

Article One

The Twenty-First Century Delivery of Legal Services: Thoughts for Legal Education

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The twenty-first century lawyer will face rapid and unsettling changes in the way legal services are delivered. Legal futurists foresee many aspects of legal services being delivered more efficiently with the use of technology. For example, future breakthroughs in artificial intelligence may expand the ability to automate many tasks that currently require the skill of a lawyer. Similarly, less complex legal services such as the drafting of wills and trusts are being commoditized and provided more quickly and cheaply by new market entrants, such as LegalZoom, which provide on-line documents to millions of satisfied consumers. Additionally, new categories of licensed legal professionals are beginning to challenge established models of delivering legal services, and will continue to do so.

These changes are all, and will continue to be, disruptive. Although every business faces disruptive changes at some point, in the legal services area these changes involve unique issues, particularly when they encounter the barriers that control entry into a regulated profession that is intertwined with the judicial branch of government. For example, as new technologies and market players increase the public's access to legal services, questions arise about how to define and protect the fundamental values of the legal profession, how to maintain the independence of lawyers and the judicial branch, how to define the practice of law, and how to increase the public's access to affordable and competent legal services. For legal educators, it can be challenging—and often impossible—to imagine how these changes will affect our students during their professional careers. Furthermore, although we can envision some of the changes on the horizon, others are not yet within view. Within this framework, legal education needs to prepare students for the future.

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This essay examines three categories of disruptive changes that will be relevant to the future delivery of legal services—technological advancements, new regulated categories of legal professionals, and new unregulated market players. During their careers, today’s law students will have to grapple with how these changes will affect the legal profession and access to legal services. This essay provides some thoughts for legal educators about preparing law students for this task. Part I of this essay will give a brief overview of the three changes and how they may impact the future delivery of legal services. Part II will discuss how these changes challenge the identity and values of the legal profession and how these challenges should impact the future of legal education.

I. THE FUTURE DELIVERY OF LEGAL SERVICES

This essay’s focus on three disruptive changes — technological advancements, new regulated categories of legal professionals, and new unregulated market players—does not mean to suggest that there are no other changes occurring that will impact the legal profession. To the contrary, there are other changes that will impact the delivery of legal services, such as the globalization of the practice of law.¹ Thus, legal educators should not limit themselves to this list as they consider how to prepare students for the future. Rather the three changes discussed here are simply a starting point for thinking about how legal education should respond to disruptive changes to the delivery of legal services.

A. *Technological Advances*

Computing advances have been occurring at a staggering speed. In a 1965 paper, George Moore, the co-founder of Intel, set out a prediction that has come to be known as “Moore’s Law.”² Moore predicted that the number of transistors that could fit on a microchip, meaning computer processing speed, would double approximately every two years.³ Moore’s prediction has been validated thus far, although such exponential growth is certain to end at some point.⁴ The growth of

1. See ABA Commission on Ethics 20/20, Introduction and Overview 5-6 (Aug. 2012), available at http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_hod_introduction_and_overview_report.authcheckdam.pdf.

2. See *Moore’s Law Turns 50: Ever More from Moore*, THE ECONOMIST (April 18, 2015); see also John O. McGinnis & Russell G. Pearce, *The Great Disruption: How Machine Intelligence will Transform the Role of Lawyers in the Delivery of Legal Services*, 82 FORDHAM L. REV. 3041, 3043-44 (2014).

3. *Moore’s Law Turns 50: Ever More from Moore*, THE ECONOMIST (April 18, 2015).

4. See *id.*

computing power has influenced our lives in many ways and the legal profession has certainly felt those changes.

The legal profession has embraced many of the changes fueled by technology. For example, lawyers routinely e-mail clients and opposing counsel, electronically file court documents, perform on-line research, have deposition transcripts prepared in digital formats, request discovery materials in electronic format, use technology to scan, search and catalog documents, and use a variety of courtroom technologies.⁵ Many of these changes have increased communication with clients, expedited tasks, and lowered the cost of tasks.

Additionally, these technologies have created new questions for the legal profession, particularly in the areas of professional ethics. For example, ethics opinions and rules of professional conduct now address issues such as maintaining confidentiality of electronically transmitted and stored data,⁶ using metadata,⁷ using Internet resources to find clients,⁸ and, more radically, assessing whether lawyers can create virtual law offices on the Internet.⁹

In response to evolving technology, the legal profession has created a variety of committees and commissions on the topic. On a national level, the American Bar Association has created several groups to examine issues regarding technology. For example, in 2000 the ABA formed the eLawyering Task Force to educate the profession about technology.¹⁰ In 2009 the ABA also formed the Ethics 20/20 Commission to address how globalization and technology are transforming the practice of law.¹¹ That commission made a variety of recommendations that resulted in several changes to the ABA Model Rules of Professional Conduct. For example, the comments to Rule 1.1, which sets out the standard for attorney competence, now explicitly state, “[t]o maintain the requisite knowledge and skill, a lawyer should keep

5. See, e.g., ABA Commission on Ethics 20/20, Introduction and Overview 4-5 (Aug. 2012), available at http://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120508_ethics_20_20_final_hod_introduction_and_overview_report.authcheckdam.pdf; but see “Please Allow Us to Introduce Ourselves”: The Commission on Law & Technology, 32 *DELA. LAW.* 10, 11 (2014) (quoting Delaware Chief Justice Shrine’s comments about some of the pitfalls of technology such as on-line legal research and e-mails).

6. See, e.g., ABA Formal Op. 99-413 (1999) (addressing the use of unencrypted e-mail to communicate with clients).

7. See, e.g., ABA Formal Op. 06-442 (2006) (addressing the review and use of metadata).

8. See, e.g., ABA Formal Op. 465 (2013) (addressing the ethics of using group-coupon marketing programs on the Internet to advertise for clients).

9. See, e.g., Va. Legal Ethics Op. 1872 (2013) (discussing virtual law offices).

10. See http://www.americanbar.org/publications/law_practice_magazine/2014/july-august/teaching-the-technology-of-practice-the-10-top-schools.html.

11. See ABA Commission on Ethics, *supra* note 5, at 1.

abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology*, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.”¹² In addition, the ABA publishes an annual Tech Report that explores key developments in technology and how they impact the legal profession.¹³

Other groups are also addressing issues related to technology and legal services. In 2000 the Legal Services Corporation created a Technology Initiatives Grants program.¹⁴ That program has awarded more than \$46 million to hundreds of programs that are using technology to increase access to legal services to low and moderate income individuals.¹⁵ The programs include creating informational websites, creating automated document preparation programs, assisting with pro bono representations and creating online intake systems to save time and resources.¹⁶ Furthermore, state organizations are beginning to focus on technology. For example, the Delaware Supreme Court created the first state Commission on Law and Technology in 2013.¹⁷

Importantly, the extent of technology’s impact on legal services remains unknown. Legal futurists such as Richard Susskind predict that information technology will dramatically change the legal profession.¹⁸ Susskind cites to a book by Ray Kurzweil, who predicts that by 2020 “the average desktop computer will have the same processing power as the human brain” and by 2050 “the average desktop machine will have more processing power than all of humanity combined.”¹⁹ Susskind states:

It is significant that many new and emerging applications do not simply computerize and streamline pre-existing and inefficient manual processes. Rather than *automate*, many systems *innovate*, which, in my terms, means they allow us to perform tasks that previously were not possible (or even imaginable). There is a profound message here for lawyers—when thinking about IT and the Internet, the challenge is not just to automate current working practices that

12. ABA MODEL R. PROF’L CONDUCT R. 1.1 cmt. [8] (emphasis added).

13. The 2014 report is *available at* <http://www.americanbar.org/publications/techreport/2014.html>.

14. *See* <http://tig.lsc.gov/about-us/background>.

15. *See id.*

16. *See* <http://tig.lsc.gov/about-us/tigs-impact>.

17. *See* “Please Allow Us to Introduce Ourselves,” *supra* note 5, at 11 (quoting Delaware Chief Justice Shrine’s comments about some of the pitfalls of technology such as on-line legal research and e-mails).

18. RICHARD SUSSKIND, *TOMORROW’S LAWYERS* 3 (2013).

19. *Id.* at 11.

are not efficient. The challenge is to innovate, to practise [sic] law in ways that we could not have done in the past.²⁰

Although technology has already been involved in automating, Susskind argues that it is in the area of innovation that it may be the most revolutionary.

Anecdotally, when I hear lawyers discuss technology, I frequently hear them say something to the effect that it will never be able to replace the judgment of a lawyer. To assess this statement, however, the word “judgment” needs to be defined. If by judgment we mean the ability to provide a reasoned prediction about the outcome of a case, then computers may very well exceed at this task beyond humans.²¹ If judgment means the ability to think creatively or to see non-legal issues, such as business concerns and impacts on personal relationships, then perhaps humans will remain superior.²² It is hard, however, to know what might be possible, and what issues may arise. After all, how many of us envisioned driverless cars before Google put some on the streets three years ago?²³

B. *New Unregulated Market Players*

Technology has also enabled the entry of new market participants that challenge the definition of the practice of law and the scope of lawyers’ monopoly. Indeed, technology has been the engine behind the entry of new market players that are not operating within the regulatory framework that governs licensed lawyers. Perhaps the most well-known example is LegalZoom, an online legal document preparation service.²⁴ LegalZoom has served over 2 million customers,²⁵ and was used to set up more than twenty percent of the limited liability companies in California in 2011.²⁶ In 2014 LegalZoom partnered with Sam’s Club to offer small business members discounted access to services, including estate planning products and business products such as incorporation documents and trademark registrations.²⁷

20. *Id.* at 13 (emphasis in original).

21. McGinnis & Pearce, *supra* note 2, at 3052-53.

22. *See id.* at 3055.

23. *See* Connor Dougherty and Aaron M. Kessler, *Google to Test Bubble-Shaped Self-Driving Cars in Silicon Valley*, N.Y. TIMES (May 15, 2015), available at http://www.nytimes.com/2015/05/16/technology/google-to-test-bubble-shaped-self-driving-cars-in-silicon-valley.html?_r=0.

24. *See* <https://www.legalzoom.com/about-us>.

25. *See* McGinnis & Pearce, *supra* note 2, at 3058.

26. *See id.*

27. *See* Press Release, LegalZoom Teams Up with Sam’s Club to Provide Legal Solutions for Small Businesses, available at http://www.businesswire.com/news/home/20141023005242/en/LegalZoom-Teams-Sam%E2%80%99s-Club-Provide-Legal-Solutions?_ga=1.41753634.1252363398.1429541125#.VVzfw_IVhBd.

LegalZoom also offers prepaid legal services plans, so it is now a conduit to lawyers.²⁸ Importantly, LegalZoom has withstood multiple challenges to charges that it is engaged in the unauthorized practice of law,²⁹ and has been successful in creating a legal services product that does not constitute the practice of law or the provision of legal advice.³⁰

Many other companies are using technology to enter the field of legal products available online. For example, Rocket Lawyer advertises that it combines “free legal documents and free legal information with access to affordable representation by licensed attorneys.”³¹ Additionally, Trademarkia, another Internet based company, strives to be the “world’s largest and finest online legal technology platform empowering individuals, small businesses, law firms, and multinational corporations with the tools to automate, streamline, and simplify processes related to trademarks, corporate registrations, and domain filings.”³² These are just a sampling of the new services in the market.

Other new market players are similarly challenging the traditional delivery models for legal services by using technology to reduce the costs of lawyers. Axiom is a good example of this model.³³ Axiom is not a law firm; it is a Delaware corporation.³⁴ Because it is not a law firm, it is not subject to the rules of professional regulation, such as prohibitions on solicitation, fee-splitting prohibitions and conflict of interest restraints on representations.³⁵ It is likewise prohibited from practicing law.³⁶ Axiom, however, employs hundreds of lawyers who are typically former attorneys of the nation’s leading law firms.³⁷ Its customer base is mainly in-house counsel of Fortune 100 companies

28. Robert Ambrogi, *Why Is This Man Smiling? Latest Legal Victory Has LegalZoom Poised for Growth*, ABA J. 33, 35 (Aug. 2014).

29. See, e.g., Terry Carter, *LegalZoom Business Model OK'd by South Carolina Supreme Court*, ABA J. (April 25, 2014), available at http://www.abajournal.com/news/article/legalzoom_business_model_okd_by_south_carolina_supreme_court/.

30. See *id.*

31. www.rocketlawyer.com/about-us.rl.

32. <http://www.trademarkia.com/about-trademarkia/about-us.aspx>.

33. See www.axiomlaw.com. For a video that Axiom created to explain what it does see <http://www.axiomlaw.com/the-big-idea>.

34. See John S. Dzienkowski, *The Future of Big Law: Alternative Legal Service Providers to Corporate Clients*, 82 FORDHAM L. REV. 2995, 3008 (2014).

35. See Richard Granat, *Is Axiom Law a Law Firm?*, eLawyering Blog, <http://www.elawyerin.gredux.com/2013/04/articles/outsourcing/is-axiom-law-a-law-firm/>.

36. Axiom’s website states, “We help in-house teams deliver more efficient and effective legal support and improve legal processes. But we don’t practice law.” <http://www.axiomlaw.com/what-were-not/>. And yet, the website also states “Our attorneys structure and negotiate small M&A transactions, joint venture transactions, partnerships, co-marketing agreements and alliances.” <http://www.axiomlaw.com/practices/mergers-acquisitions>.

37. See William Henderson, *More Complex than Greed*, THE AM. LAW. (May 29, 2012).

that are interested in using analytics to better manage legal work, as well as hiring teams of temporary lawyers to handle legal-related projects, such as mergers and acquisitions.³⁸ As Axiom's website states, it has been mentioned in the press seventy-nine times in 2014 and fifty-seven of those times it was mentioned as being an innovator or disrupter of legal services.³⁹

There are numerous other businesses entering the market in new and innovative ways.⁴⁰ Those mentioned above are just a small but representative sampling of the types of new players who are entering the market, but they have crafted the delivery of their services so they are not within the regulatory structure that governs lawyers. And yet, they are providing services that are directly responsive to consumers' legal needs, which is largely due to the fact that there is a market for more legal services. This idea may seem misguided in light of current beliefs that there are too many lawyers, as evidenced by the dramatic decline in law school applicants and legal jobs.⁴¹ There is a disconnect, however, between the demand for lawyers as reflected in job statistics and the demand for lawyers as reflected by the needs of the general population. The needs of the latter are increasing, which is why there is a growing market for more affordable ways to access legal services.⁴²

The legal profession has responded to these new market players in different ways. In some situations the legal profession has sought to enjoin their operation under laws that prohibit the unauthorized practice of law.⁴³ However, both a lack of public support for this approach, as well as a lack of resources to litigate these matters, have limited this strategy.⁴⁴ The other possible approach is to regulate new players. This is effectively the approach that the United Kingdom took in 2007 when it enacted the Legal Services Act.⁴⁵ The Act cre-

38. Dzienkowski, *supra* note 34, at 3008-10.

39. See <http://www.axiomlaw.com/news>.

40. See, e.g., Dzienkowski, *supra* note 34, at 3002-15 (providing an overview of six of these new players, including Axiom).

41. See, e.g., Martha Bergmark, *We Don't Need Fewer Lawyers. We Need Cheaper Ones.*, WASH. POST (June 2, 2015), available at <http://www.washingtonpost.com/posteverything/wp/2015/06/02/we-dont-need-fewer-lawyers-we-need-cheaper-ones/?hpid=Z3>; Stephen M. Peterson, *Too Many Lawyers? . . . or Not Enough Clients?*, 36 WYO. LAW. 43, 43 (2013).

42. See, e.g., LEGAL SERVS. CORP., 2013 ANNUAL REPORT 22, available at <http://www.lsc.gov/sites/lsc.gov/files/LSC/Publications/AnnualReport2013/LSC2013AnnualReportW.pdf>.

43. See Deborah L. Rhode & Lucy Buford Ricca, *Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587, 2588 (2014).

44. See *id.* at 2596-97.

45. See Laurel S. Terry, *Why Your Jurisdiction Should Consider Jumping on the Regulatory Objectives Bandwagon*, 22 PROF. LAW. 28, 28-29 (2013).

ated opportunities for many new delivery models and new regulators, which dramatically expanded the ways in which legal services can be delivered. For example, today there are five different types of entities that can prepare wills including banks and unions.⁴⁶ None of the states have adopted such a radical approach, but as discussed in the next section, a few states are exploring authorizing nonlawyers to provide some legal services, particularly in light of access to justice concerns.

C. *New Categories of Legal Professionals*

Access to legal services, particularly for low and moderate income individuals, continues to be an intractable problem.⁴⁷ Companies such as LegalZoom strive to meet that need and the legal profession is also slowly starting to respond to those concerns in new ways.⁴⁸ Unlike the new market entrants discussed above, who enter the market without the certainty that their business model will withstand legal challenges, this section discusses new categories of legal professionals that the state supreme courts are creating and/or regulating. This process of creating new categories immunizes such professionals from legal challenges over their legitimacy, but it requires the political will of the state supreme courts to create them.⁴⁹

On one end of the spectrum, some new categories require minimal training, are not subject to licensing requirements, and their permissible activities are quite limited. For example, New York's court navigator program, which began in 2014, typically employs college and law student volunteers who receive a mere two-and-a-half hours of training.⁵⁰ These individuals can assist unrepresented litigants involved in landlord-tenant and consumer debt cases.⁵¹ Although the navigators' assistance cannot include legal advice, they can provide general infor-

46. See IFF RESEARCH, RESEARCH REPORT: UNDERSTANDING THE CONSUMER EXPERIENCE OF WILL-WRITING SERVICES 5 (2011).

47. See, e.g., Chief Judge Jonathan Lippman, *The State of the Judiciary 2014*, 7-8 (Feb. 11, 2014), available at <https://www.nycourts.gov/ctapps/soj2014.pdf>.

48. Historically the legal profession has mainly focused on calls to increase pro bono representation and to increase funding for legal aid services to ameliorate access to justice gaps. See, e.g., Benjamin H. Barton, *The Fall and Rise of Lawyers*, CNN.com (May 23, 2015), available at http://www.cnn.com/2015/05/22/opinions/barton-rise-and-fall-of-lawyers/index.html?fb_action_ids=10152823512736850&fb_action_types=og.shares.

49. See Laurel A. Rigertas, *Stratification of the Legal Profession: A Debate in Need of a Public Forum*, PROF'L. LAW.79, 111-12 (2012).

50. See Lippman, *supra* note 47; see also *Court Navigator Program: Prospective Court Navigators*, N.Y. COURTS (last updated March 19, 2014), available at http://www.courts.state.ny.us/courts/nyc/housing/rap_prospective.shtml (describing a general overview of New York's court navigator program).

51. See *id.*

mation about the courthouse and available forms, help unrepresented litigants use the computers to fill out forms, and accompany unrepresented litigants into the courtroom for moral support.⁵²

At the other end of the spectrum, the Supreme Court of Washington has created a new licensed category of legal practitioners—Limited License Legal Technicians (“LLLT”)—who are authorized to independently practice law in limited areas.⁵³ The graduates of the first LLLT program will have a limited license to practice in the area of domestic relations.⁵⁴ Licensing requirements for LLLTs are substantial, including forty-five credit hours of coursework and 3,000 hours of law-related work experience supervised by a licensed lawyer.⁵⁵ Much like lawyers, applicants must also take and pass an examination.⁵⁶ Successful applicants must also adhere to a code of ethics that mirrors the obligations that lawyers have to their clients.⁵⁷

Although LLLTs are not permitted to appear in court or negotiate with opposing counsel, they may engage in some activities traditionally reserved for licensed lawyers.⁵⁸ This includes, but is not limited to, informing clients of the applicable procedures, filing deadlines, and documents that must be filed in their legal proceeding.⁵⁹ LLLTs can also review documents or exhibits the client has received from the opposing party and explain them to the client.⁶⁰ In addition, they may prepare some standardized legal forms on behalf of their clients.⁶¹

Other states—California and Oregon—are also considering the adoption of similar models that would create new categories of professionals who could address some of the demand for affordable services.⁶² It is hard to predict how many other states will create new categories of professionals, or whether these new categories will in-

52. See Lippman, *supra* note 47, at 8.

53. For a general overview of the adoption of the limited license legal technician rule, see Brooks Holland, *Washington State’s Legal Technician Limited License Practice Rule: A National First in Access to Justice*, 82 MISS. L.J. SUPRA 75 (2013), available at mississippilawjournal.org/wp-content/uploads/2013/02/3_Holland_Final.pdf.

54. WASH. ADMISSION TO PRACTICE APP. R. 28, REGULATIONS 1-12, effective Sept. 3, 2013.

55. See *id.*, R. 28D (3)(b) and E(2).

56. See *id.*, R. 28 E(1).

57. See WASH. LIMITED LICENSE LEGAL TECHNICIAN RULES OF PROF. CONDUCT Pmb1. (“The Rules of Professional Conduct for LLLTs are modeled on Washington’s Rules of Professional Conduct for lawyers (Lawyer RPC)”).

58. WASH. ADMISSION TO PRACTICE R. 28.

59. See *id.*, R. 28 F(2).

60. See *id.*, R. 28 F(5).

61. See *id.*, R. 28 F(6).

62. See, e.g., Anna L. Endter, *State Activities Related to Limited License Legal Professionals* (updated by AJ Blechner, 2014), available at <https://lib.law.washington.edu/content/guides/StateLimLicLegPro>; Lippman, *supra* note 47, at 7–9.

crease access to justice. Even the Washington Supreme Court conceded that it did not have a crystal ball and could not predict the impact of creating LLLTs.⁶³ However, given the increased interest in these alternative providers, it is likely that the future of the legal profession will include more types of legal professionals.

II. HOW CHANGES ARE CHALLENGING THE IDENTITY AND VALUES OF THE LEGAL PROFESSION AND HOW THEY WILL IMPACT THE FUTURE OF LEGAL EDUCATION

The legal profession has accepted some of the changes discussed, particularly when they simply assist lawyers with the more efficient delivery of traditional legal services. However, other changes have posed challenges to the legal profession. For example, when computers create decision-trees that guide consumers through the creation of legal forms, questions arise about whether the computers are practicing law without a license.⁶⁴ Are companies like Axiom crossing into the unauthorized practice of law and, if so, is that a problem?⁶⁵ When regulators create new market entrants like Washington's LLLTs, how do they determine the types of tasks can be performed competently by someone who has less training than a licensed lawyer?⁶⁶ Future generations of lawyers will have to continue to assess these and other questions as more changes occur.

Indeed, changes are inevitable and they will impact different stakeholders in different ways. From the consumers' point of view, changes to the way legal services are delivered hold the promise of increasing their availability and reducing their cost.⁶⁷ From the legal profession's point of view, such changes will affect the job prospects of new entrants and, more importantly, possibly pose a threat to the integrity of the rule of law.

As a result, law schools have an important role in educating the next generation of lawyers who will face radical changes to the profession. In response to these changes, the only legitimate concern of future juris doctorates emerging from the legal education system will be to ensure that increased efficiency in the delivery of legal services is

63. See *In re Adoption of New APR 28—Ltd. Practice Rule for Ltd. License Legal Technicians*, No. 25700-1-1005, slip op. at 8-9 (Wash. June 15, 2012), available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>.

64. See Catherine J. Lanctot, *Does LegalZoom Have First Amendment Rights?: Some Thoughts about Freedom of Speech and the Unauthorized Practice of Law*, 20 *TEMP. POL. & CIV. RTS. L. REV.* 255, 257-65 (2011).

65. See Dzienkowski, *supra* note 34, at 3035-36.

66. See Holland, *supra* note 53, at 102.

67. See, e.g., Benjamin H. Barton, *supra* note 48.

not gained at the expense of increased risk to the consumer. Furthermore, increased efficiency must not threaten the integrity and independence of the judicial branch and the rule of law. Law schools' curricula should prepare students to think critically about these concerns, and to think about how to integrate new ways of providing services into their future practices to make the delivery of legal services more accessible and affordable. In so doing, law schools need to educate future lawyers about the challenges that these and other changes, including those we cannot yet predict, will bring. Indeed, the next generation of leaders will have to grapple with new innovations and determine whether to fight them, integrate them, ignore them, regulate them, or take some other approach.

In 2009 then-ABA President Carolyn Lamm created the Commission on Ethics 20/20 in 2009 to examine ethical and regulatory issues in light of globalization and technology. She directed the commission in the course of its work "to follow these principles: protecting the public; preserving the core professional values of the American legal profession; and maintaining a strong, independent, and self-regulated profession."⁶⁸ That list is a good summary of the principles that are also implicated by other changes, such as new regulated professionals and new unregulated market entrants.

This list also, however, raises many questions that the next generation of lawyers should be considering as they start their careers. What does it mean to protect the public, particularly in light of concerns about access to justice?⁶⁹ What are the core values of the American legal profession and why do they need to be preserved in the twenty-first century? Similarly, what are the benefits of a self-regulated profession and when do they justify the costs? As the profession contemplates its future, these questions have to be critically examined. If regulatory barriers are going to limit innovations, they must do so because it is necessary to protect consumers or to protect the integrity of the judicial branch or the rule of law.⁷⁰

These types of questions are likely explored in many professional responsibility courses, which traditionally focus on the ABA Model Rules of Professional Conduct. Those rules are the foundation for students' understanding of many of the legal profession's values that may be threatened by changes. The Preamble, for example, contains

68. ABA Commission on Ethics 20/20, *supra* note 5, at 1.

69. See Laurel A. Rigertas, *The Legal Profession's Monopoly: Failing to Protect Consumers*, 82 *FORDHAM L. REV.* 2683, 2696 (2014).

70. See *id.* at 2691.

many provisions about the role of the legal system and lawyers that are relevant to answering the questions posed above:

- The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.⁷¹
- An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.⁷²
- The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar.⁷³
- Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system.⁷⁴

It is not known how many professional responsibility courses are exploring contemporary changes to the delivery of legal services through the lens of these rules, but surely many are doing so.⁷⁵ Notwithstanding, these types of discussions should be a key component to professional responsibility courses that are preparing the next generation of lawyers. In addition, law schools should consider including other courses beyond the professional responsibility courses to address these issues. For example, in fall 2014 I taught a seminar titled "The Future of the Delivery of Legal Services," which gave students the opportunity to explore some of these changes in more depth.

Legal educators must also help law students develop their professional identity in a time of great flux. As options for the delivery of legal services expand, what do lawyers offer that cannot or should not be replaced by cheaper and more efficient alternatives? Creative problem-solving? Expertise? Empathy? Judgment? Trust? Confidential advice? Guardianship of the rule of law? Exploring these questions in a variety of courses will help future lawyers appreciate

71. ABA MODEL R. PROF'L CONDUCT PREAMBLE [10].

72. *Id.* at [11].

73. *Id.* at [12].

74. *Id.* at [13].

75. See, e.g., RUSSELL G. PEARCE, ET AL., PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH 31-60 (2d ed. 2014) (case book covering issues such as legal software).

their professional identity and their value-added role in a changing society and market.

Focusing future lawyers on these types of questions is also consistent with the 2007 Carnegie Report on legal education, which encouraged legal educators to help students develop a professional identity, particularly in changing times. The report stated:

Lawyer professionalism is still importantly defined with reference to ideals first announced by leaders of the bar in the early part of the twentieth century—ideals of independent service to the public, requiring and supporting counsel to clients that would also be independent of possible benefit to the attorney or law firm. Over the last several decades, however, the relatively stable and secure relationships that characterized at least the upper levels of the bar in the mid-twentieth century have altered radically. . . . Ours is an era marked by a growing body of lawyers trained by an increasing number of law schools who then enter unstable and highly competitive domains of practice. . . . Law schools can help the profession become smarter and more reflective about strengthening its slipping legitimacy by finding new ways to advance its enduring commitments.⁷⁶

Although the authors of the Carnegie Report may not have been thinking explicitly about the changes discussed in this essay—technology and new market entrants—their comments apply with equal force to the increased presence of these changes. As such, law schools can help the profession reflect about how, in the face of changes that are restructuring the delivery of legal services, to advance the enduring commitments that are essential to maintain the rule of law. The next generation of lawyers must be cognizant of these issues as they join the debates about whether and how to change the rules regulating the legal profession to accommodate such changes.

Importantly, law schools should not only help future lawyers think about how to respond to changes to the delivery of legal services, they should also prepare students to be a part of change. There are some examples of curricular changes that are focused in this direction. For example, a 2013 ABA survey sought to determine what law schools are doing to educate graduates about the technology of law.⁷⁷ Although responses to the survey were limited, the ABA created a list of ten schools that were devoting significant attention, through the creation of courses, institutes and centers, to the technology of practice.⁷⁸

76. WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS 127-28 (2007).

77. See Richard Granat et al., *Teaching the Technology of Practice: the Ten Top Schools* 40 L. PRAC. MAG. (The Annual Big Ideas Issue) 4 (2014), available at http://www.americanbar.org/publications/law_practice_magazine/2014/july-august/teaching-the-technology-of-practice-the-10-top-schools.html.

78. See *id.*

For example, in 2013 Suffolk University Law School created an Institute on Law Practice Technology & Innovation. The website explains that the institute was created “because technology is revolutionizing the delivery of legal and law-related services, creating both opportunities and challenges for lawyers and other legal professionals.”⁷⁹ As a result, the Institute “oversees projects and programs designed to leverage technology and other innovations to improve the practice of law and the delivery of legal services.”⁸⁰ Similarly, professors at Michigan State created Reinvent Law, which is a “law laboratory devoted to technology, innovation, and entrepreneurship.”⁸¹

More law schools should include similar programs in their curricula. The ABA’s recent Task Force on the Future of Legal Education issued a report and recommendations in January 2014, which stated, “although changes in the delivery of legal services have made competence in the use and management of law-related technology important, only a modest number of law schools currently include developing this competence as part of the curriculum.”⁸²

Similarly, law schools should also prepare students to think about how to work with new regulated and unregulated players in the market to create law practices that will bring clients high quality services at the lowest prices. There is a great need and opportunity to reconceive how legal services are delivered while still protecting the public, the integrity of the rule of law, and the judicial branch. It may be that future lawyers will need to develop new management systems to determine which client needs can be handled by automated systems, which can be handled by legal technicians, and which will require the attention of the lawyers. More schools are starting to include courses in law practice management and these courses may be appropriate platforms to explore how lawyers will work with market changes to deliver better and cheaper services to their clients.

79. About Us, Suffolk Univ. Boston Law Sch. Inst. On L. Practice Tech & Innovation (2013), available at <http://lawpracticetechnology.blogs.law.suffolk.edu/about-the-institute/>.

80. *Id.*

81. Daniel Martin Katz et al., *How This Duo is Trying to Reinvent Law School*, A.B.A. J., May 2013, available at http://www.abajournal.com/legalrebels/article/how_this_duo_is_trying_to_reinvent_law_school.

82. The Honorable Randall Shepard et al., *Report and Recommendations American Bar Ass’n Task Force on the Future of Legal Education*, American Bar Ass’n, 14 (January, 2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

CONCLUSION

The job of legal educators is to prepare students to critically assess market changes that may negatively impact consumer protection, the independence of the judicial branch, and the preservation of the rule of law. However, future lawyers must also be trained to be open to changes that can increase affordable access to legal services and to reconceptualize the delivery of services in ways that advantage consumers. As Richard Susskind concluded in his book *Tomorrow's Lawyers*, change “opens up the possibility of important new forms of legal service, and of exciting new jobs for those lawyers who are sufficiently flexible, open-minded, and entrepreneurial to adapt to changing market conditions.”⁸³ Success for the next generation of lawyers will require these skills.

83. See SUSSKIND, *supra* note 18, at 109.