typical of professional occupations) to eventually facilitate changes.[94] Using accumulation, there does not tend to be any conscious

---

[90] *Id.* at 386; *see also* Andrew Van de Ven & Raghu Garud, *Innovation and industry development: The Case of Cochlear Implants*, 5 RES. ON TECH. INNOVATION, MGMT. AND POL'Y 1, 2–3 (1993).

[91] Dorado, *supra* note 85, at 408.

[92] *Id.* at 407.

[93] *Id.* at 401.

[94] *Id.* at 390.

focus. The established institutional arrangements evolve through emerging consensus rather than through any conscious effort to identify external opportunities to add unique value.[95]

To sidestep the pitfalls of accumulation, this Article suggests facilitating change *within* individual organizations and within the existing ABA Standards. In this way, coordination across organizations (and with various institutions) is minimized. By also narrowly framing the scope of potential changes within existing ABA standards, accumulation can be avoided as a resource mobilization technique. Individual organizational efforts are therefore more likely to be both timely and successful.

Where fast and distinctive solutions are desired (within existing rules), and where the options are relatively transparent to qualified individuals, a more appropriate resource mobilization technique is leveraging.[96] As with convening, in leveraging, "[p]olitically skilled actors are the driving forces behind this process."[97] However, unlike convening, leverage involves advocacy for particular solutions. Institutional entrepreneurs use their "access to, and skills in leveraging, the scarce and critical resources needed to mount political action."[98] Leveraging is typical "when actors strategically engage in institutional change processes."[99] This would appear to be particularly appropriate where there is a recognized need to rapid meaningful change.

In sum then, using institutional entrepreneurship to facilitate meaningful change for individual law schools should probably utilize convening as the overall resource mobilization technique. However, convening alone is unlikely to provide optimal results. Instead, specialized groups should be empowered (and possibly educated) to use leveraging. The leveraging should relate to unique and sustainable opportunities for the individual law school. Of course, this raises the next rather obvious question regarding the characteristics of "unique and sustainable opportunities." This is specifically addressed below.

B. The Characteristics of Meaningful Opportunities—VRIO.

Although it might be crass to admit it, the success of all U.S. law schools relies in part upon economic fundamentals. Given the professional orientation of law schools, there is a normative tendency to equate economic

---

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] Julie Battilana, Bernard Leca, & Eva Boxenbaum. *How Actors Change Institutions: Towards a Theory of Institutional Entrepreneurship*. 3 ACAD. MGMT. ANN. 65, 86 (2009).

[99] Dorado, *supra* note 85, at 398.

success with simply providing a quality education. However, the relationship is not so simple. Economics and recruiting also play a role in law school success. Even the very best law schools would cease to exist if their students were unable to perceive of any value in attending the particular school. The task is even more difficult for schools that are not as widely recognized as being exceptional. For some law schools, recruiting and communicating sufficient perceived value is a matter of life or death.

The importance of perceived value and recruiting is even more important considering the correlation between a law school's median entering LSAT score and the subsequent average bar passage rates. Practically speaking, a law school's median entering LSAT score correlates highly with the school's eventual average bar passage rate.[100] Whether or not there is a direct or indirect causal connection is beyond the scope of this Article. The fact remains that median LSAT score and bar passage rates are perceived by some potential students as a measure of educational quality. Raising median LSAT scores will therefore tend to increase (either directly or indirectly) both the subsequent bar passage rates and economic well-being of any individual law school.

When viewed in this way, the secret to some individual law schools surviving is dependent upon their ability to provide a perceived superior value proposition to prospective students. In this regard, prospective students do not ordinarily care how the superior value is achieved. They only care that the particular offering has superior value. In this specific regard, the business literature recognizes two main perspectives that explain how domestic firms can succeed in this way: the market-based view and the resource-based view.[101]

The market-based view has its origins in industrial economics and "argues that conditions within an industry, to a large extent, determine firm strategy and performance."[102] Given the conditions and institutionalization within U.S. legal education today, the market-based view, by itself, offers little promise for law schools. In contrast, the resource-based view "suggests that it is firm-specific differences that drive strategy and performance."[103]

---

[100] Paul L. Caron, *LSAT Mean of 152 Correlates with 88% Eventual Bar Pass Rate (for 160, it's 97%),* TAXPROFBLOG (Dec. 17, 2015), http://taxprof.typepad.com/taxprof_blog/2015/12/88-of-152-lsats-and-97-of-160-lsats-eventually-pass-the-bar-.html [https://perma.cc/E4FR-5PKZ].

[101] *See* Mike W. Peng et al., *An institution-based View of International Business Strategy: a Focus on Emerging Economies*, 39 J. INT'L BUS. STUD. 920, 920 (2008); *see also* Jay B. Barney, *Firm Resources and Sustained Competitive Advantage*, 17 J. MGMT. 99, 101 (1991) [hereinafter Barney I].

[102] Peng et al., *supra* note 101, at 920; *see also* Michael E. Porter, COMPETITIVE STRATEGY: TECHNIQUES FOR ANALYZING INDUSTRIES AND COMPETITORS (1980).

[103] Peng et al., *supra* note 101, at 920.

The essence of the resource-based view is that the intentional configuration, acquisition, and deployment of firm resources can provide a specific firm with a uniquely competitive position.[104] If done correctly, the development of unique firm resources will provide the basis for a sustainable competitive advantage.[105]

One way to explain sustainable competitive advantage is as follows:

> A sustained competitive advantage exists when the value-creating strategy [used by a particular law school] is currently not being implemented by an organization's competitors or potential competitors and when these other organizations are not able to imitate, either through duplication or substitution, the benefits of the value-creating strategy . . . . It is the inability of other organizations to imitate that strategy that helps an organization achieve a sustained competitive advantage.[106]

Within the resource-based view, a given strategy or potential opportunity can be a source of sustainable competitive advantage if it complies with the requirements of the "VRIO Framework."[107]

The VRIO framework (within the resource-based view) is based upon the premise that a sustainable competitive advantage can be achieved by organizations pursuing strategies where the firm successfully deploys its resources that are "valuable," "rare," "inimitable," and "organizationally appropriate."[108] In this regard, "firm resources include all assets, capabilities, organizational processes, firm attributes, information, knowledge, etc. controlled by a firm that enable the firm to conceive of and implement strategies that improve its efficiency and effectiveness."[109] Once again, the VRIO framework applies to all resources—big, little, ambitious, and mundane.

---

[104] *See* Barney I, *supra* note 101, at 105–06; *see also* Jay B. Barney et al., *The Resource-based View of the Firm: Ten Years After 1991*, 27 J. MGMT. 625, 625 (2001). *See generally* EDITH PENROSE, THE THEORY OF THE GROWTH OF THE FIRM, (Oxford Univ. Press 1959).

[105] Barney I, *supra* note 101, at 104.

[106] W. Glenn Rowe & James G. Barnes, *Relationship Marketing and Sustained Competitive Advantage*, 2 J. MKT. FOCUSED MGMT., 281, 285 (1998) (boldface omitted).

[107] JAY BARNEY, GAINING AND SUSTAINING COMPETITIVE ADVANTAGE 145–64 (1997) [hereinafter BARNEY II].

[108] *Id.* at 145.

[109] Barney I, *supra* note 101, at 101, 104.

Importantly, one of the key resources for law schools is the law faculty. It is for this reason that individual uncertainty and status quo bias in behavioral economics presents such a critical issue for U.S. law schools. The creation of law school value requires marrying the necessary firm resources—including law faculty —with an external market that recognizes the unique value. Since law faculty is also integral to decision-making, the configuration of the "faculty resource" is far more complex than in traditional business organizations.

In considering how law schools can use the VRIO framework, it is critical to first recognize that the process of creating a sustainable competitive advantage is largely based upon an individual organization navigating internal concerns while also adopting an external focus that uniquely addresses the perceptions and needs of prospective law students. This can be done directly—through communications to prospective students. This can also be done indirectly—through communications by graduates and the reputation in the profession.

At the same time, merely because an individual organization seeks to communicate unique value to the market does not mean that the substantive quality of the education is diminished in any way. In many instances, superior perceived value can be achieved by simply configuring traditional educational components in a new way or adding non-educational components to deliver unique value. In the process, if superior value is actually delivered to the right individuals, the recruiting of superior students can increase too. Of course, once again, all of this must be achieved within the internal context of faculty as both a resource and a member of governance.

For example, consider the common practice of offering combined J.D./M.B.A. degrees. As compared to law schools that cannot offer combined degrees, there is an advantage. However, many of the combined degree programs fail to make the most of the opportunity. Rather than creating superior value—relative to other J.D./M.B.A. programs—the combined programs are really just overlapping, segmented, programs offered by separate schools. The law school handles the law; the business school handles the business. However, superior value could be delivered if the traditional J.D./M.B.A.s were creatively combined in a new way. For instance, one way would be to require J.D./M.B.A.s to take some specialized versions of their capstone courses in a multidisciplinary format. This could be linked to local economic resources to create a signature internship program that similarly exposes J.D./M.B.A.s to multidisciplinary problems often missed by any one discipline alone. In this way, the program would be unique (for a while at least) and could be more successfully promoted to potential students with better credentials.

In short, the overall purpose of the VRIO framework is to determine how, within existing and potential resources, a given firm can create unique value. However, to do this, it is necessary that the value be created with a

focus on the market and ultimately delivered in a way that others will have difficult duplicating. Accordingly, it is necessary to address each component of the VRIO framework separately below.

1. Valuable

A resource is considered valuable when "it enables an organization to increase revenues by taking advantage of opportunities in the organization's environment, to reduce costs by neutralizing threats in the organization's environment, or to do both."[110] The resource must "enable [the] firm to exploit environmental opportunities or neutralize environmental threats."[111] In this regard, the focus of "valuable" is strictly limited to recognition of financial value to the organization. The concept of public goods within the VRIO framework is only recognized to the extent that their creation increases the individual organization's revenue, decrease costs, or both. Although an individual law school can certainly justify creating public goods as part of its broader mission, it should not be confused with providing for the economic sustainability of the law school.

As applied to U.S. law schools, an example of a valuable opportunity would be to develop a reputation for producing law graduates who are exceptionally prepared to practice something like "oil and gas law in multinational corporations." As a result, if the legal education of a particular law school can tailor their offerings to fully reach out to future oil and gas corporate lawyers, the offering would most certainly be perceived as valuable to a discrete segment of potential students. Importantly, the value is in the result—not necessarily in the means by which the result is achieved. In this regard, it is important to remember that "most people who attend law school expect to end up with a decent standard of living [among other things] that exceeds what they would have attained without the degree."[112] Therefore, considerably less value exists in simply offering a course on Oil and Gas Law—as opposed to producing law graduates who are exceptionally prepared to practice oil and gas law in multinational corporations.

For these same reasons, a much more difficult question exists regarding the value of legal scholarship. Whether or not scholarship (i.e. faculty research and writing) is valuable within the VRIO framework greatly depends upon the use to which the scholarship is put by the particular law school. Is there a nexus between the scholarship and increased revenue for the school? Does the scholarship—for the individual law school—"enable[]

---

[110] Rowe & Barnes, *supra* note 106, at 285.

[111] BARNEY II, *supra* note 107, at 145.

[112] Brian Z. Tamanaha, *Is Law School Worth the Cost?* 63 J. LEGAL EDUC. 173, 173 (2013) [hereinafter Tamanaha II]; *see also* TAMANAHA I, *supra* note 32.

[the individual law school] to increase revenues . . . to reduce costs . . . or to do both"?[113]

Undoubtedly, some elite U.S. law schools could properly conclude that their scholarship is valuable under the VRIO framework. The reputation for leading scholarship is likely to attract some students in applying to the particular school.[114] It may also result in an increased receipt of some types of research grants. Likewise, some other U.S. law schools that are known for niche specialties could also conclude that their niche-related scholarship is also valuable under the VRIO framework.

However, other legal scholarship may present some challenging questions. For instance, does the cost of producing the scholarship actually exceed the revenues that can reasonably be identified? This could easily be determined by surveying current and past students about the criteria they used in originally selecting the particular law school. For current purposes, let it suffice to state that scholarship provides a perfect example of how value within an institutionalized organization does not necessarily equate with value within the VRIO framework.

2. Rare

The second component of the VRIO framework is whether or not the resource is rare. Just because something is valuable does not necessarily mean that it is also rare. "[I]f a particular resource or capability is controlled by numerous competing firms, then that resource is unlikely to be a source of competitive advantage for any one of them."[115] For instance, water is certainly valuable. It has multiple uses and is necessary for life on earth. However, in most places on the globe, water is abundant. Ordinarily, it is not rare—unless some additional unique aspects are perceived by consumers (making it rare again).

For instance, in 1994 Pepsi "invested $3 million to purify municipal tap water in Wichita, Kansas—creating the Aquafina brand . . . by 2003, Aquafina brought in $8.1 billion for Pepsi."[116] In this case, the purification and adjustments to taste corresponded to market recognition of water quality concerns.[117] Bottled water also addressed rising demands for convenience

---

[113] Rowe & Barnes, *supra* note 106, at 285.

[114] *See generally* Dan Subotnick & Laura Ross, *Scholarly Incentives, Scholarship, Article Selection, and Investment Strategies for Today's Law Schools*, 30 TOURO L. REV. 615, 620 (2014).

[115] BARNEY II, *supra* note 107, at 148.

[116] Zach Johnston, *Finding Clarity in the Muddled History of Bottled Water*, LIFE (Nov. 7, 2016), http://uproxx.com/life/bottled-water-history-mineral-water/6/ [https://perma.cc/VHC7-C4K4].

[117] *Id.*

and portability.[118] The combination converted a generic commodity into a valuable brand.

For this reason, a firm resource is considered rare "when the number of organizations which possess, and/or are capable of possessing, the strategy are less than the number of organizations that is required for perfectly competitive conditions among a set of competitors or potential competitors."[119] In many ways, the concept of rarity is just another way asking if there is any unmet demand for the particular resource. As such, rarity can be caused by various factors.

As applied broadly to U.S. law schools, the historically poor adaptations by institutionalized competitors suggests that there should be multiple areas where innovative market-focused offerings could be considered rare. For instance, take virtually any specific career where a law degree is considered to be beneficial.[120] All that would be necessary for an individual law school to create a rare program would be to assemble—and communicate—a clearly targeted (but difficult to copy) program thoroughly serving that specific career. Objectively, this should be far easier than trying to sell a twenty-ounce bottle of water for two dollars!

Note that simply creating a certificate or assembling courses does not, by itself, create rarity. Unless backed by truly scarce faculty expertise and/or other difficult-to-copy characteristics (that are appreciated by the customer—the students), certificates are easy to copy. What is necessary is for the individual law school to communicate to the market how the offering is unique, and then take steps that make the offering more difficult to copy. So, for instance, if the occupation is unique to the law school's location (such as federal government and Washington, D.C.), the law school could include internships and active participation by professionals affiliated with the local resource. Additional steps could be taken to make the experience even more distinctive by securing unique—and ideally exclusive—partnerships.

Another way to look at rarity within the VRIO framework is to realize that, prior to the economic shock in 2008, all forms of legal education were *perceived* as being rare. This essentially supported the institutionalization of legal education. It was only after the shock that the rarity of a traditional form of legal education came into question for a sizable number of potential law school applicants.[121] For the weaker schools, it is now questionable

---

[118] *Id.*

[119] Rowe & Barnes, *supra* note 106, at 286.

[120] *See generally* Tamanaha II, *supra* note 112.

[121] *Cf.* Barnhizer, *supra* note 12, at 250 (noting that, unlike other industries, American law schools have "been able to operate largely without any required adaptation to the economic realities of demand for their product."); Newton II, *supra* note 9, at 59 (remarking that the "recent economic recession has resulted in what appears to be long-term structural changes in the legal employment market that make

whether there is any unmet demand for the particular traditional resource.[122] Consequently, prospective law students "are less inclined to maintain loyalties; they are seeking value from organizations, and are demanding that organizations provide a good reason for customers to deal with them."[123] This has the unpleasant result of both reducing the demand for legal education as well as increasing the price sensitivity—unless individual law schools can successfully create their own rarity that is perceived and valued by students.

Even if their resource is both valuable and rare, the fact remains that the individual organization may not necessarily be able to recognize any sustainable competitive advantage unless the resource is also difficult to copy. It must be inimitable (or imperfectly imitable).

3. Inimitable

A firm resource is imperfectly imitable when other organizations "are not able to imitate [them] . . . through duplication or substitution."[124] Generally speaking, barriers to imitation reduce to unique history, causal ambiguity, or social complexity.[125] However, once again, the focus is on the perceptions of the customer rather than merely on the technical differences between the competitors. It is not enough to be different; the differences must be perceived and valued by potential customers—potential students. In fact, it is even arguable that the customer perceptions may be more important than technical reality.

For example, does anyone seriously think that there are major substantive differences between Coke and Pepsi? Nonetheless, each of the brands has significantly different perceptions by the consuming public. Each brand has achieved "imperfect imitability," even though the underlying

---

the systemic failures of American legal education even more glaring and inequitable to law students.").

[122] *Cf.* Sonali Kohli et al., *Whittier Law School Is Closing, Due in Part to Low Student Achievement*, LA TIMES, Apr. 20, 2017 (indicating that the closure of Whittier Law School was due to "struggles with challenges hitting many law schools across the country. Applications to law schools nationwide are down . . . prompting less-prestigious campuses to accept students with lower GPAs and law school admission test scores. State bar passage rates have fallen . . . ."); Steven J. Harper, *The Charlotte School of Law and A Whistleblower*, THE BELLY OF THE BEAST (Sept. 21, 2017), https://thelawyerbubble.com/category/law-school/ [https://perma.cc/S3NE-SXKL] (stating that, after the Great Recession, "[a]t most marginal [law] schools, that has meant lowering admission standards—an action that later reflects itself in declining bar passage rates for graduates.").

[123] Rowe & Barnes, *supra* note 106, at 287.

[124] *Id.* at 285.

[125] BARNEY II, *supra* note 107, at 152–58.

offering is quite similar and generic brands often taste quite similar. This is a lesson that many U.S. law schools have yet to learn.

In applying inimitability to U.S. law schools, a number of patterns quickly emerge. For instance, the inimitability of most leading law schools is at least partially the result of a unique history.[126] History is difficult to imitate—even if the offerings of newer schools are technically superior. Just as with Coke and Pepsi, history provides a unique patina to the brand of older law schools. Moreover, the ability of lesser known law schools to "catch up" is made even harder where institutional pressures undermine competition between constituent organizations. In these situations, the institutionalization of legal education reinforces the alignment—and ranking—of constituent schools. In the process, institutionalization reinforces the status quo.

As compared to imitability based on history, a slightly easier source of inimitability to overcome is "causal ambiguity."[127] This exists where the exact means of achieving a particular outcome is obscure. For instance, if the recipe for a particular cookie is a trade secret, competitors will hopefully encounter difficulties replicating the cookie's flavor. The relationship between the inputs and outputs is unclear.

As applied to law schools, causal ambiguity can relate to the means of achieving a particular distinction that is valued by potential law students. For instance, if a particular law school consistently produces trial advocacy teams that win national competitions (and this is presumably both valuable and rare), then the ambiguity can be a source of inimitability. The same situation could also be at work in the previous example of a reputation for producing great oil and gas attorneys. There could be causal ambiguity in explaining the apparent preponderance and success of a law school's graduates in a particular industry.[128]

A last source of imperfect imitability is "socially complex" relationships.[129] Examples of socially complex relationships include: "the interpersonal relations among managers in [an organization], [an organization's] culture, [an organization's] reputation among suppliers, and [an organization's reputation among] customers [and consumers]."[130] As with causal ambiguity, the contribution of social complexity is that it makes copying more difficult.

For law schools, a socially complex basis for inimitability is simply developing a reputation for serving a particular niche exceptionally well.

---

[126] Barney I, *supra* note 101, at 107–08.

[127] *Id.* at 108–09.

[128] This also suggests that individual law schools may wish to determine where their graduates are currently working in attempting to potential offerings that can be a source of sustainable competitive advantage.

[129] *Id.* at 110.

[130] *Id.*

Although the benefit of the end result (reputation in the niche) is hopefully obvious, the exact steps necessary to achieve it are hopefully quite obscure. Of course, in order to achieve inimitability, it is imperative that law schools do far more than just announce a certificate or a new course. Other law schools will copy the innovation as soon as the certificate or course appears to be successful. A similar problem exists with simply offering a combined J.D./M.B.A. program. Any law school can partner with a business school to offer a similar program. There must be more complexity that is more difficult for competitors to copy.

For instance, if a law school offers J.D./M.B.A. joint degrees to students interested in entrepreneurship, the law school could consciously pursue social complexity and causal ambiguity while developing a long-term goal of developing a unique history. This process could start by identifying the characteristics of good entrepreneur attorneys. Developing those skills could then be integrated into the curriculum. The law school could survey its own graduates to ask about their experiences and recommendations. The law school could start a writing competition on entrepreneurial skills and the practice of law. The law school's law review could issue annual awards for best papers on law practice by sole practitioners. The law school could offer CLE programs, open to current law students, on building a law practice. The law school could even offer a cross-listed course on entrepreneurship—open to both law and business students. On the faculty side, the law school could recruit faculty with experience and recognition in entrepreneurship law. All of this would foster inimitability through social complexity. Over time, the law school would develop a unique history-based inimitable reputation for producing exceptional "entrepreneurial lawyers." All of this would then need to be disseminated to potential students and employers.

As a caveat, it is important to note that all of the efforts to create inimitability must be based upon both implementation and communication. It is not enough to do something outstanding if no one knows about it. At the same time, it is also not enough to advertise a program, but not deliver the desirable performance. It is only after the effort has been successfully implemented that the resulting reputation becomes difficult for other law schools to imitate. As long as the law school continues to meaningfully support the reputation, the innovation will remain partially inimitable. In contrast, if the law school fails to implement a quality plan and provide the necessary resources, the benefits will quickly evaporate.

For all of the above reasons, one of the most critical components in the VRIO framework is the capability of the specific organization to successfully implement. This leads directly to the last component of the VRIO framework—organization.

4. Organization

Even if an opportunity is valuable, rare, and inimitable, it is still worthless if the organization is unable to execute. In this regard, organization relates to the organizational capability to implement. It refers to how "the organization's formal reporting structures, management styles, explicit management control systems and compensation policies [are] designed to exploit the full competitive potential of its strategy. . . ."[131] Stated otherwise, the VRIO framework requires that the organization has the capability to effectively implement over time.

In fact, the capability of an organization to execute is critical for an organization to recognize any of the benefits from the VRIO framework. As it happens, this challenge is also integral to the previous discussions on behavioral economics and institutional theory. Without the ability to execute, without the processes to make sure that strategies are implemented, there is no ability to achieve any sustainable competitive advantage. It is specifically for this reason that the remaining portions of this Article focus on the processes connected with successful execution. The next Section addresses the role of strategic planning in law schools (which assure alignment with both the external environment and the law school's mission). The last Section then proposes a change-process model tailored for use by law schools. Together, they are intended to increase the likelihood of specific law schools successfully deploying their capabilities to meaningfully adapt and execute.

C. Law School Strategic Planning

As noted previously, some law schools may reasonably believe that the existing approach to legal education is "fundamentally fine."[132] However, the pursuit of better market alignment does not necessarily conflict with the core mission and values of any specific law school. A law school can actually both fulfill its existing mission and create a sustainable competitive advantage. A law school can pursue its noble goals while implementing distinctive and meaningful programs consistent with the VRIO framework. To do this, all the law school needs to do is operate "strategically."

According to Igor Ansoff, "strategic" means "'pertaining to the relation between the firm and its environment.'"[133] By seeking to better align an organization with its external environment, strategy is critical to the long-

---

[131] Rowe & Barnes, *supra* note 106, at 285; *see also* BARNEY II, *supra* note 107, at 160–62 (italics omitted).

[132] Wu, *supra* note 79, at 417.

[133] IGOR ANSOFF, CORPORATE STRATEGY 5 (1965).

term success of most organizations.[134] Economically speaking, strategy enables organizations to deploy their resources in a way that profitably and uniquely creates customer value. If properly implemented, strategic planning also assures that the potential innovations align with the individual law school's mission and values. Strategic planning can assure both the continued noble purpose of legal education as well as the benefits of meaningful change.

In 1981, Kotler and Murphy[135] specifically applied strategic planning principles to organizations in higher learning. In this regard, Kotler and Murphy expressly recognized that in education the creation of unique value still begins with the identification of marketing opportunities. Marketing opportunity for educational institutions was defined as "'an attractive area of relevant action in which a particular organization is likely to enjoy superior competitive advantage[] . . . . An opportunity can be assessed in terms of two basic dimensions: (1) its potential *attractiveness* as measured by the amount of revenue or other results that an organization might value and (2) the *probability* that the institution will be successful in developing the opportunity."[136]

By providing for "other results that an organization might value," Kotler and Murphy expressly provided for alternative value considerations beyond just revenue. However, practically speaking, alternative value for organizations in higher education needs to be evaluated *in addition to* potential revenue—not *instead of* potential revenue. Otherwise, the long-term economic viability of the individual educational organization would be completely left to chance. Accordingly, in evaluating different potential market opportunities (specifically looking for VRIO characteristics), Kotler and Murphy essentially suggest that schools start by conducting what is commonly known as a "SWOT" analysis.[137]

A SWOT analysis is an effort to better understand the competitive landscape in which the organization exists, and then to determine where,

---

[134] The reference to "most" organizations alludes to the fact that some organizations do not need to contend with any serious form of competition. One situation where competition fails to exist is where a single organization enjoys economic monopoly power.

[135] Philip Kotler & Patrick E. Murphy, *Strategic Planning for Higher Education*, 52 J. HIGHER EDUC. 470–89 (1981).

[136] *Id.* at 475 (emphasis in original).

[137] A "SWOT" analysis is a common approach used in business strategy to evaluate an organization's competitive position by considering both the firm's internal resources and its external market position. "SWOT" refers to "Strengths, Weaknesses, Opportunities, Threats." For more details, see Barney I, *supra* note 101, at 99.

within that context, the organization can best compete.[138] This involves marrying a survey of the external market conditions used by the market-based view, with the existing and potential firm capabilities used by the resource-based view.[139] As a practical matter, this involves first considering all of the potential external market opportunities and threats.[140]

For example, for law schools, potential opportunities would inherently include providing legal educational services to students interested in becoming licensed attorneys. This could include students interested in practicing law within a particular state. It also could include international students interested in becoming licensed in the United States, but practicing law in their home country (or practicing in the United States while serving entities from their home country). This could then be broken down further by the various types of lawyer practices that already exist. However, the analysis should not stop here.

Opportunity-wise, the external market should also include students who want to receive a law license, but want to work in an industry or profession that does not require a law license. An easy way to identify these industries or professions would be to survey recent graduates employed in fields where a J.D. is considered advantageous, but not required. Surveying students pursuing combined degrees could also help to identify these fields: What are the students planning to do with their combined degrees? What are the intended benefits of the degree? Lastly, the external market should consider law students who ultimately secure jobs where a law degree is not deemed advantageous—as well as *potential* law students who have decided not to pursue a law degree: What are their goals? How do these groups of individuals perceive the value of a legal education. Would they consider a degree other than a J.D.? How would they value it? How large is the segment? What would be necessary to better serve their needs?

Once the external market has been surveyed, the next step is to determine the existing and potential threats that exist for each segment identified as a potential opportunity. For instance, there would be numerous threats if the opportunity is as generic as "students interested in becoming licensed attorneys." Almost by definition, all law schools would be existing competitors. For this reason, it is important to dig much deeper.

For instance, what if there is a segment of insurance adjusters who value obtaining a J.D. but do not want to practice law? It might prove beneficial to determine if there is any potential program certification that might be offered by the current providers of the Chartered Life Underwriter (CLU) Certificate, Chartered Property Casualty Underwriter (CPCU) Certificate, or Associate in Claims (AIC) Certificate. If not, is there a possibility for an individual law

---

[138] *Id.*

[139] *See id.* at 99; Porter, *supra* note 102.

[140] This corresponds to the "OT" in "SWOT."

school to partner with the certificate providers? What other law schools already offer similar services? Where are they located and where do their students originate? The process of identifying actual and potential threats should be repeated for each opportunity. Additionally, it should be determined if groups of opportunities naturally group together. If so, threats should be examined for the groups as well.

At the same time, the specific law school needs to evaluate its existing and potential resources "as providing a key to what it can accomplish."[141] These resources can be either internal (in the form of faculty expertise) or external (in the form of alumni networks, unique geographic benefits or special industry access) in aligning with potential market demand. A comparison of the potential opportunities and available organizational resources enables the educational organization to evaluate its own strengths and weaknesses.[142] In particular, "[t]he school should pay attention primarily to those strengths in which it possesses a differential advantage [to other schools], that is, it can outperform competitors on that dimension."[143] When considered as a whole, the individual law school should have a much better idea of the attractiveness of the identified opportunities as well as the probability that the efforts would prove successful.

"The theory is that an organization should pursue goals, opportunities, and strategies that are suggested by, or congruent with, its strengths and avoid those where its resources would be too weak."[144] However, at all times, options should be evaluated within the context of the *external* market opportunities and their alignment with the appropriate organizational distinctive competencies. "Distinctive competencies are those resources and abilities in which the organization is especially strong."[145]

Once the school has completed its SWOT analysis, the next step is for the school to formulate (or reformulate) its organizational goals. This starts by re-examining the organization's mission. The mission statement "defines what an organization is, why it exists, [and] its reason for being."[146] This is actually the heart of the problem. In many ways, the mission statement

---

[141] Kotler & Murphy, *supra* note 135, at 471.

[142] This corresponds to the "SW" in "SWOT."

[143] Kotler & Murphy, *supra* note 135, at 477 (italics omitted). Although it may not be initially obvious, virtually all organizations possess some sort of potential differential advantage. For instance, pre-existing geographic proximity to the particular educational institution provides a compelling reason for some students to attend particular schools. However other competitors may be similarly situated.

[144] *Id.* at 476.

[145] *Id.* at 476–77 (italics omitted).

[146] SMALL BUSINESS ENCYCLOPEDIA, *Mission Statement*, https://www.entrepreneur.com/encyclopedia/mission-statement [https://perma.cc/U6D7-HJ6K] (last visited Feb. 22, 2018).

overlaps with the process of institutionalization. The greater the institutional pressures, the greater the likelihood that the individual organization will ignore meaningful consideration of its own mission statement. After all, in institutionalized industries, the institution—rather than the individual organization—largely dictates what the organization is and why it exists. However, through the use of institutional entrepreneurship, the organizational focus can at least temporarily shift back to the organization's mission statement.

Theoretically, the function of the mission statement is to communicate to internal stakeholders—like the faculty and staff—why the organization exists.[147] By comparing the identified market opportunities, the initial SWOT analysis, and the mission statement, a law school has a clear process for either adjusting its existing mission to account for the new opportunities, or rejecting potential opportunities because they are outside the purposes for which the organization exists. Either way, the nobility of the legal education is protected.

Of course, the process of formally reconsidering the mission statement provides an ideal opportunity to determine the extent to which faculty and staff have internalized the existing mission of the organization. If the faculty or staff do not even know (or cannot agree upon) the contents of the school's existing mission, it is critical to pause and thoroughly revisit the issue. This could be the result of either institutionalization or bounded rationality by the faculty. Clarifying these issues will provide faculty with the opportunity to consciously reconsider some of the organizational assumptions. However, consensus on the organizational mission is essential. Otherwise, even without any institutional pressures, it will be virtually impossible to consistently prioritize opportunities.[148]

Next, having made sure to align the results of the SWOT analysis, and the revised mission statement, Kotler and Murphy clearly set forth the remaining steps of the strategic planning process. First, a prioritized list of primary outcomes can be established.[149] In other words, using the VRIO framework and other considerations, what opportunities will the organization pursue and which ones are most important? How many opportunities have

---

[147] May Chau, *The Guide to Company Objectives and Key Results (OKR)*, 7 GEESE BLOG (May 16, 2016), https://7geese.com/company-okrs/ [https://perma.cc/YYV6-SCDD].

[148] Given the central role played by the mission statement, it is suggested one of the first steps of the strategic planning process is to determine how many of the organization's faculty actually know what the mission actually states. Once consensus is achieved as to the existing mission of the organization, the evaluation of potential opportunities should proceed much more smoothly.

[149] *See* Kotler & Murphy, *supra* note 135, at 479–80.

been selected? What are their relative priorities to each other? What are the estimated probabilities of success?

Second, individual goals need to be developed to explain how the objectives will be measured.[150] This involves setting one or more goals for each objective. What goals will be used to determine if the objective has been achieved? For instance, if a law school is going to develop an oil and gas program, how many students need to be recruited in order for the program to be considered a success? How high should the LSAT scores and grade point averages of the incoming students be for it to be considered a success? How high should subsequent student employment rates be in order for the program to be considered a success? How far out after graduation should the employment rates be measured?

Third, once the goals have been preliminarily determined, one or more strategies must be selected in order to achieve each of the stated goals.[151] For instance, how will the law school generally go about recruiting students to the new oil and gas program? What generally needs to be in the program for the goals to be achieved? Generally, where and how does the program need to be promoted? What are the general approaches to link the program content to the students who will value it the most (and have the best credentials and/or employment capabilities)?

Fourth, for each strategy or group of strategies, specific operational plans (tactics) should be developed to achieve the corresponding objectives.[152] For instance, in developing the oil and gas certificate program, which oil and gas companies will be contacted to determine the ideal content of such a program? How will the program be specifically promoted? How much will each of the plans cost to implement? Who will supply the resources?

And lastly, the organization must provide a mechanism to continuously monitor the implementation in order to facilitate any necessary adjustments.[153] In other words, who is responsible for monitoring progress and to whom do they report? How frequently will progress be measured?

Although the specific process of strategy development might at first appear complicated, the actual task remains quite simple: find ways for your organization to profitably deliver superior value to existing and potential students. This can be achieved by: using one set of institutional entrepreneurs to engage and convene faculty; empowering another set of institutional entrepreneurs to use the VRIO framework to identify distinct and meaningful opportunities for distinctive and meaningful change; and then applying strategic planning principles to select, prioritize, and

---

[150] *See id*. at 480–81.

[151] *See id.* at 481.

[152] *See id.* at 483–87. Although Kotler and Murphy do not delve into tactics, the operational planning is a common component as included in this paper.

[153] *See id.* at 483–88.

implement opportunities that are consistent with both the external market and the mission of the individual law school. By way of further clarification, in the last Section, all of these aspects are integrated into a single process model for individual law schools.

V. A LAW SCHOOL CHANGE PROCESS MODEL

By combining all of the topics discussed previously, institutional theory, behavioral economics, and management theory can be combined into a generic process model that significantly increases the likelihood of innovative success by individual law schools. Although part of the proposed change process model is based upon Dorado's 2005 article *Institutional Entrepreneurship, Partaking and Convening*,[154] the proposed model does not track Dorado's article exactly. Most notably, Dorado's article worked across three separate dimensions (resource mobilization, agency, and opportunity) to discuss "institutional change profiles."[155] For current purposes, the proposed model focuses only on resource mobilization (but incorporates some of the other considerations presented by the other dimensions as well). This dramatically reduces the scope and complexity of both the current Article and the proposed model. To make the model simpler, the proposed model also relies upon components from an earlier version of Dorado's article.[156]

A. The Participants

As proposed, the change process model involves the coordinated participation of five entities—each playing a specific role in facilitating appropriate and successful organizational change. The five coordinated entities are: the Dean, the Entire Law Faculty, the Conveners Team, an Internal Leveraging Team (Innovators), and an External Leveraging Team (Catalysts). Each entity or team is discussed below. The participants are then coordinated across seven stages—all with the intended goal of achieving successful organizational change.

---

[154] *See generally* Dorado, *supra* note 85.

[155] *Id.* at 395.

[156] A description of Dorado's earlier version was included in C.R. HININGS ET AL., DYNAMICS OF CHANGE IN ORGANIZATIONAL FIELDS, HANBOOK OF ORGANIZATION CHANGE AND INNOVATION, (Marshall Scott Poole & Andrew H. Van de Ven, Oxford University Press 2004).

1. The Dean

The role of the Dean is to support and initiate (or reinitiate) the change process model. In this regard, the Dean starts the process of constructing "chains of action" within the individual law school "with at least some pre-fabricated links."[157] This means determining the paths and key personnel within the law faculty most likely to successfully champion meaningful change. It also involves helping to identify any limitations on the entire process, and to frame the process in a way that addresses both bounded rationality as well as bounded willpower.

Personnel-wise, the Dean needs to select one or two respected law faculty members with the ability of convincing the overall law faculty of the "desirability and viability of collaborating to jumpstart the development of a solution to a problem."[158] These respected faculty members need to be "politically skilled actors" who are instrumental in "bridging unaware, unsure or skeptical actors to explore the possibilities of cooperation."[159] However, at the same time, the Dean should be careful not to predetermine or endorse any particular plans or ideas. The focus is on simply starting to build links that channel "action through the shape and organization of those links,"[160] rather than by predetermining the ends to which they are put.

In regard to the overall proposed process, the Dean is the individual with the greatest knowledge of the limitations imposed on the law school by the University and other key institutions. For this reason, by the time the process is initiated, the Dean should be able to clarify any University-related restrictions on potential innovations. The Dean should determine and communicate any express institutional limitations on the change process as early as possible.

2. The Entire Law Faculty

In regard to the proposed change process, the law faculty is important for several reasons. First, as previously noted, some law schools may rationally decide that meaningful change is unnecessary. The sooner it is determined that this is the case, the sooner the process can shift to discussing other matters. There is no need to pursue meaningful change if the faculty overwhelmingly sees no need for it.

A second reason that the law faculty is important to the proposed change process is that institutional and behavioral forces are often internalized by the law faculty. The greater the law faculty's awareness of the challenges posed by institutionalization and behavioral economics, the less resistant the faculty

---

[157] Swidler, *supra* note 81, at 277.
[158] Dorado, *supra* note 85, at 390–91.
[159] *Id.* at 391.
[160] Swidler, *supra* note 81, at 277.

will be to change. In fact, by raising awareness of institutionalization and behavioral economics within the entire law faculty, individual faculty members will be more likely to meaningfully participate in the change process and support the empowerment of focused institutional entrepreneurship groups.

A third reason that the law faculty is important is that they inherently represent the most valuable resource of any law school. Without their engagement, contribution, and flexibility, the task of creating meaningful and distinctive programs becomes significantly more difficult—if not impossible.

3. The Conveners Team

Besides the Dean and the entire law faculty, the key mechanism for successfully achieving change is the Conveners Team.[161] The purpose of the Conveners Team is to convene the entire law faculty to specifically provide process, credibility, and legitimacy.[162] At the same time, the Conveners Team will manage the groups charged with Leveraging, discussed below. In this way, the Conveners Team will increase the chances that the Leveraging groups will identify opportunities that are acceptable to the entire faculty.

Given the special importance of the Conveners Team, the recommended process model limits the role of the Dean to only picking one or two of the initial core members. This recommendation assumes that the participation by the Dean will introduce a top-down bias or other resistance from the general faculty. Since the goal of the process model is to obtain full participation from the general faculty, the preferable engagement is bottom-up, rather than top-down. Of course, if the individual faculty has a collegial relationship with the specific Dean, this rule certainly can be relaxed as appropriate.

Assuming the Dean is not actively involved, the initially selected core members of the Conveners Team should then bootstrap the selection of the remaining members of the Conveners Team. At all times, the Conveners Team should consist of the most respected, unbiased, senior members of the law faculty. As their name implies, the Conveners Team serves as the convening linkage between the general law faculty and the innovative process represented by the other teams (discussed next). In this regard, the Conveners Team should be sensitive to faculty questions regarding uncertainty of outcomes as well as structuring the process into manageable pieces. Once this is achieved, the Conveners Team needs to forcefully resolve limitations to bounded willpower. Faculty commitment to the process is critical.

In assuring the ability of the Conveners Team to facilitate the success of the entire process, one or more members of the Conveners Team is expected

---

[161] Dorado, *supra* note 85, at 401–02.

[162] *Id*.

to monitor each of the other two teams. Their involvement is not to manage the other teams but to facilitate focus, efficiency, and consensus throughout the entire process. The Conveners Team is also expected to supplement the "pre-fabricated" linkages[163] identified by the Dean that will enable the successful implementation of whatever changes are recommended. This should consist of careful selection of all other team members who are appropriate for the respective tasks and committed to working in a collegial environment. Where necessary, the Conveners Team will also need to identify any sources of general faculty resistance and take appropriate measures. Ultimately, the job of the Conveners Team is to provide unbiased recommendations to the general faculty regarding the adoption of the proposed change strategies. The Conveners Team should manage the entire change process through the point where specific opportunities are (hopefully) approved for implementation by the entire faculty.

4. The Internal Leveraging Team (Innovators)

Beside the Conveners Team, the next key component of the proposed change process is to assemble a highly entrepreneurial team from within the law school to identify, promote, and leverage specific opportunities.[164] This team consists of the Innovators. This team should consist of externally focused, market-aware, faculty and staff from admissions, placement, and alumni affairs. Staff from each of these offices should have extensive knowledge about the students' perceived value of existing offerings as well as knowledge of common complaints and potential additional offerings. To the extent possible, creative law faculty with the ability to cooperatively work on multidisciplinary teams should be central to the team dynamics. The meaningful involvement (though not necessarily control) of faculty is necessary to increase the likelihood of adoption.

The Innovator Team should be extremely creative, strategic, and encourage active endorsement of their recommended opportunities across the general faculty.[165] The Innovator Team should be encouraged to freely share and refine their ideas. In addition, they should be charged with primary responsibility for finding promising opportunities that challenge the assumptions of the organization.

The Innovator Team must be comfortable applying the VRIO framework to potential opportunities for the individual law school. In this way, the ideas promoted by the Innovators Team should be expected to lead to quantifiable increases in enrollment, and provide a basis for sustainable advantage relative to other law schools. In order for the Innovators to be successful,

---

[163] Swidler, *supra* note 81, at 277.

[164] *See* Dorado, *supra* note 85, at 385.

[165] *Id*. at 386.

they will need to do far more than just brainstorm. Success will require research and formulation of strategies that will stop other law schools from simply copying new innovations. Ultimately, the job of the Innovator Team is to creatively identify and promote substantive opportunities for the individual law school that are valuable, rare, inimitable, and organizationally appropriate.

5. The External Leveraging Team (Catalysts)

Sometimes, even motivated entrepreneurs are limited by their occupational or employment role. Consequently, in addition to the (internal) Innovators Team, it is necessary to provide an additional external reality check by virtue of the External Leveraging Team—the Catalysts. The Catalyst Team consists of external stakeholders with a commitment to quality legal education and the success of the individual law school. At the same time, the Catalyst Team should consist of individuals with knowledge of potential resources beyond the law school. As with the Innovators, the Catalyst Team should have a strategic perspective and be free to actively recruit support for ideas that they believe would be most beneficial for the law school. However, their perspective is fundamentally from the outside-in. Except for input from a member from the Conveners Team, the Catalyst Team should completely consist of individuals who do not work for the law school or in education. They should represent a broad array of creative individuals with external knowledge of potential law school opportunities for distinction.

To some extent, the Catalyst Team can serve as a sounding board for the Innovator Team. In the process, they can provide initial market feedback on the various Innovator ideas while contributing their own perspectives. Without the identification of quality opportunities, the benefit of the entire process will be minimized. Ultimately, the primary value of the Catalyst Team is the provision of input from external stakeholders as to how to improve perceived market value, sustainability, and resources to support and prioritize the opportunities. At the same time, the involvement of a Convening Team member within the Catalyst Team is meant to further shepherd the process along with the intention of producing solid recommendations back to the entire law faculty.

B. The Stages of a Change Process Model

Having described the specific role for each of the five key entities, this Section discusses the related seven-stage change process model.[166] Within

[166] By way of clarification, this model represents a synthesis by the author in assembling the earlier-identified considerations. It represents the author's own effort

the model, each previously discussed entity plays either a primary or secondary role in achieving distinctive and meaningful change. An overview of the model is provided immediately below with each stage discussed in greater detail.

By way of overview, the seven-stage model assumes that the field of legal education has been institutionalized and is subject to the limitations of behavioral economics. However, the model also assumes that the change being sought can be achieved within the currently existing ABA rules. As such, there is no inherently obvious need for inter-organizational coordination. The proposed model seeks to empower and coordinate institutional entrepreneurs within individual law schools to convene and engage the entire law faculty in an endorsed change process.

Once the entire faculty has endorsed the change process, the proposed change model utilizes both internal and external institutional entrepreneurs in leveraging new opportunities for distinctive and meaningful change. Consistent with the rest of this Article, the proposed model does not specifically endorse any particular plans. Instead, the internal Innovator Team is charged with working cooperatively with the external Catalysts to identify unique opportunities. Together, the two teams apply the VRIO framework to the available resources of their specific law school to make specifically tailored recommendations.

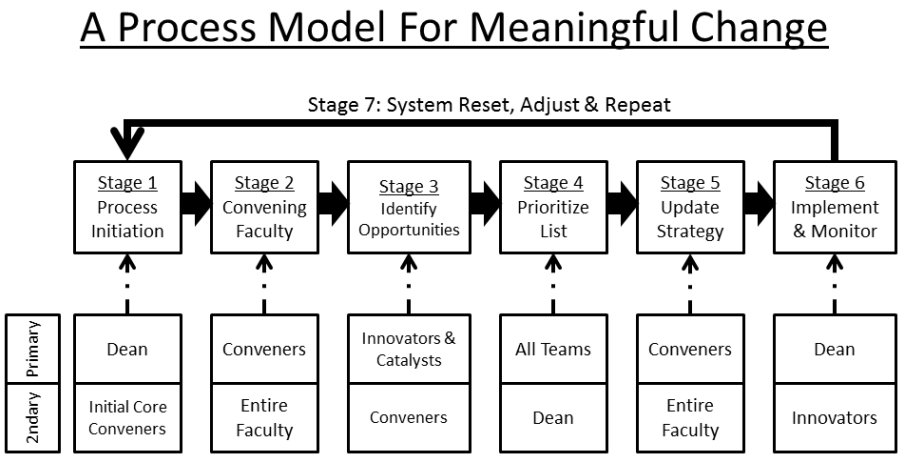
The Conveners are next charged with helping to integrate the recommendations within an unbiased strategic planning process that involves the entire law faculty. In this way, the Conveners will facilitate the entire faculty in specifically selecting some or all of the recommended opportunities for implementation. "None" is not an option. At the same time, the involvement of the entire faculty will assure that the recommended opportunities also align with the mission of the individual law school. It is only after the entire faculty has endorsed specific change opportunities that the Dean will initiate implementation and monitoring of the plan in conjunction with Innovator team members. Once the primary stages have been completed the Dean resets the entire process to refine, revisit, or otherwise pursue additional change for future cycles.

By way of further clarification, it should be noted that the individual stages of the model may require significantly different amounts of time, effort, and preparation to complete at different law schools. In some stages, such as those involving the entire law faculty, it is likely that multiple meetings and flexibility will be necessary to achieve optimal results. In some instances, it will be necessary to modify the proposed model. Depending upon specific circumstances, it may be necessary to more deeply engage

---

to present a clearer process by which to apply the more abstract concepts discussed earlier and to achieve change within individual law schools.

university officials, the student body, employers of graduates, or bar associations. Likewise, in Stage 2, a number of steps may either be completely unnecessary or require much greater depth (depending upon the perspectives and dynamics of the particular law school faculty). Individual law schools should feel free to adapt the model as necessary to achieve the intended goal of the particular stage.



1. Stage 1: Initiation

In Stage 1, the law school Dean identifies the overall goals and limitations for the current efforts and clarifies its role within the broader strategic planning process. For example, if this is not the first time that the law school has engaged the change process model, the Dean may wish to comment on the output from previous efforts. The Dean may also wish to suggest changes to the current cycle to address specific issues previously encountered, or supply some basic information or other data to help in the success of the overall process. However, in all instances, the Dean should provide a mechanism for determining the minimal success for each stage and the entire process. For instance, if distinctive and meaningful change is being pursued, the Dean should indicate that, for example, "at least five viable ideas should be approved by this process for implementation." Zero should never be an option.

Once the overall goals of the process are identified, the law school Dean should select one or more energetic and widely-respected faculty who are recognized by the general faculty for their balanced and unbiased character and commitment. The selected faculty members should be fully informed of the entire change model and know exactly how the effort relates to the broader strategic planning process. These leaders should be "quick to appreciate the beneficial impact of mutual exchange, proficient at scanning the environment surrounding the collaboration, and skilled in appraising the

consequences of contemplated future actions."[167] These leaders also should be attuned to the resistance mechanisms typical of both institutional theory and behavioral economics.

The core faculty initially selected by the Dean will then independently select the remaining members of the Conveners Team. Unless circumstances dictate otherwise, the Dean should avoid any activities that would be viewed as interference in the selection of the remaining members. Subsequent cycles of the change model can then simply maintain the composition of earlier team membership—with minimal adjustment as necessary.

Ideally, all members of the Conveners Team should have existing relationships with the most creative members of the law school as well as existing relationships with faculty actively involved in strategic planning for the law school. If the individual law school does not have an existing and meaningful strategic planning mechanism that integrates law faculty, one should be established. Ideally, at least one member of the Conveners Team should also have established relationships with key external individuals who will ultimately constitute the Catalyst Team. The primary role of the Conveners Team is to guide (but not manage) the developmental process of ideas across the seven stages while maintaining the integrity of the process for the general faculty. Part of this challenge is to identify areas of resistance and proceed to address any concerns to the extent possible. At all times, it is the responsibility of the Conveners Team to successfully guide the process to deliver the predetermined number of specifically adopted opportunities (as agreed upon by the entire faculty) for implementation and monitoring.

2. Stage 2: Convening

Having defined the general purpose, scope, and minimal deliverables, and facilitated the formation of the Conveners Team in Stage 1, next the Conveners Team is responsible for successfully convening the entire law faculty to engage and endorse the overall change process. In this regard, recall that convening is based upon the creation of a collaborative initiative that "involves convincing [parties] of the desirability and viability of collaborating to jumpstart the development of a solution to a problem."[168] Convening requires "politically skilled actors" who are instrumental in "bridging unaware, unsure or sceptical [sic] actors to explore the possibilities of cooperation."[169] This includes minimizing the potential role of bounded rationality, bounded willpower, and status quo bias throughout the process. This is why there is a Conveners Team.

---

[167] Dorado, *supra* note 85, at 391.
[168] Dorado, *supra* note 85, at 390-91.
[169] *Id*.

In attempting to fully convene the faculty in the process, the exact configuration of Stage 2 will likely vary across different law schools. The configuration of Stage 2 may require pursuing one or more of three different goals that depend upon the character, composition, and perspectives of the law faculty at the specific school. It is up to the Conveners Team to determine the optimal configuration for their specific school—with the goal always being to successfully achieve meaningful change.

For instance, some of the law faculty might be unaware of the taken-for-granted assumptions that accompany institutionalization. This could cause some of the law faculty to be less flexible in accepting innovative ideas. At the same time, other law faculty might believe that individually meaningful change is completely unnecessary. Yet other law faculty might simply desire a greater understanding of the process of institutional entrepreneurship and change. However, in all instances, the Conveners need to engage the individual law faculty in ways most likely to influence them to endorse the overall change process and commit to accepting at least some of the resulting recommendations.

Assuming an individual law school deems it necessary to cover all of the above-listed concerns, the specific goals for Stage 2 would be as follows:

- First, to sensitize the law faculty regarding the impact of institutionalization and behavioral considerations to their own perspectives and decision-making;
- Second, to determine the receptiveness of the law faculty of pursuing meaningful and distinctive change by either increasing revenue or reducing costs; and
- Third, to engage law faculty by explaining the model and obtaining their endorsement of the overall change process.

At all times, it is recommended that Conveners pursue their respective goals in bite-sized pieces. This will reduce resistance due to bounded rationality. The Conveners should feel free to adjust the number, duration, and configuration of dedicated faculty meetings as necessary to maximize the chances for success.

In pursuing the first of these goals (sensitivity to impact of institutionalization and behavioral considerations), Conveners may wish to begin by engaging the law faculty with questions that highlight some of their own taken-for-granted assumptions[170] in legal education. The goal of these questions is not necessarily to resolve any issue, but to cause faculty to pause and individually challenge some of their own assumptions, and appreciate how it impacts their own decision-making. In the process, these questions

[170] Scott II, *supra* note 38, at 496.

(or questions like them) might highlight how taken-for-granted assumptions can overshadow the ability of the law school to recognize innovative opportunities.

Conveners could use various methods to assure active individual participation. For instance, faculty could be asked to discuss their individual answers to some or all of the questions below:

1. What are the outer limits of what constitutes the practice of law? Why?
2. How have these changes been incorporated into U.S. legal education?
3. What have been the biggest changes in the practice of law over the last century?
4. What has NOT been incorporated into U.S. legal education? Why?
5. When it comes to legal education, who is the customer?
6. What is the broadest possible list of benefits that a law student obtains by obtaining a legal education?
7. How does your individual school support each of these benefits?
8. What benefits does your school NOT support and why?
9. What complaints have you heard from students and recent graduates about the existing educational offerings at your specific law school?
10. Are there any other groups of potential customers that could benefit from what a legal education has to offer? Who?
11. Why has your law school NOT pursued extending benefits to these additional potential customers?
12. What is the mission of your law school? How well do you think you achieve this mission?
13. What could your school do better to fulfill its mission?
14. What is unique about the legal education provided at your individual law school?
15. What could be unique, but is not currently, about the legal education provided at your individual law school and why isn't it being done?
16. What is the difference between the legal education provided by your individual law school and your biggest competitor?
17. Who is your biggest competitor? Why do you consider them to be your biggest competitor?
18. Why do so many potential law students rely upon the U.S. News and World Report ranking of U.S. law schools?
19. Why do individual law students attend your law school?
20. Is there anything that could be done to increase the value of the legal education offered by your law school? What?

By asking questions like those presented above, law faculty should become more conscious of the impacts of institutionalization in creating taken-for-granted assumptions.[171] It should also naturally raise the prospect of faculty engagement in meaningful change. In the process, the general faculty should become more aware and receptive to a broader array of the opportunities that they will be asked to approve in Stage 6.

Of course, there are other concerns that the Conveners may need to address besides simply the awareness of institutionalization and limits of behavioral economics. The second potential goal of Stage 2 is to determine the extent to which individual law school faculty perceive of *any* need for change. As such, the Conveners Team may wish to have the faculty answer or discuss an additional series of preliminary core questions. One question that the Conveners Team might wish to ask the law faculty might be: "Do you (as a law faculty member) believe that your law school should pursue, as a priority, either new sources of revenue or ways to reduce costs? Pick one: YES or NO."

If a significant number of law faculty respond "no"—ask why. It may be that your law school is fortunate enough not to need to change—or your faculty may suffer from either bounded rationality or bounded willpower. It is important to clarify the situation.

The Conveners Team should listen closely. Before deciding how to proceed, the Conveners Team should fully understand the perspectives of the law faculty that believe change is unnecessary. The law faculty may know something you do not; or the faculty may need to know something more. Educate them if necessary. Given the importance of consensus building in law school governance, it is important to have an open, sincere understanding before deciding what to do next. In some contexts, the option to do nothing might well be a legitimate alternative. The sooner the Conveners determine this, the better.

However, assuming that a clear majority of law faculty agrees that doing nothing is not an option, the next step is to solicit faculty feedback in selecting the general priorities for change options. The Conveners Team might therefore ask the law faculty a second question: "Should the primary focus of organizational change be either cost-cutting or revenue growing? Pick one: cost-cutting or revenue growth."

At its most fundamental level, responding to an environmental shock requires organizations to decide how to cope in ways that improves their chances for survival. One way to do this is to determine how to increase organizational value. It therefore helps to know if the faculty primarily believes that their law school should cope by pursuing either Option 1—reducing costs, or Option 2—increasing revenue. Notably, there is no Option

[171] *Id.* at 496.

3—do both (or neither). Once again, organizational focus requires clarity of purpose and the pursuit of meaningful change has to start with commitment. Moreover, it is assumed that all U.S. law schools are already trying to both reduce costs and increase revenue. It is necessary for the faculty to clarify what they believe should be the primary focus of significant change. Each distinctive priority presents its own advantages and disadvantages. The answers to these second questions should confirm the receptiveness of the law faculty to pursuing meaningful and distinctive change by either increasing revenue or reducing costs. The scope of the process can therefore be adjusted accordingly.

With these issues resolved, the third and primary goal in Stage 2 is to obtain faculty endorsement of the overall change process. For some law faculty, all that may be necessary is to have them read a copy of this Article and have them affirmatively vote to follow its process model. For other law faculty, they may want to know a little more about the process for instituting meaningful changes. Remember that individual uncertainty is a potential source of status quo bias. It should be addressed accordingly. For faculty who want to know even more about the underlying theory, these faculty members should be encouraged to learn about the linked processes of theorization, legitimization, and dissemination.

The first step—theorization—"involves both building a model of how new practices and organizational forms work, and providing a justification for them in the current and future contexts."[172] Through theorization, the generalizability of the initial, narrow experiences of new alternatives is subject to more rigorous investigation.[173] The theorization informs the wider population (in our case, the law faculty) about what, exactly, *is* the new process and related alternatives. Theorization also provides the foundation for comparison of the new alternatives to the old alternatives. In the process, theorization enables justification of the new alternatives to the entire group of socially connected individuals.[174] Theorization thereby provides the rational foundation for understanding the change model. In turn, it also facilitates legitimization.[175] Coincidentally, theorization also helps to address decisional problems resulting from the cognitive limitations of bounded rationality.

The second step is legitimization. Legitimacy is defined as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of

---

[172] C.R. HININGS ET AL., *supra* note 156, at 312.

[173] *Id.* at 314.

[174] *Id.* at 310.

[175] One of the potential uses for the present article is to provide the theoretical basis—theorization—of the practical recommendations of the next Section.

norms, values, beliefs, and definitions."[176] Legitimation is "the process of linking new ideas, forms and practices to sets of values and logics that are held in esteem by field actors and by the surrounding societal context."[177] Thus, subjecting new ideas or practices to theoretical development has the additional benefit of enabling the new alternatives to be adopted and held in greater regard by peers. In this way, innovations by "fringe" individuals or entities are able to be tested and embraced by others. In the process, the new alternatives obtain greater "moral legitimacy" both within and beyond the group—in this case, within the law faculty.[178]

In the present model, the use of internal Innovators and external Catalysts teams to use leveraging for recommended opportunities is the conscious creation of "fringe" entities that have been sanctioned, in advance, by the individual faculty. In this way, the entire faculty involvement in reviewing and selecting opportunities as part of the subsequent strategic planning process is consciously intended to provide a legitimization mechanism for meaningful change. The entire faculty will be invited to examine the output and decide which opportunities align with the law school's mission and are a source of sustainable competitive advantage.

Once the process and proposed alternatives have been subjected to theorization and legitimation, the last step in integration is by way of dissemination. Dissemination includes the speed, frequency, and patterns of diffusion of the new alternative.[179] This can be achieved through the iterative application and review of outcomes from earlier efforts. In the present model, the Conveners achieve this directly by holding one or more meetings with faculty where the entire faculty is invited to discuss any concerns and ultimately to select the opportunities that they approve. Moreover, with each cycle of the proposed change process model, the faculty will be able to reevaluate the cumulative value, context, and subsequent performance of earlier decisions. Legitimation will increase with each cycle.

In sum then, there are several possible issues that the Conveners may need to address as part of Stage 2. The Conveners should use their discretion in determining the need and configuration of any efforts to address the related goals. However, under all instances, it is critical that the Conveners Teams get an unambiguous commitment from the general law faculty that they will accept, support, and implement at least some amount of the output of the change process model. The acceptable number can be selected by the Dean in advance or left to future determination as some number greater than zero. However, do not proceed to Stage 3 unless and until there is full

---

[176] Mark C. Suchman, *Managing Legitimacy: Strategic and Institutional Approaches*, 20 ACAD. MGMT. REV. 571, 574 (1995).

[177] C.R. HININGS ET AL., *supra* note 156, at 312.

[178] *Id.* at 310 (citing Schuman, *supra* note 176).

[179] *Id.* at 311.

faculty endorsement of the change process model endorsed by the Conveners Team.

3. Stage 3: Identify & Refine Opportunities for Leveraging

Having obtained overall faculty engagement and endorsement for the change process model, in Stage 3 the Conveners Team proceeds to recruit members of both the Innovator Team and the Catalyst Team. The purpose of both teams is to identify optimal opportunities that comply with the VRIO framework. The job of both teams is to creatively identify distinctive and meaningful opportunities where the individual law school can create a sustainable competitive advantage. While the Innovators and Catalysts are doing this, the role of the Conveners Team is to establish a timeline for completion of this stage, determine the form of the specific deliverables, and continue to engage the general faculty.

In order to increase the likely value of the deliverables, members of the Innovator Team should consist of the most creative, outward looking faculty and staff. By design, the Innovator Team should consist of individuals internal to the law school who are especially committed to finding and pursuing better opportunities. These should be the individuals from within the law school most capable of improving the fit of the law school with the external market and correcting problems with the implementation of existing programs.

Once the Innovator Team has been recruited, they should be immediately turned loose. Let the Innovators Team establish their own approach to leadership and management. Of course, some predetermined target number of opportunities should be provided to the Team. This should help the Innovator Team to avoid being overwhelmed. Any additional ideas identified by the Innovators Team can be saved and then used in future initiatives.

The Innovator Team should be encouraged to talk with existing students and recent graduates. It should also be encouraged to talk with current and potential employers of recent graduates. The goal is to creatively formulate valuable, rare, inimitable, and organizationally appropriate offerings that can be adopted and implemented by the individual law school. At all times, the Innovator Team should remain cognizant of identifying opportunities that have a reasonable probability of providing a sustainable competitive advantage. The Innovator Team should be given a clear budget for doing market research and evaluating viable strategies to recruit more (or better) students. The Innovator Team should also be permitted to group opportunities based upon potential complementary benefits. At the same time, the Innovator Team should estimate the probability of success in pursuing each opportunity. The Innovator Team should determine the amount and type of resources that would be necessary to make the selected

strategies a successful reality. All of this should help the Innovator team ultimately decide which opportunities to recommend, endorse, and promote.

While the Innovators Team proceeds to start pursuing opportunities, the Conveners Team should begin to organize externally engaged parties to constitute the "Catalyst Team." In this regard, the Dean, alumni affairs, fundraising, and members of the Innovator Team may be able to recommend Catalyst Team members. However, the decision as to composition and size of the Catalyst Team should ultimately rest with the Conveners Team.

During Stage 3, the purpose of the Catalyst Team is to provide a fresh external perspective regarding ideas originated by the Innovator Team. Therefore, although the Catalyst Team can start to formulate their own ideas for how to improve curricular offerings, the Catalyst Team is intended to supplement the efforts of the Innovators. However, it is important that the Catalyst Team remains involved as a perpetual external reality check on the process. It is up to the Conveners Team to assure that optimal balance is maintained between the Innovator and Catalyst Teams.

Together, the Innovator and Catalyst Teams can evaluate the combined upside benefits of all of the ideas. However, it is assumed that the Innovator Team will have more time available to pursue its goals. Whenever meetings are possible between the Innovators Team and the Catalyst Team, one of the primary goals will be to compare their own thoughts about both the opportunities and threats to those opportunities. The primary deliverable(s) resulting from the combined discussions, besides a list of potential projects, should be the foundation for strategic planning and a SWOT analysis in Stage 4.

In this regard, given their day-to-day experiences, it may be tempting for some Innovator and Catalyst Teams to view the entire process as an impossible task. Fortunately, nothing could be further from the truth. Although institutionalization and bounded rationality may have led to perceptual blindness to opportunities, the opportunities still exist in abundance. All that is necessary is for a particular law school to seriously look for them, and then formulate and implement strategies creating VRIO resources.

By way of initial generic guidance, consider the data listed below. All of this suggests some level of unmet potential demand for legal education in niche markets of various sizes. Additional detail is available by visiting the Bureau of Labor Statistics (BLS):

1. Of the 792,500 U.S. lawyers in 2016, 161,700 of them worked as self-employed lawyers.[180] By 2026, the number of self-employed

[180] BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, OCCUPATIONAL OUTLOOK HANDBOOK, https://www.bls.gov/ooh/legal/lawyers.htm#tab-6 [https://perma.cc/9FV3-CDUP]

lawyers is expected to increase slightly (7.4%) to 173,800.[181] This suggests that one area where law schools can look to add value is by developing a sustainable strategy for producing law school graduates that are successful as self-employed lawyers. The challenge will be in configuring resources to comply with the VRIO framework.

2. Of the 792,500 U.S. lawyers in 2016, only 382,100 (48%) of them were engaged in the direct provision of legal services for hire.[182] This means that 52% of all lawyers in 2016 (about 410,000) were *not* engaged in the provision of legal services for hire. By 2026, the numbers of employed lawyers *not* providing "Legal Services for hire" will increase slightly (7.7%) to 411,600.[183] Notably, within this context, the Bureau of Labor Statistics has stated that "a law school graduate's willingness to relocate and his or her practical experiences are becoming more important."[184] This strongly suggests that another area where law schools can look to add value is through the development of a sustainable strategy for producing law graduates prepared for geographic mobility, developing practical experiences, and prepared to practice of law OUTSIDE the provision of legal services for hire. Once again, the challenge will be in configuring the individual law school's resources to comply with the VRIO framework.
3. Looking more specifically at the 410,000 U.S. lawyers who *do* directly provide legal services for hire, there are multiple areas where law schools can add value by tailoring educational offerings to address emerging issues. For instance, how about developing a law program specifically tailored to the needs of international business? Look beyond the local practice of law to incorporate the global context. Once again, the challenge will be in configuring the individual law school's resource to comply with the VRIO framework.
4. Alternatively, extrapolating from the most recent 2016 ABA employment data for recent graduates, indicates that, in reference to

---

(last visited Jan. 15, 2018) [hereinafter BUREAU OF LABOR STATISTICS] (compare Code TE1000 to TE1100, [cells D6 and D7, respectively]).

[181] *Id*. (comparing Code TE1100, 2016 [Cell D7] with 2026 [Cell G7]).

[182] *Id*. (comparing Code TE1100 [Cell D6] to Code 54110 [Cell D129]).

[183] *Id*. (comparing Code 54110, 2016 [Cell D129] with 2026 [Cell G129]). Note, however, that the increase in total law enrollment (comparing Code TE1100 [Cell D7] with 2026 [Cell G7]) will slightly outstrip the increases in employment in the direct provision of legal services for hire.

[184] *See id.*

those employed as lawyers, there is an additional 21.93%[185] of recent law graduates employed in jobs which do not technically require bar passage, but still consider a J.D. to be an advantage in employment. Applying the 21.93% to the BLS data supports results in an estimated 170,000 additional law graduates employed in non-law positions where they are still directly benefitting from a law license.[186] To address this, law schools could add value by developing a sustainable strategy for producing law graduates successful outside the traditional practice of law. Once again, the challenge will be in configuring the individual law school's resources to comply with the VRIO framework.

5. Similarly, recruit potential law students who are interested in using their law degree in conjunction with other advanced degrees. Extending the earlier example about producing exceptional oil and gas attorneys, how about a J.D./ M.B.A. program that specifically integrates the estimation of monetary value of individual oil and gas wells? How about a J.D. combined with a MSc. in Petroleum Engineering? Or how about a J.D. combined with an M.S. in Computer Science? Whatever the decision, make sure to recruit, and then deliver graduates that create value to their employers. This strategy could be replicated across multiple potential industries with multiple degrees.
6. Even ignoring all of the items in 1 through 5, the projections from the BLS suggest that there are multiple niche categories for the employment of lawyers within traditional practice areas. All that individual law schools need to do is build a unique reputation for a superior education—delivering superior lawyers. Look at the BLS data.[187] It breaks out attorney employment—including future projections—into categories like Legal Services, Government, Finance and Insurance, Management of Companies and Enterprises, Waste Management and Remediation, Information, Manufacturing,

---

[185] According to the 2016 ABA Recent Graduate Employment Data, the total number of recent graduates who reported being in jobs requiring bar passage was 23,948. At the same time, the total number of recent graduates who reported being in jobs where bar passage was not required but was still an advantage was 5,254. 5,254/23,948 = .2193. If this percentage is multiplied by 778,700 (the estimated employment for all lawyers by the BUREAU OF LABOR STATISTICS, *supra* note 180, the estimate is 170,168.

[186] Note, the BUREAU OF LABOR STATISTICS data, *supra* note 180, only includes data on lawyers working as attorneys. See, tab, "What Lawyers Do." This does not include work in a capacity other than as a lawyer where the law degree is unnecessary but still an advantage.

[187] BUREAU OF LABOR STATISTICS, *supra* note 180.

Educational Services, Healthcare and Social Assistance, Wholesale Trade, Real Estate and Rental/Leasing, Mining, Quarrying, Oil & Gas Extraction, Publishing (except Internet), and Computer/Electronic Mfg.[188] Pick one, or drill down further and identify an even clearer niche—then add unique value. Once the optimal niche is identified, the individual law school simply needs to configure their resources to comply with the VRIO framework.

7. Putting all of the other items aside, the creation of a sustainable competitive really is not all that difficult. In fact, every time there is any problem in the delivery or content of legal services or legal standards, there is an opportunity for someone in legal education. All the problems might not be sexy, but the opportunity is real if a solution can be provided within the VRIO framework. Additionally, always remember that the customer's (potential student's) perception of value is what matters. Recall the example of Coke versus Pepsi.[189] Try walking down the soft drink isle of your local grocery store and ask yourself—what do they know that law schools do not? Better yet, pick up a bottle of Aquafina and ask yourself what is so special about it?

In looking at the information above, there are numerous potential opportunities for individual U.S. law schools to develop their own niche VRIO offerings that provide unique value. In Stage 3, the challenge for the Innovator and Catalyst Teams is to identify and determine which opportunities most closely align with the individual law schools current and potential capabilities.

4. Stage 4: Obtaining Team Agreement On Prioritization and Recommendations

In Stage 4, members from all three teams and the Dean meet to hopefully agree on a prioritized list of recommended opportunities and corresponding resource estimates. During this meeting, members of the Innovators and Catalyst Teams are free to advocate for particular opportunities. Each is welcome to champion one or more options for distinctive change at the individual law school. Each is also welcome to explain related steps that should be taken to stop other schools from copying the innovation. However, ultimately, the purpose of Stage 4 is to facilitate a consensus across the active participants as to an agreed-upon list of opportunities to recommend for adoption by the entire faculty.

---

[188] *Id.*

[189] *See supra* Part IV.B.

For this reason, a secondary purpose of Stage 4 is an administrative fail-safe to resolve any concerns between active participants before formal recommendations are presented to the entire faculty. Stage 4 also provides the Conveners Team and the Dean with the opportunity to limit the number of recommended opportunities to some smaller number so as to ensure a unanimous (or at least wide-spread) support for whatever is recommended. The risk is that nominal disagreements on marginal opportunities will distract the full faculty vote. Discarded opportunities can always be revisited during future cycles. In this way, Stage 4 provides the Conveners Team with the opportunity to engage the Dean and other teams in a consensus-building meeting. Again, the goal is to assure wide-spread (if not unanimous) support across all team members prior to formally making any recommendations to the entire faculty.

5. Stage 5: Update and Integrate Strategy in Light of Prioritized Opportunities

After having obtained a consensus across the teams and the Dean on a prioritized recommended list of opportunities, in Stage 5, the Conveners "re-convene" the entire faculty or whatever group is in charge of strategic planning for the law school. The purpose of Stage 5 is to assure that the recommended opportunities align with the existing mission of the law school but are also formally adopted in the form of a prioritized list of opportunities that can be immediately pursued.

Given the strategic planning process previously explained in Part IV.C., it should be expected that Stage 5 will include the conscious consideration of how the recommended opportunities align with the law school's available resources and the external environment. The strategic planning process should include consideration of how the recommended opportunities create unique value. Accordingly, in evaluating different potential market opportunities (specifically looking for VRIO characteristics), the law school should start by conducting a SWOT analysis (if one has not already been conducted by the Innovator or Catalyst Teams). At the same time, the law school should evaluate its existing and potential resources "as providing a key to what it can accomplish."[190] In particular, "[t]he school should pay attention primarily to those strengths in which it possesses a differential advantage [to other schools], that is, it can outperform competitors on that dimension."[191]

Once the evaluations required of Stage 5 have been completed, the adjusted list should then be formally adopted—either in whole or in part (as appropriate)—by either the entire faculty or whatever appropriate entity

[190] Kotler & Murphy, *supra* note 135, at 471.

[191] *Id.* (italics omitted).

provides such formal acceptance in the given law school. Ideally, the consideration and selection should be done as part of an open discussion that includes all parties, including the external Catalyst Team members. Once formally accepted, the next step (either within Stage 5 or 6—depending upon the law school's existing procedures) is to develop the individual strategies explaining how each of the opportunities will be achieved. This can incorporate recommendations that were previously made about how the opportunities can best be achieved in practice. This should also include one or more means of measuring the extent to which the individual strategies have been successful. Moreover, for each objective, specific operational plans (tactics) should be developed to achieve the corresponding objectives.

6. Stage 6: Implement and Monitor

Given that all steps should have been completed to identify, prioritize, align, and authorize the pursuit of specific opportunities, Stage 6 involves the implementation and monitoring of performance. In this regard, all parties should remain cognizant that the recognition of a sustainable competitive advantage requires both successful implementation and communication to the market. Moreover, given the continuing need for faculty involvement, it would be a huge mistake at this point to simply throw the opportunities over the wall for someone else to handle. For this reason, it is important for the Conveners Team and/or Dean to provide systematic updates to the faculty on the progress of any selected opportunities. Similarly, it would be beneficial to recruit participants from all earlier stages of the model to observe the implementation and make recommendations for improvements.

Overall, it is assumed that the Dean will have primary responsibility for managing the implementation process. However, at the very least, it is recommended that Innovators also participate in the progress of monitoring the performance of each individual plan. Given the central role of the Innovators in identifying and prioritizing the opportunities, the Innovators should be ideally suited to make sure that the implementation is done in a way that is most likely to achieve the intended purposes. Innovators should therefore recommend incremental adjustments that could enhance overall performance. For this reason, it is recommended that Stage 6 continue (with broad participation, monitoring, and reporting) until such time as the individual success or failure for each opportunity has been determined.

7. Stage 7: System Reset and Repeat

Having completed all of the primary portions of the change process model, the purpose of Stage 7 is to reset the process by integrating the lessons learned for future use. To do this, the Dean and the Conveners Team should debrief all team members and the general faculty regarding their

experiences with the process. Special care should be taken to reinforce the commitment to the process (overcome bounded willpower) and answer any questions that may have arisen. In this same regard, the Conveners should remain cognizant of potential problems presented by individual outcome uncertainty. This can be easily addressed by simply inviting individual faculty participation and involvement. It can be further addressed by noting which faculty members might face particularly dramatic role changes by virtue of the recommended opportunities, and allaying their concerns and asking for their feedback. This feedback process can improve the model (or the model's performance) for its next iteration. Additionally, this process can include scheduling the next iteration of the change process model, adjusting the membership of the various teams, and potentially agreeing on future deliverables.

VI. CONCLUSION

According to both behavioral economics and institutional theory, the current problems in legal education are not simply caused by the stubborn resistance to change. According to behavioral economics and psychology, the problems for U.S. law schools started as soon as the decisional considerations exceeded the cognitive limits and willpower of individual law faculties. Eventually, further change was also hampered by the emergence of a status quo bias.

Pursuant to institutional theory within sociology, the problems with organizational decision-making probably began as soon as U.S. law schools began to coalesce into an institutional field. Although the resulting institutional pressures assured stability across the field, the pressures also created barriers to meaningful organizational adaptation. These impediments meant that, while U.S. law schools remained stable, the broader society and the practice of law continued to change. Alignment was lost.

Now, U.S. law schools face the potential consequences of an exogenous shock to legal education. Both the number and quality of law school applicants have collapsed. With the devastating economic impact on law school budgets, law schools now have to make a choice. Do they want to seek meaningful adaptation? Given differences in resources and market positions across U.S. law schools, the individual decisions may vary. However, one way or another, the carrying capacity of the field *will* reach a new equilibrium. The supply and demand curve *will* reach a new equilibrium too. The question is how many schools will successfully and uniquely adapt versus how many will decide to merge or simply disappear.

For law schools seeking to adapt, institutional entrepreneurship offers several promising mechanisms to navigate the limitations identified by both behavioral economics and institutional theory. Through institutional entrepreneurship there is a vehicle for temporarily overriding decisional

constraints by convening the general faculty and leveraging especially promising opportunities. Moreover, facilitating change within the VRIO framework enables the selection and deployment of specific opportunities that can provide sustainable competitive advantages.

The proposed seven-stage process change model provides a preliminary effort to put it all together. However, ultimately, the success of these efforts will be evidenced by the extent to which individual law schools successfully achieve an improved, unique, and sustainable alignment of their resources with the external needs of their law students, the legal profession, and society at large. Looking at the external data, it is clear that meaningful opportunities remain. Success is potentially available to virtually all U.S. law schools—but only if they choose to meaningfully implement and adapt. To the extent that multiple law schools become meaningfully engaged in this process, the future is truly promising.

Let's get started.