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LEGAL EDUCATION UNBUNDLED (AND REBUNDLED)

*Megan M. Carpenter**

INTRODUCTION

FOR 150 years, law schools and the legal services industry have combined to make legal education a precious commodity, separated from the rest of higher education and packaged, or bundled, in a very specific way. By not responding to market needs and technological developments, we have isolated the construction, interpretation, and operation of law away from many of its subjects and objects. And we have done so at our peril. Technology has led to disruption in the legal services industry and facilitated a growing market for legal professionals outside the JD. With approximately 40% fewer JD applicants, law schools have been in competition with one another for fewer students and many are offering steep tuition discounts to keep enrollment numbers up.

However, while the number of law school applicants has decreased, people who need to know something about the law are everywhere—especially in a knowledge economy. Right now, we have an unprecedented opportunity to democratize legal education, to embrace a definition that is various and responsive to market change. Law schools should not be afraid of this. Lawyers should not be afraid of this. The legal services industry is being disrupted whether we like it or not. As leaders in legal education, we should consider who needs knowledge about law and figure out how to leverage our strengths individually and collectively to provide it.

This essay calls for an unbundling of legal education, much like the kind of unbundling we have seen in the cable, music, and print news media. It suggests that the standard legal education “bundle”—the generalized JD—is just one of many forms of legal education that can be packaged appropriately for today’s legal education market needs.

I. UNBUNDLING IN THE INFORMATION ECONOMY

Bundling occurs when several potential products or services are offered for sale as a single package. It works where the provider enjoys a market dominance and where there is an abundance of consumers willing to pay.¹ Bundling is especially common where product or service markets are imperfectly balanced,

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1. Jeremy G. Philips, *Don't Look Now, but the Great Unbundling Has Spun Into Reverse*, N.Y. TIMES (Feb. 14, 2017), <https://www.nytimes.com/2017/02/14/business/dealbook/bundling-online-services.html>.

including dominance of distribution channels. Over the last two decades, we have seen an unbundling in many sectors of the information economy. The internet has had an enormous impact on how people produce, distribute, and receive information and content. In an economy based primarily on information and content, that impact is felt broadly and has led to disruptive innovation.

The cable industry is often cited as a classic example of unbundling. Historically, broadcast television was able to combine advertising and content as an effective business model because broadcast licenses served as a tight control over distribution to consumers. Cable television took the same model one step further and bundled many different types of content; those who wanted Food Network would also get ESPN or The History Channel, regardless of their interest. The inability to customize caused consternation among consumers and eventually even became a political issue.² As the internet has increased distribution channels, other options for consumption of content have emerged. Consumers have increasingly abandoned what was perceived as an outdated business mode of bundled cable and satellite services in favor of standalone services like Netflix and Amazon.³ Last year, the amount of homes with pay television declined an estimated 10%, dropping from 90% to 80%, with more than 2 million consumers “cutting the cord” and leaving cable television in 2 years.⁴

Similarly, the internet has been a catalyst for unbundling in print media and the music industry. Newspapers and magazines historically made money by gathering up editorial content, news, and advertisements into a single product. The rise of companies like Craigslist, Monster, Indeed, and Zillow have removed substantial sources of revenue from newspapers by parsing out classified ads, jobs, and real estate listings. Compounding the problem for print media is that consumers no longer have to pay for much of their news when content is available a la carte online. In the music industry of the past, record labels brought together back catalogs with new acts and controlled distribution of music, including consumer sales of albums rather than singles.⁵ However, the development of home recording and consumer audio technologies enabled music fans to break apart albums and reassemble them into a new whole. The advent of digital media on the internet transformed distribution chains and, eventually, the way that people

2. For example, in 2013 John McCain introduced the Television Consumer Freedom Act, which would have required television companies to offer programming a la carte, calling the practices of the television industry “an injustice being inflicted on the American people.” He believed that unbundling services would “help shift the landscape to benefit television consumers.” Joe Flint, *John McCain Introduces Television Consumer Freedom Act of 2013*, L.A. TIMES (May 9, 2013), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-mccain-cable-20130509-story.html>. See also Television Consumer Freedom Act, S. 912, 113th Cong. (2013).

3. Teresa Rivas, *Triple Nay: Who Wins & Loses in the Great Cable Unbundling*, BARRON'S (Oct. 17, 2017, 12:23 PM), <https://www.barrons.com/articles/triple-nay-who-wins-loses-in-the-great-cable-unbundling-1508257437>.

4. Philips, *supra* note 1.

5. True, despite the sale of 45s and “cassingles.”

consume music altogether. File-sharing gave rise to Apple's iTunes, a system that enabled consumers to purchase music (and unbundle albums) with a mere click.⁶

Bundling and unbundling is a cycle. And in some of these unbundled industries, we are now seeing a rebundling of sorts, in ways that (hopefully) respond better to changing market interests.⁷ Netflix and Amazon Prime are good examples. This year alone, Netflix will spend \$12-13 billion on content development, spanning genres and formats.⁸ Netflix and Amazon Prime have recently raised subscription rates as their offerings increase, and Amazon is not only developing its own content but has cultivated relationships with companies like HBO, Starz, and Boomerang. And while content on the internet is largely a la carte, we have seen the emergence of powerful aggregators that bundle content in a way that curates the consumer experience: Facebook, Google, and Amazon bundle vendors, advertisements, digital identities, and web pages.⁹

The music industry has experienced some rebundling, as well. Streaming services like Spotify and Apple Music take the best of unbundling and repackage it. Consumers spend about the cost of one album per month to subscribe to a service that gives them the ultimate bundle of music—a significant portion of recorded music throughout history. This new streaming bundle has brought stable, recurring revenue to the music industry and accounts for over 43% of revenue for recorded music—although it is unclear how the business model works long-term for the streaming services.¹⁰

A bundle is good for consumers when the whole is bigger than the sum of its parts—that is, when consumers are interested in having more than one thing and the package aligns with their interests. In those cases, a bundle can be good both for content creators and consumers themselves. Bundling simplifies consumer decision-making—fewer choices are less stressful, and when packaged according to consumer needs, translates to consumer satisfaction and higher sales.

6. Global consumer music market revenue dropped 45%, from \$23.8 billion in 1999 to \$13.2 billion in 2016. IFPI, GLOBAL MUSIC REPORT 2017: ANNUAL STATE OF THE INDUSTRY 11 (2017), <http://www.ifpi.org/downloads/GMR2017.pdf>.

7. See, e.g., Philips, *supra* note 1.

8. *Netflix is Moving Television Beyond Time-Slots and National Markets*, THE ECONOMIST (June 30, 2018), <https://www.economist.com/briefing/2018/06/30/netflix-is-moving-television-beyond-time-slots-and-national-markets>. This is more than any studio spends on films or any TV studio pays for content outside sports.

Their viewers will get 82 feature films in a year when Warner Brothers, the Hollywood studio with the biggest slate, will send cinemas only 23. (Disney, the most profitable studio, is putting out just ten.) Netflix is producing or procuring 700 new or exclusively licensed television shows, including more than 100 scripted dramas and comedies, dozens of documentaries and children's shows, stand-up comedy specials and unscripted reality and talk shows. And its ambitions go far beyond Hollywood. It is currently making programmes in 21 countries, including Brazil, Germany, India and South Korea.

Id.

9. Richard Yao, *The Coming Wave of Bundling*, IPG MEDIA LAB (Aug. 2, 2018), <https://medium.com/ipg-media-lab/the-coming-wave-of-bundling-e6882b6bf8bb>.

10. *Id.*

II. DISRUPTION IN THE LEGAL SERVICES INDUSTRY

Like the cable industry, the music industry, and news media, the legal services industry is changing. The work that lawyers do can be unbundled and is already being unbundled, whether lawyers or regulators like it or not. In a report by the Clayton Christensen Institute, Pistone and Horn claim that two factors, in combination, set the stage for disruptive innovation in the legal services industry. The expenses associated with legal services combined with regulations limiting the number of legal service providers cause an inflation of legal services.¹¹ Advances in legal tech drive significant changes by making legal services more accessible and facilitate resultant business model innovations, including making it possible for lawyers to do their work faster and more efficiently. On one hand, lawyers become more efficient; on the other, fewer lawyers are needed to do the same amount of work. Second, technology makes possible what Pistone and Horn refer to as “more standardized, systematized, and, in some instances, commoditized offerings to the market.”¹² Finally, technology calls into question the scope of lawyers’ monopoly over legal work. Each of these changes has resulted in a decrease in consumption of legal services by lawyers.¹³ I will talk about each of these factors in turn.

Legal tech has enabled lawyers to become much more efficient at what they do in the realms of legal research, review of documents, and drafting. We have come a long way from the late 1990s, when a primary source of technological efficiency came through having individual documents stored on a common server for adaptation and use by other attorneys in a firm. The internet now provides a wealth of documents and drafting help, and companies like Practical Law Company can provide templates and deal checklists.¹⁴ Document review, once the purview of first year associates, can now often be completed without significant attorney involvement through the use of predictive coding.¹⁵ Legal research has also been an increasing focus of legal tech startups. Companies like ROSS,¹⁶ Ravel,¹⁷ and Judicata¹⁸ provide smart research technologies, including pattern recognition software, to conduct legal research. This makes attorneys more efficient and requires them to develop a different skill set than they once needed. As legal tech becomes more sophisticated, attorneys need to be skilled not only in legal analysis, but in their ability to interact effectively with this technology.

11. MICHELE R. PISTONE & MICHAEL B. HORN, *DISRUPTING LAW SCHOOL: HOW DISRUPTIVE INNOVATION WILL REVOLUTIONIZE THE LEGAL WORLD* 5 (2016), <https://www.christenseninstitute.org/publications/disrupting-law-school/>.

12. *Id.*

13. *Id.*

14. *Practical Law*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/products/practical-law> (last visited Dec. 16, 2018).

15. Aaron Goodman, *Predictive Coding: A Better Way to Deal with Electronically Stored Information*, 43 LITIG. 1, 1-3 (2017).

16. *What is Ross?*, ROSS, <https://rossintelligence.com/ross/> (last visited Dec. 16, 2018).

17. *Who We Are*, RAVEL, <https://home.ravellaw.com/who-we-are> (last visited Dec. 16, 2018).

18. *About*, JUDICATA, <https://www.judicata.com/about> (last visited Dec. 16, 2018).

Developments in legal tech do not only facilitate legal work being done by attorneys, they also reduce the need for attorneys at all. Computers can help non-lawyers accomplish what they once needed a lawyer to do—creating a sort of DIY approach to legal services. When legal services are perceived as inaccessible, potential clients will find other ways to resolve their legal issues outside of an attorney-client relationship. From incorporation of business entities to living wills to simple contracts, technological advances have made legal services more affordable and accessible by, in some cases, leaving out the “middle man”—who, apparently, often turns out to be the lawyer. Companies like Legal Zoom have grown exponentially.¹⁹ A couple years ago, I taught a class called Complex Intellectual Property Problems. Throughout the semester I brought in a visual artist, an author, the owner of a film production studio, an entrepreneur, and an inventor, all to talk with students about particular IP problems they confronted in their work. Despite their differences in background and focus, each of the class visitors had one surprising thing in common: None of them had consulted a lawyer to help navigate these legal issues. The norm that emerged in discussion was a perception of lawyers as too expensive and too difficult to work with. Visitors to class used technology to avoid hiring a lawyer and expressed a general preference for legal uncertainty over engaging an attorney. They said things like, “Who can afford a lawyer?” and “Lawyers are the ‘no’ people.” Technology calls into question the monopoly that lawyers have over legal work.

III. DISRUPTION IN LEGAL EDUCATION

It has been said that legal education is in crisis. During the great recession, law school graduates had a hard time finding jobs and were saddled with debt. Law schools got a bad reputation in the public eye, from the media to prospective applicants to university pre-law advisors. Declines in enrollment and revenue hurt law schools at a time when public support for higher education also waned. Law schools have taken different approaches to weather the storm and some have pursued strategies of attrition until things “return to normal.” However, as discussed above, there are significant and fundamental changes to the legal services industry that dictate a new normal. The legal services industry is being disrupted in fundamental ways that will not allow a return to the status quo. Although it is possible for some law schools to continue with business as usual, we ignore this disruption at our peril. Disruptive innovation in the legal services industry signals disruptive innovation in legal education, as well.

Attorneys and accreditors, in addition to law schools, have kept the practice of law precious. By keeping legal education for the few and failing to adapt to new roles over time, the haves and have-nots of legal knowledge have been defined in

19. See Amit Chowdhry, *How LegalZoom Provides Businesses with Affordable Legal Assistance*, FORBES (Oct. 9, 2017, 12:30 PM), <https://www.forbes.com/sites/amitchowdhry/2017/10/09/how-legalzoom-provides-businesses-with-affordable-legal-assistance/#3dcf08b732de> (noting that LegalZoom is the largest former of small businesses, largest filer of trademarks, and can provide legal advice in all 50 states).

a way that is not sustainable and is ripe for disruption. A relevant distinction can be made between the legal and medical professions here: Under “Healthcare Occupations,” the Bureau of Labor Statistics Occupational Outlook Handbook lists 46 professions, from doctors and nurses to physician assistants, physician extenders, technologists, and technicians.²⁰ Yet, under “Legal Occupations,” the BLS Handbook lists only five positions.²¹ By failing to adapt like the medical industry has to a variety of roles for different types of legal professionals, we have become stuck in a model that has set itself up for disruption.

The market has responded to the precious nature of the law certification and to the inflation of billing rates for lawyers by working around it—creating markets for professions that are law-related but do not require a JD. In fact, the only growth area for jobs for law graduates in 2016 was in JD advantaged jobs—jobs that do not require a JD.²² Legal Process Outsourcing (“LPO”) companies provide a good example. LPOs have gained significant traction and are increasingly performing work that was once the purview of entry-level associates, with annual industry growth rates upwards of 20%.²³ Contract managers are also illustrative: A contract manager drafts, negotiates, and interprets contracts, but does not typically require a JD.²⁴ And job opportunities for contract managers are thriving. A search on the LinkedIn job database for “contract manager” leads to over 20,000 job postings.²⁵

This unbundling presents an enormous opportunity for law schools. The need for legal education is widespread across industries and positions well beyond the five listed by the Bureau of Labor Statistics. As leaders in legal education, we should embrace the new normal and do what we do best—provide legal education to those who need it. By keeping legal education for a precious few and refusing to adapt to a variety of roles for different types of legal professionals, we will be unresponsive to consumer needs and those consumers will work around us. Ultimately worse, we will be doing a disservice to these new legal services professions by not taking the responsibility to educate those who need it most. While law school applications have decreased, the need for legal education has not. Just like people still listen to music, watch entertainment on television (or computer) screens, and read the news, people still need to know about the law. In fact, in an information economy so heavily enmeshed in intellectual property, where people are both consumers and creators of content on a daily basis, the need for an understanding of legal principles is arguably greater than ever. It is the

20. *Healthcare Occupations*, BUREAU OF LAB. STAT., <https://www.bls.gov/ooh/healthcare/home.htm> (last visited Dec. 16, 2018).

21. *Legal Occupations*, BUREAU OF LAB. STAT., <https://www.bls.gov/ooh/legal/home.htm> (last visited Dec. 16, 2018). Legal occupations include: (1) arbitrators, mediators, and conciliators; (2) court reporters; (3) judges and hearing officers; (4) lawyers; and (5) paralegals and legal assistants.

22. James Leipold & David Montoya, NALP Update: Dean’s Workshop (June 30, 2017). See generally NALP, *What Do We Know About JD Advantage Jobs?*, NALP BULLETIN (Nov. 2017), <https://www.nalp.org/1117research>.

23. PISTONE & HORN, *supra* note 11, at 9.

24. See Michael J. Sofield, Jr., *The Attorney/Contract Manager: The Intersection of Two Professions*, 13 J. CONT. MGMT. 41 (2009), <https://www.ncmahq.org/docs/default-source/default-document-library/articles/jcm09---41-50>.

25. LINKEDIN, <https://www.linkedin.com/> (last visited Dec. 16, 2018).

model that is broken, not the thing itself. Like other industries that have been disrupted, we have packaged legal education in a particular bundle that simply no longer fits the needs of many consumers. Democratizing legal education does not threaten the JD—rather, it is legal education for a new, and valuable, consumer base. As leaders in legal education, we must recognize the widespread need for legal education, and work to offer it to markets both broad and deep. Legal education is critical for the functioning of civil society, and we must embrace that or we all lose.

IV. THE UNBUNDLING OF LEGAL EDUCATION

So, what does an unbundling and rebundling of legal education look like? First, we work to expand our offerings outside the JD. Although the JD is the crown jewel of legal education, it is not the only jewel. Law schools should expand their role as legal educators for all markets. This includes undergraduate and graduate education, as well as professional education. Lawyers, future lawyers, and non-lawyers. Degree and non-degree opportunities. However, law schools cannot be all things to all people. Thus, law schools should leverage individual strengths in ways that maximize opportunities in the new legal services economy. Here are some recommendations:

First, law schools should embrace a role in higher education more generally. It is a deep irony that while law schools have often operated independently of undergraduate and graduate programs at universities, either *de jure* or *de facto*, law is inherently interdisciplinary. There are legal issues, consequences, and problems associated across the spectrum of academic fields. Yet, students earning a 4-year university degree may be required to take a litany of courses in language, writing, sciences, and math, but could graduate without having had any exposure to the legal frameworks and principles that impact their area of study (and within which they live their lives) every day. Law schools should take the lead in helping university administration and other university deans understand the importance of legal education across the university campus and play a role in overcoming institutional barriers to interdisciplinarity. Law school leadership can—and should—be on the front lines of redefining what legal education looks like in contemporary higher education and of crafting and executing that vision.

The University of Arizona provides a good example, with its first-in-the-nation law major. Law is the fastest growing major on campus;²⁶ this major is not a pre-law major, but a law major. The nomenclature recognizes the unbundling of the legal services industry. Legal education in the undergraduate context can prepare students for a wide variety of occupations that are law-related but do not require a JD—the dozens of professions that don't yet show up in the BLS Occupational Handbook. Students who seek work in professions with substantial legal components should have access to legal education, and law schools should take the reins here. In a university environment, the law school is best suited to know what precisely these students need and to deliver it in a way that makes

26. Marc L. Miller, Dean, Univ. of Ariz. Coll. of Law, Comments at Ass'n of Am. Law Sch. Deans' Meeting (Jan. 2018).

pedagogical and practical sense. It is healthy for law schools not only to be part of a university, but to take the lead in introducing legal study to undergraduate and graduate students in various fields of interest.

Second, law schools should continue to unbundle their general JD program and repackage (and design) curricula for various audiences, including degree and non-degree programs. Law schools should consider further what markets may need access to legal education, and the form of education that makes sense for each of those markets. Law schools should embrace specialized programs of legal study. Leveraging strengths in new legal services markets begins to rebundle legal education in a way that responds to the needs of the new legal services economy. As markets demand increased credentials and knowledge for junior associates, law schools should look for opportunities to offer specialization.

Finally, law school leaders should find new ways to collaborate and work together to break down structural barriers, both between law schools and with those involved in the legal services industry. Rankings and competition for a smaller pool of students tends to reinforce competition with one another; however, law schools can work together as partners in ways that capitalize on individual strengths for collective benefit. Companies like iLaw, now owned by BarBri, are treading into waters beyond the traditional boundaries of individual law schools in ways reminiscent of iTunes, which can help overcome these barriers. Providers of a la carte online legal education can help schools focus on particular strengths and serve as back up where there are gaps. The University of New Hampshire School of Law (“UNH Law”) is working with iLaw to offer courses in its top-ranked intellectual property program, for example, to schools across the country. Schools that may not typically offer a certain IP class, or may have a faculty shortage, can offer an IP course from a top-10 program to their students as part of its catalog for the semester. As dean of UNH Law, how happy I would be to be able to offer top-ranked specialty courses from other schools outside our focus area to our students! Rather than competition, that helps us provide the best education we can to our students. I would challenge law school administrations across the United States, as leaders of our own institutions, to think about ways to unbundle what we offer and work together for the benefit of students beyond the silos of individual schools.

CONCLUSION

In the past, the dominance and relative success of the traditional model of legal education stifled innovation that might otherwise have occurred naturally. Higher education has never been quick to innovate, and in law schools, we are ahead of the curve in witnessing the decline of old ways of doing things. A changing legal services industry demands an evolution in education and training. And for many law schools, the old way of doing things, frankly, does not present a sustainable business model. We must not stay put and hope that the market right-sizes itself—that applications will rise while some law schools close, and things return to normal. There is an enormous opportunity for law schools to train students in a legal services industry that looks very different than it once did. And we must respond to the challenge. The world will be operating as subjects and

objects of legal principles (and, increasingly, doing law-related work) whether we are a part of it or not. Let's lead the charge.