

**NEW TECHNOLOGY, THE DEATH OF THE BIGLAW MONOPOLY
AND THE EVOLUTION OF THE COMPUTER PROFESSIONAL**

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Much has been written recently about new technology disrupting¹ the traditional law firm model of providing legal services.² Susskind and Susskind predicted the failure of professions, including the legal profession, due in large part to the external pressure of disruptive technology.³ However, concentrating blame on the technology is misguided; it blames the tool used to disrupt rather than the root causes of the disruption. In short, computers do not kill lawyers. Neither is the disruption aimed at the profession as such, but rather at the business models of modern day legal practices that have developed under the auspices of the profession. Under the guise of a profession, the legal profession has established the barriers to entry that have allowed lawyers to hold a monopoly on providing legal services. The monopoly has allowed law firms to develop business models through which they have been able to

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¹ “‘Disruption’ describes a process whereby a smaller company with fewer resources is able to successfully challenge established incumbent businesses.” Clayton M. Christensen, Michael E. Raynor & Rory McDonald, *What is Disruptive Innovation?*, HARV. BUS. REV., Dec. 2015, at 46.

² See, e.g., Jason Koebler, *Is Artificial Intelligence Making Lawyers a Disappearing Profession?*, FIN. REV. (Apr. 25, 2017, 12:38 AM), <http://www.afr.com/business/legal/is-artificial-intelligence-making-lawyers-a-disappearing-profession-20170418-gvmzbs>; Dan Mangan, *Lawyers Could Be the Next Profession to Be Replaced by Computers*, CNBC (Nov. 27, 2018, 10:33 AM), <https://www.cnb.com/2017/02/17/lawyers-could-be-replaced-by-artificial-intelligence.html>.

³ RICHARD SUSSKIND & DANIEL SUSSKIND, *THE FUTURE OF THE PROFESSIONS: HOW TECHNOLOGY WILL TRANSFORM THE WORK OF HUMAN EXPERTS* 154–55 (2015).

charge high, sometimes extravagant, prices for their services. It has also produced barriers to innovation. Clients have begun to react to perceived consistent overcharging and inefficient services of the BigLaw firms that benefit from the monopoly at the same time that technologies are becoming more powerful and effective. Meanwhile, new and hungry legal service providers who provide alternative business models to law firms are also using new technologies to open access to law and erode the monopoly. Lawyers are facing increasing competition that is set to destroy the BigLaw firm model. The disruption, though, will not be limited to BigLaw, and will also impact smaller law firms and sole practitioners.

As the dynamic between clients and lawyers changes, the next generation of lawyers will be required to perform a vast number of roles to satisfy client demands while all the while being asked to maintain their professional responsibilities. Lawyers, as humans, will be incapable of, or disinterested in, managing the demands of this multi-faceted role, and the professional aspect of the role will further recede. However, computers have vast technical knowledge, they do not seek financial reward, and they can be programmed to work ceaselessly and to put the client's interests ahead of their own. It is computers, therefore, that will be in a much better position to display "professional" characteristics than humans in the future. If it is desirable to have a legal profession, then it is in the interests of our society to allow computers to take the role of legal services providers. It will be necessary to take the profession out of the hands of self-interested humans and to develop a technological profession that would provide legal services, initially with the assistance of lawyers, but then, as with the introduction of autonomous vehicles, in a five-staged deployment, develop a fully autonomous legal profession. This new technological profession would also subordinate "personal aims and ambitions to the service of . . . [the law] discipline and the promotion of its function in the community"⁴ and begin to regain the trust so lacking in the legal profession today.

⁴ Daryl Dawson, *The Legal Services Market*, 5 J. JUD. ADM. 147, 148 (1996).

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I. INTRODUCTION

Law is a profession.⁵ It evolved from around the twelfth century as individuals within the church developed expertise in canon law⁶ and, over time, developed the characteristics that many now use to distinguish a profession: “special skill and learning; public service as the principal goal; and autonomy or self-regulation.”⁷ However, the legal profession, as dominated by large law firms, has more recently drifted from its professional moorings and, in doing so, has opened itself up for disruption.⁸ Some commentators have argued that the disruption of the legal services industry could spell the death of the profession.⁹ Susskind surmised that new technologies may result in the end of lawyers.¹⁰ He posited that commoditization of legal work and new technologies would combine to make the traditional work of the lawyer redundant.¹¹ This analysis oversimplifies Susskind’s prodigious output on the subject, but I agree with his ultimate conclusion that technology will have a disruptive effect on the legal services market. However, Susskind elides the

⁵ YSAIAH ROSS, *ETHICS IN LAW: LAWYERS’ RESPONSIBILITY AND ACCOUNTABILITY IN AUSTRALIA* 57 (5th ed. 2010).

⁶ James A. Brundage, *The Rise of the Professional Jurist in the Thirteenth Century*, 20 SYRACUSE J. INT’L L. & COM. 185, 186 (1994).

⁷ G. E. DAL PONT, *LAWYERS’ PROFESSIONAL RESPONSIBILITY* 5 (4th ed. 2010); see ROSS, *supra* note 5, at 58–59.

⁸ Christensen, Raynor & McDonald, *supra* note 1, at 44. Christensen, et al. define disruption as a process in which smaller, less-well-resourced companies provide products and services that challenge larger incumbent companies. *Id.* The smaller companies take advantage of the tendency of the larger incumbents to concentrate resources on their most profitable clients. *Id.* This leaves the disrupting companies free to provide the overlooked clients with “more-suitable functionality—frequently at a lower price.” *Id.* Disruption is complete when the smaller disruptive companies develop their products and services to a point where mainstream customers adopt them in volume. *Id.*

⁹ See Robert F. Cochran Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternate Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 305, 308–11 (2000); Bob Murray, *Will Law Firms Be Digitised to Death?*, LAW. WKLY. (Oct. 6, 2016), <https://www.lawyersweekly.com.au/opinion/19702-will-law-firms-be-digitized-to-death>.

¹⁰ See generally RICHARD E. SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* (Oxford Univ. Press 2008).

¹¹ *Id.* at 27.

root cause of the disruption. I argue that there is a malignancy that has metastasized in two of the ideals that define a profession (that is, the requirements for special skill and learning, and self-regulation and autonomy) that has led to the legal profession holding a monopoly on providing legal services. This monopoly has led to big law firms becoming businesses in pursuit of profits, rather than true members of a profession. It is this business-oriented pursuit of monopoly profits that has developed in place of a more professional (in the traditional sense) approach to client service that has opened the legal services market up to disruption.

Part II of this paper teases out the tenets of a profession and emphasizes the professional ethics of service to society as a defining characteristic. A profession sets the level of education required, and the credentials that individuals must attain, to enter it.¹² A profession is typically also responsible for constantly testing the capabilities of its members and for expelling those who fail to maintain the required levels of competence and “character.”¹³ The legal profession upholds these entry requirements with vigor. Ironically, though, by enshrining these defining characteristics of professions the legal profession has excluded others from performing “legal work” and has thus created a monopoly on providing legal services.¹⁴

¹² See, for example, regulation five of the Legal Profession Uniform Admission Rules of New South Wales, which sets out the prerequisite academic qualifications as:

- successfully completing a tertiary academic course in Australia, whether or not leading to a degree in law, which:
- (a) includes the equivalent of at least 3 years’ full-time study of law,
 - (b) is accredited by the Board, and
 - (c) the Board determines will provide for a student to acquire and demonstrate appropriate understanding and competence in each element of the academic areas of knowledge set out in Schedule 1, or otherwise determined by the Admissions Committee after consulting each of the Boards.

Legal Profession Uniform Law 2015 (NSW) reg 5 (Austl.).

¹³ Marion Crain, *The Transformation of the Professional Workforce*, 79 CHL-KENT L. REV. 543, 548–49 (2004).

¹⁴ See JOSEPH W BARTLETT, *THE LAW BUSINESS: A TIRED MONOPOLY* 7–19 (1982); TERENCE C. HALLIDAY, *BEYOND MONOPOLY: LAWYERS, STATE CRISES, AND PROFESSIONAL EMPOWERMENT* 16–23 (1987); Bridgette Dunlap, *Anyone Can “Think Like a Lawyer”: How the Lawyers’ Monopoly on Legal*

Part III examines the monopoly that lawyers hold over the provision of legal services. It also addresses the damaging impact that monopolies, in any industry, pose to prices and innovation. The literature on monopolies, in general, is not kind;¹⁵ there are a number of social and economic costs associated with them including that monopolists charge higher prices and fail to innovate.¹⁶ Monopolies also lead to a deadweight loss to society, which, in the case of the lawyer monopoly, has led to problems with the majority of society being able to access justice. The social and economic costs of monopolies have been evident in the legal profession, mostly in big law firms, for many years and have eroded the tenets that make law a profession in the first place. In doing so, they have created fertile ground for disruption.¹⁷ Susskind and Susskind acknowledged the monopoly held by professions, including the legal profession, and that the cost of legal services was a key driver in a technological response to the monopoly.¹⁸ They argued that the commoditization of legal work and technological innovation would erode the monopoly and lead to the end of the profession.¹⁹ They reported the monopoly merely as a fact of the modern legal profession. I argue that it is the monopoly itself that has brought the legal profession to the point at which it is now ripe for disruption. It is the monopoly,

Understanding Undermines Democracy and the Rule of Law in the United States, 82 FORDHAM L. REV. 2817, 2821–23 (2014); Leslie C. Levin, *The Monopoly Myth and Other Tales about the Superiority of Lawyers*, 82 FORDHAM L. REV. 2611, 2611 (2013).

¹⁵ See, e.g., MASSIMO MOTTA, COMPETITION POLICY: THEORY AND PRACTICE 43–57 (2004).

¹⁶ See Richard A. Posner, *The Social Costs of Monopoly and Regulation*, 83 J. POL. ECON. 807, 807–27 (1975); MOTTA, *supra* note 15.

¹⁷ Here, I must distinguish between the big law firms that act as businesses from the large number of hard-working lawyers, such as dedicated local sole practitioners, or those in community legal centers or indigenous legal services, or even hardworking, honest lawyers within the large law firms whose work does contribute to the greater good of society. In Part IV, I make the argument that for these large law firms, law has become a business rather than a profession. However, in my experience, I know of several lawyers within large law firms that maintain high ideals and professionalism despite the corrosive effect of the business imperatives of Big Law.

¹⁸ SUSSKIND & SUSSKIND, *supra* note 3, at 27, 67–68.

¹⁹ *Id.* at 67–68.

and all that comes with it that has caused the underlying environment that feeds the disruption. Concentrating blame on the technology misses the point; it blames the tool used to disrupt rather than its root cause. New technology alone does not disrupt an industry. Disruption is a *reaction* to, for example, client dissatisfaction. That dissatisfaction stems in large part from overpricing, failures to innovate and the deadweight loss to society—natural outcomes of monopolies. NewLaw,²⁰ using new technologies, is disrupting traditional models of providing legal services. However, the new technology is merely the tool that is enabling new solutions. It is the means by which the disruptive forces can have their way.

In Part IV, I argue that, because the legal profession has been able to maintain a monopoly on providing legal services, law has become a business that has drifted from its professional moorings. I discuss how BigLaw²¹ has for many years maintained its business model which relies on leveraging large numbers of junior lawyers

²⁰ Eric Chin, *2018: The Year Axiom Becomes the World's Largest Legal Services Firm*, BEATON CAP. (Sept. 13, 2013), <http://www.beatoncapital.com/2013/09/2018-year-axiom-becomes-worlds-largest-legal-services-firm/> (defining the term “NewLaw”). For a definition of “NewLaw,” see *infra* Part V.C.1

²¹ The traits of BigLaw are (or have been described as):

- Attraction and training of top legal talent,
- ‘Leveraging’ of these full-time lawyers to do the bulk of the work serving clients,
- Creation of a tournament to motivate the lawyers to strive to become equity partners (the idea of a tournament is akin to Roman gladiator contests and the subject of a seminal book),
- Tight restriction on the number of equity owners,
- Structuring as a partnership, and
- Charging high hourly rates (which is or at least until very recently has been possible because of the mystique associated with legal advice).

George Beaton, *Last Days of the BigLaw Business Model?*, BEATON CAP. (Sept. 6, 2013), <http://www.beatoncapital.com/2013/09/last-days-biglaw-business-model/>. Perhaps one day soon we will witness the Amazon of law—a single law firm that will provide advice to all of the world’s largest companies. Conflicts of interest may prevent one single large law firm of this nature, but if there are only two or three such firms remaining, then all of the world’s corporate work can be divided among these firms.

working long hours to push profits up to the partner level. Technology threatens to make much of that level of lawyers redundant. Law firms, whose profit model depends on leveraging, will seek to resist the disruption but its impact is insistent, and the barriers that define the lawyers' monopoly are falling. The pressures I outline in Part V of this paper are leading to some interesting outcomes. BigLaw is reacting to these pressures and is trying to stave off its demise by adopting new technologies. This creates a feedback loop in which the BigLaw firms adopt and beta test new technology which leads to better, faster, and more intrusive technology being able to do more of the work currently performed by lawyers. Ironically, it is only the BigLaw firms that have the scale, large data sets, and financial strength to be able to test some of these new technologies and allow them to "learn" and improve their capabilities. By buying into this process, so they can be seen adopting new technology, the large law firms may be hastening their own disruption.²² Unfortunately for the rest of the legal profession, once the beta testing is completed and prices for new technologies reduce because of economies of scale built over time, new technologies will eventually drop onto the rest of the legal service industry with catastrophic effect.

Despite the emphasis in the literature on technology being the disrupting force, there are other forces that have allowed technology to become a disruptive tool in the first place. In Part V, I argue that there are five distinct forces creating pressure on law firms—the

²² For example, The Law Society of New South Wales noted that:

Large law firms accustomed to operating in traditional ways are hedging their bets by forging alliances with start-ups. Last year, the Australian office of Norton Rose Fulbright increased its financial stake in Australia's LawPath, a company that supplies low-cost documents online and connects clients to lawyers for fixed-price work. Also in 2016, Gilbert + Tobin increased its stake in Australian technology-enabled legal practice LegalVision by close to 20 per cent, from \$600,000. Allens has developed its own suite of fully downloadable, free documents for the start-up market and has reported 3,000 unique downloads as of July 2016.

THE L. SOC'Y OF NSW, THE FUTURE OF LAW AND INNOVATION IN THE PROFESSION 31 (Gary Ulman et al. eds., 2017).

archetypal model for providing legal services²³—that are creating fertile ground for disruptive innovation in the legal services market. The first pressure is created because legal services have been overpriced for a long time. The predominant structure of the modern legal practice—the partnership within a monopoly—has allowed lawyers to charge clients by the hour in increments of six minutes, which has, over time, driven up prices for fundamentally inefficient practices.²⁴ I argue that this overcharging by law firms is the biggest determinant of disruption to the profession. Overcharging, and a lack of innovative service, another outcome of monopolies, seems to have reached its apogee sometime in the last ten to twenty years and clients have begun to push back. Clients are now pressuring law firms to reduce fees and to use fee models other than the billable hour.²⁵ Before the interruption of new technologies, law firms have been able to resist these client demands. Now, other pressures are combining with client pressure to lessen that resistance.

The second pressure on the traditional or incumbent legal service providers is that, for a number of years, there has been a consistent oversupply of lawyers into the market.²⁶ This has led to two outcomes: firstly, those law graduates who left legal practice or

²³ The structure of the legal services market with law firms as the dominant force is outlined *infra* Part IV.

²⁴ See Tim Williams, *Busy Fools vs. Eureka Moments*, IGNITION CONSULTING GROUP (Nov. 29, 2017), <http://www.ignitiongroup.com/propulsion-blog/paying-for-busy-fools-or-eureka-moments>.

²⁵ David Ruiz, *Microsoft Rethinks Law Firm Relationships as 13 Join Alternative Billing and Diversity Initiative*, LEGAL WK. (Aug. 8, 2017), <http://www.legalweek.com/sites/legalweek/2017/08/08/microsoft-rethinks-law-firm-relationships-as-13-firms-join-alternative-billing-and-diversity-push/>.

²⁶ Christine Parker, *An Oversupply of Law Graduates? Putting the Statistics in Context*, 4 LEGAL EDUC. REV. 255, 255 (1993). Parker refuted the claims of oversupply in this 1993 article. See generally *id.* However, since 1993, the number of law schools in Australia has doubled and, as a result, the number of law graduates has concomitantly increased. See Peter Woelert & Gwilym Croucher, *The Multiple Dynamics of Isomorphic Change: Australian Law Schools 1987–1996*, 56 MINERVA 479, 491–92 (2018); see also David Weisbrot, *What Lawyers Need to Know What Lawyers Need to Be Able to Do: An Australian Experience*, 1 J. ASS’N LEGAL WRITING DIRECTORS 21, 29 (2002) (“[L]awyer numbers have continued to grow, leading to greater intra-professional competition.”).

chose in the first place not to become practicing lawyers²⁷ have added to a society that is better educated in the law and legal matters,²⁸ and this more educated population has continued to demystify the law and dilute the monopoly in legal knowledge traditionally held by law firms.

Secondly, and relatedly, this oversupply of lawyers that are leaving law firms creates a third pressure on the big law firm service model. The diaspora of lawyers has created an explosion of legal service providers able to offer easier access to law at a much lower cost than the traditional law firm partnership and has spawned a new term: “NewLaw.”²⁹ These NewLaw providers create alternative models of providing legal services to the longstanding structure of the law firm partnership. They are also able to compete with law firms by harnessing the recent exponential increase in the power, availability, and utility of new technology, including technology that is specifically designed to do the work of lawyers.³⁰ In effect, they have been given a loaded gun. These new entrants to the market (the disruptors) are finding ways to provide innovative and cost effective legal services outside the traditional law firm partnership model.³¹ Consequently, the traditional clients of law firms, such as in-house

²⁷ Nicola Berkovic, *Fewer Law Graduates Are Choosing Practice as a Career*, AUSTRALIAN (July 1, 2011), <https://www.theaustralian.com.au/business/legal-affairs/fewer-law-graduates-are-choosing-practice-as-a-career/news-story/03552d1a9a5f1c85dd15f1145e2e208d?sv=95a9d2c40ca3d9327d8681cb14fbaade> (noting that “the proportion of law graduates taking jobs in industry or commerce jumped from 13.5 per cent to 20.1 per cent” between 2005 and 2010).

²⁸ These are what Furlong refers to as “self-navigators.” See Jordan Furlong, *The Pivot Generation: How Tomorrow’s Lawyers Will Help Build a New and Better Legal Market*, 50 SUFFOLK U. L. REV. 415, 428 (2017).

²⁹ See Chin, *supra* note 20 (coining the term “NewLaw”).

³⁰ For example, see Ailira, which is marketed as:
an artificial intelligence that uses natural language processing to provide free legal information on a broad range of legal issues, including Business Structuring, Wills and Estate Planning and much more coming soon! In addition, you can use Ailira to instantly generate Australian legal documents for your business and personal use, much cheaper and faster than a visit to a lawyer would take.

AILIRA, <https://www.ailira.com/> (last visited Jan. 15, 2019).

³¹ See, e.g., NEXUS LAW GROUP, <https://www.nexuslawyers.com.au/> (last visited Feb. 8, 2019).

legal counsel, who are subject to their own cost pressures, are now more willing to acquire their legal services from this greater range of providers.³²

The fourth force pressuring traditional models of providing legal services (although in combination with the other three) is the new technology itself. Over the last 30 years, there have been exponential advances in computer technology, including in the sub-categories of artificial intelligence: machine learning, natural language processing, and computer vision.³³ Savvy legal entrepreneurs are able to use these new technologies to help clients unlock access to law that has been for so long under the control of lawyers and law firms. Some of the first applications of new technologies in law include expertise automation systems designed specifically to systematize routine tasks, such as common advices, previously performed by lawyers.³⁴ Other applications target document review, legal research, and case prediction.

Further, because of improvements in technology, the primary sources of the law are much more freely available on the internet and are constantly updated.³⁵ This development, related and dependent on improvements in technology, is the fifth element that is pressuring the business model of BigLaw. It is democratizing legal knowledge that for so long has been in the sole keep of lawyers. The combination of powerful computer technology and free access to law is allowing not only law firms but also NewLaw entrepreneurs to provide legal services quicker and cheaper than ever before.³⁶ Free access to law also allows sophisticated business

³² See MAHLAB, MAHLAB REPORT 2016: CORPORATE 4 (2016) <https://docplayer.net/40663725-Mahlab-report-2016-corporate-corporate-lawyers-company-secretaries.html>.

³³ This exponential trajectory seems to have flattened in the last few years. See *The End of Moore's Law*, RODNEY BROOKS (Feb. 4, 2017), <https://rodneybrooks.com/the-end-of-moores-law/>. However, this has not slowed the onslaught of new technology from NewLaw providers and developers of new technology aimed squarely at the law firm monopoly.

³⁴ See, e.g., NEOTA LOGIC, <https://www.neotalogic.com/> (last visited Feb. 8, 2019) (advertising drag and drop software products).

³⁵ See *infra* Part V.E (referencing the Austlii effect).

³⁶ Governments have seen the need to legislate to combat overcharging and inefficiency. For example, the overriding purpose of the *Civil Procedure Act 2005*

people to access and understand their legal rights without having to refer to law firms.

The disruption of the BigLaw services model will have an impact on the way that legal services are provided in the future, but it is difficult to predict what that market will look like in, say, twenty years' time.³⁷ Part VI discusses some of the impacts of these changes on the legal profession already and provides some predictions about what changes need to be made to prepare new lawyers for a profession in flux. It is the nature of disruption that change happens quickly. One thing is certain—the way that legal services are delivered in the near future will be a far cry from the rigid way that the profession has carried on business over the last 200 or so years. Despite this, these changes in the profession do not have to be a bad thing. In many ways, by facilitating greater service and freer access to law at a lower cost, new technology could pre-empt a new profession. In the new profession, lawyers will be required to embrace new technologies or perish. Disruption has a tendency to subvert the status quo, no matter the intentions of the incumbent. Furlong predicted some radical changes in the work that lawyers will be required to perform in the future, all the while displaying the characteristics of a professional. I argue that computers are much more suited to this new environment and could potentially provide a much more professional service than humans. The goals of providing a public service is an important defining characteristic of

(NSW) and the rules of the court stated in section 56 to be the “just, quick and cheap resolution of the real issues in the proceedings” as opposed to a drawn out and expensive resolution. *Civil Procedure Act 2005* (NSW) s 56 (Austl.).

³⁷ See, e.g., Furlong, *supra* note 28, at 416 (“The legal market is transforming, and it is not at all clear what the result of that transformation will be.”); *My Dated Predictions*, RODNEY BROOKS (Jan. 1, 2018), <https://rodneybrooks.com/my-dated-predictions/> (providing predictions on the probability of certain events occurring within the next thirty-two years); see also PETER STONE ET AL., ARTIFICIAL INTELLIGENCE AND LIFE IN 2030 (2016), <https://ai100.stanford.edu/2016-report> (exposing the practical limitations on seeking to predict impacts of developing AI in the next 15 years in eight key domains: transportation, healthcare, education, public safety and security, employment, workforce, and entertainment).

a profession³⁸ that sets it apart from a trade or an occupation. The legal profession, as dominated by large law firms, has strayed from this ideal; but, with the intervention of new technology, it might be able to regain some of its fundamental character.

Part VII concludes with a note of optimism for the rebirth of law as a profession—only with computers at the helm. After all, as with taxi drivers and truck drivers, themselves subject to disruption through technology, not many in society will mourn the loss of the lawyer. I argue that, far from being the death of the profession, technology should allow more people to gain greater access to the law at a lower cost. Surely, this is laudable as an aim of society; that its citizens should have free, or at least affordable, access to the laws that govern them and not be beholden to those members of a monopoly privileged enough to define and control that access. There will still be a need for lawyers with their expertise in the law to guide development of new laws and to lead members of society through the intricacies of interpreting and applying the law. Therefore, the advent of new technologies that can perform many tasks currently performed by lawyers may bring, not the decline of a profession, but its rebirth and the opportunity for lawyers to become true professionals again.

II. LAW AS A PROFESSION

Examining the tenets of a profession highlights firstly how far the legal profession, as epitomized by BigLaw firms, has strayed from the core tenets of professionalism and, secondly, to light a clear path back. In Parts III and IV, I demonstrate how far from the path of professionalism the legal services industry has strayed. In the latter half of the paper, I highlight the positives that might be taken from the current disruption of the industry that might signal the rebirth of the profession—albeit a technologically enhanced version. Firstly, though, I attempt to clarify what a profession, and in particular, what the legal profession is (or could be).

³⁸ Although it is difficult to use a set of traits to define professionalism, this characteristic is predominant in many descriptions of professions and is discussed more fully in Part II of the paper.

There is no settled definition of a profession, but there are a number of attributes or traits that have been used to mark out a profession. These include:

- skill based on theoretical knowledge;
- the provision of training and education;
- testing the competence of members;
- an ethical code of conduct; and
- altruistic service.³⁹

But these traits now describe a number of occupations other than the traditional professions such as medicine, law, and the clergy and as such, their use in distinguishing professions from other occupations has lessened.⁴⁰ Rizzardi, former attorney for the Department of Justice and member of the Florida Bar's ethics and professionalism committees, analogized Supreme Court Justice Potter Stewart's reference to classifying pornography, "I know it when I see it,"⁴¹ to help define professionalism. The obverse might also be true: we know it when we do *not* see it; that is, when so-called professionals or professions no longer seem to act professionally.⁴²

There is a considerable body of literature that espouses the altruistic ideals of the *legal* profession. Lawyer professionalism has been described as "high competency in the knowledge and skills necessary for professional work, respect for the justice system and its participants, and 'civic trusteeship' or an attitude of 'public altruism' by every lawyer toward the justice system."⁴³ In 1953, Roscoe Pound, former Dean of Harvard Law School, defined a profession as:

a group . . . pursuing a learned art as a common calling in the spirit of public service - no less a public service because it may incidentally be a

³⁹ See, e.g., ROSS, *supra* note 5, at 58–59.

⁴⁰ *Id.* at 59.

⁴¹ Keith W. Rizzardi, *Defining Professionalism: I Know It When I See It?*, FLA. B.J., July–Aug. 2005, at 38.

⁴² SUSSKIND & SUSSKIND, *supra* note 3, at 33–37.

⁴³ John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 331 (2008).

means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.⁴⁴

Chief Judge Breitel of the New York Court of Appeals, in 1974, differentiated the legal profession from a business and emphasized a professional's "duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even in nonprofessional matters, to conduct themselves as members of a learned, disciplined, and honorable occupation."⁴⁵

In 1986, the Stanley Report, reporting on falling levels of legal professionalism (or rather, the lack of it demonstrated in the legal profession at that time) settled on the following, more prosaic and aspirational definition of the legal profession:

An occupation whose members have special privileges, such as exclusive licensing, that are justified by the following assumptions:

1. That its practice requires substantial intellectual training and the use of complex judgments;
2. That since clients cannot adequately evaluate the quality of the service, they must trust those they consult;
3. That the client's trust presupposes that the practitioner's self-interest is overbalanced by devotion to serving both the client's interest and the public good; and
4. That the occupation is self-regulating—that is, organized in such a way as to assure the public and the courts that its members are competent, do not violate their client's trust, and transcend their own self-interest.⁴⁶

By the late 1980s then, descriptions of the legal profession that included notions of altruism and a common calling to pursue a learned art, tended to do so longingly, more in hope, than as a description of the profession as it had become. In 1992, Terrell and Wildman opined that the legal profession had an obligation to "help the legal system remain the centerpiece of our fragile sense of community, [and] help it continue to function within our culture as

⁴⁴ JUSTIN A. STANLEY, ET AL., COMM'N ON PROFESSIONALISM, A.B.A., ". . . IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 10 (1986), https://www.americanbar.org/content/dam/aba/migrated/2011_build/professional_responsibility/stanley_commission_report.pdf [hereinafter Stanley Report] (citing ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953)).

⁴⁵ In the Matter of Freeman, 311 N.E.2d 480, 483 (N.Y. 1974).

⁴⁶ STANLEY, ET AL., BLUEPRINT, *supra* note 44, at 10.

the crucial mechanism for social cohesion and stability;⁴⁷ the implication being that social cohesion and a sense of community was, indeed, fragile and soon to be lost. However, as I discuss in Part VI, this is the very role that computers can fill as they develop.

By 1996, there was a marked shift in the directness of remarks by the judiciary about the lack of these characteristics in the professionalism of the legal community. In that year, Justice Michael Kirby, then of the High Court of Australia, challenged the legal profession to “re-evaluate its conduct with a view to enhancing the level of service provided to a community which has ever-increasing expectations of the profession but a diminishing estimation of the likelihood that such expectations will be fulfilled.”⁴⁸

The idea that legal professionals would “subordinate financial reward” to the greater good of society were completely missing from these later descriptions of lawyer professionalism and seem to have been abandoned sometime after the 1970s. Computers do not need or pursue financial reward. So, while this characteristic of professionalism may have fallen off the list for human lawyers, it is still attainable by computers.

In 1996, former Justice of the High Court of Australia, Sir Daryl Dawson, described this loss by comparing the traditional notion of a professional to the modern day exemplar:

Traditionally the aim of a profession was to promote the purpose for which it existed. The primary aim of a professional man or woman was not to make money but to provide, for example, good health care or good legal services. To be sure, the professional practitioner generally made a good living But it was the subordination of personal aims and ambitions to the service of a particular discipline and the promotion of its function in the community which marked out a profession. A member

⁴⁷ Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism,"* 41 EMORY L.J. 403, 423 (1992). This approach to lawyer professionalism that emphasizes a greater duty to society as a primary trait is not without its detractors. See, e.g., Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 317–21 (1995) (discussing a range of lawyer types that challenge the one true professional lawyer stereotype proposed by the “professionalism crusade”).

⁴⁸ Michael Kirby, *Billable Hours in a Noble Calling?*, 21 ALTERNATIVE L.J. 257, 257 (1996).

of a profession was an educated person whose knowledge was acquired, not for the purpose of sale, but on trust for the benefit of the profession itself and the community which it serves. That is to say, professional practice involved the use by practitioners of the knowledge which they acquired through their education, not in the conduct of an enterprise intent on acquiring the largest market share and making the most profits, but as individuals serving their clients and, through them, the community.⁴⁹

Sir Daryl then differentiated what he referred to as “social trustee professionalism” and “expert professionalism;” the former exhibiting the service aspects outlined in the quote above while the latter was “concerned with the marketing of expertise rather than with the use of knowledge in the service of the client or the community.”⁵⁰ Expert professionalism—that is, monetizing legal knowledge—Sir Daryl said, more closely described the modern day legal profession. Similarly, Halliday argued that there is a spectrum of behaviors that fit within the definition of professional: one set of behaviors that is “monopolistic, even narcissistic, and the other benign, even altruistic.”⁵¹ Both commentators seem to reluctantly accept the bad behavior (either economic or narcissistic) as now being a characteristic of a profession. There seems to be some acceptance that these aberrant behaviors now fit within a definition of a modern legal profession.

It is unclear whether this seeming acceptance by Dawson and Halliday of a more economic or narcissistic bent in legal professionals reflected a shift in the societal attitudes towards the norms that underpinned the legal profession. Whatever level of acceptance there was, or has been in the last twenty years, it is apparent that from around the mid-1990s, the notions of lawyer professionalism were changing to reflect more mercenary-like characteristics.⁵² The modern practice of law, especially under the auspices of BigLaw firms, has strayed from its professional roots. Susskind and Susskind noted that this behavior is similar across all

⁴⁹ Dawson, *supra* note 4, at 148.

⁵⁰ *Id.*

⁵¹ HALLIDAY, *supra* note 14, at 3.

⁵² Modern day references to sports people (e.g., professional footballers) also may tend to conflate the notions of a true profession to professionals who play sport (in this example) for large sums of money.

professions.⁵³ They argued that professions have become unaffordable, have become antiquated, restrict access to their knowledge, underperform, and are inscrutable.⁵⁴ This is certainly true of the legal profession.

We must not lose sight of the fact that the notion that a profession provides a service to society has been, and remains, a prominent feature in many discussions about professions. This is a consistent trait (for want of a better term) of professions. Lawyers take pride in being labelled professionals because the label comes with such privileges as status, respect, and being able to self-regulate. A profession that accepts the prestige associated with its professional status should not accept those benefits without meeting its concomitant obligations of maintaining the ideals of professionalism in practice. If it loses what distinguishes it as a profession, then it is in danger of losing the benefits of a profession.

In the next two Parts of this paper, I illustrate how far the law business has strayed from its professional roots and how it has become a business. I argue that this failure of the legal profession is in large part because of a mutation in other precepts of a profession; namely its ability to self-regulate, and to set its own entry requirements. These constructs have enabled lawyers to establish a monopoly (with all that entails) over the provision of legal services. Part III examines the way the monopoly has been established and how it operates. Part IV details the depths to which law has become a business. Part V details the pressures that are being exerted on and disrupting the legal services business, and Part VI sets out what the effects of this disruption might have on the legal services industry.

III. LAWYERS HAVE A MONOPOLY ON LEGAL SERVICES

This Part outlines the monopoly that lawyers have in providing legal services in Part III.A. It then discusses some purported benefits of monopolies in Part III.B and some of the known detriments of monopolies in III.C.

⁵³ SUSSKIND & SUSSKIND, *supra* note 3, at 36.

⁵⁴ *Id.* at 33–37.

A. *The Lawyer Monopoly*

The notion that the legal profession holds a monopoly on providing legal services is well established.⁵⁵ I discuss it here for several reasons: first, to highlight the problems that can arise because of the protections that a profession affords; second, to discuss the problems inherent in monopolies that have become obvious in the legal services industry; and, third, as a lead into the discussion about law becoming a business in Part IV. I argue that this monopoly, enabled by the structures put in place to protect the profession, has mutated the profession and has allowed lawyers to turn the profession into a business.

The monopoly that the legal profession holds over the provision of legal services derives from the very fact that law is a profession. As discussed in Part II, professions are self-regulated. Crain, who at the time the article was written was Professor of Law at the University of North Carolina, argued that this “[a]uthority to self-regulate is founded upon the esoteric character of professional knowledge, which in turn makes it difficult for the public to assess performance or for the government to regulate it.”⁵⁶ The legal profession is self-regulating for these very reasons. Law is esoteric; lawyers argue that only they could possibly understand its complexity and intricacies enough to regulate it.⁵⁷ The structure of a profession as an autonomous self-regulating entity that sets its own entry requirements *inherently* leads to its members holding a monopoly on providing professional services.⁵⁸ Looked at another

⁵⁵ See sources cited *supra* note 14.

⁵⁶ Crain, *supra* note 13, at 548–49. Additionally, Part V of this article discusses how new technologies are surpassing human knowledge and performance in legal domains and that this element of a profession should no longer be a reason for lawyers to maintain a self-regulating profession.

⁵⁷ Eliot Freidson, *Theory and the Professions*, 64 IND. L.J. 423, 427 (1989). In Australia, the monopoly is affirmed in the various pieces of legislation regulating legal practice. See, e.g., *Legal Profession Uniform Law (NSW)* ss 5, 10, 43 (Austl.) (prohibiting an entity from engaging in legal practice unless it is legal practitioner or law practice authorized under the Uniform Law).

⁵⁸ See BARTLETT, *supra* note 14, at 7; see also DAL PONT, *supra* note 7, at 7. This is not a monopoly in that there is only one company providing goods or services in a market, but a broader conception of a monopoly over the provision of legal services. Nevertheless, it is still possible to extrapolate from the theories

way, these controls also form barriers to entry to the profession.⁵⁹ The legal profession has created this monopoly for its services and has maintained it since around the fifteenth century.⁶⁰ Bartlett argued that “the law business is a monopoly in the sense that competitive access is limited by artificial entry barriers and its practitioners, enjoying monopoly profits, suffer from the monopolist’s destructive self-satisfaction”⁶¹ Crain argued that the monopoly created by self-regulating professions such as law extended to “an economic monopoly over recruitment, training, and credentialing, a political monopoly over areas of expertise, and an administrative monopoly over determining what standards shall apply to practitioners.”⁶²

Lawyers have deliberately asserted and maintained this monopoly over access to the law. As a small example, until recently lawyers fostered a shibboleth in the use of Latin to restrict access to legal knowledge. McLeod noted that the use of Latin in law was “also a symbol of a profession. Latin adds to the mystery of the law. It adds to the difficulty in accessing the law. It keeps the profession separate from other parts of society, perhaps more now than it ever did.”⁶³ Perhaps because of this, proponents of plain English in law have for some time now advocated to reject Latinisms for the very reason that it excludes those external to the legal monopoly from accessing the law.⁶⁴

B. *Benefits of Monopolies*

Some commentators argue that monopolies, in general sense, can increase economic efficiency. For example, Barzel argued that,

of monopolies in relation to monopoly pricing and failure to innovate. *See infra* Part V.

⁵⁹ BARTLETT, *supra* note 14, at 16.

⁶⁰ ROSS, *supra* note 5, at 58.

⁶¹ BARTLETT, *supra* note 14, at 7.

⁶² Crain, *supra* note 13, at 548–49.

⁶³ Peter R. Macleod, *Latin in Legal Writing: An Inquiry into the Use of Latin in the Modern Legal World*, 39 B.C. L. REV. 235, 250 (1997) (citing LAWRENCE M. FRIEDMAN, *THE LEGAL SYSTEM: A SOCIAL SCIENCE PERSPECTIVE* 263 (1975)).

⁶⁴ *See* Debra R. Cohen, *Competent Legal Writing—A Lawyer’s Professional Responsibility*, 67 U. CIN. L. REV. 491, 506 (1999). Perhaps the plain English movement might be seen as the first technology aimed at undermining the monopoly.

at the commodity level, monopolies can lead to increased output and lower prices.⁶⁵ To use the example of a law firm, the full resources of the firm could be used to produce the monopolist product—say, some expertise in the law as it applies to a particular industry.⁶⁶ Another, less convincing, argument in favor of monopolies is that a monopoly can be used to avoid “the resource waste involved in competition among innovators.”⁶⁷

Some of the reasons proffered for maintaining the monopoly that the *legal* profession holds over the provision of legal services include that it ensures confidence in the rule of law, quality of service, and “professionalism.”⁶⁸ Other arguments put forward include that it preserves the separation of powers and the rights of citizens in a democracy.⁶⁹ Lawyers have fostered this monopoly, and lawyers guard it. This has led to criticisms of conflicts of interest—criticisms that are routinely rejected by the profession.⁷⁰ However, the problems associated with the monopoly over legal services run deeper than conflicts of interest.

C. *Problems Associated with Monopolies*

While the arguments above can be made in favor of monopolies, much more has been written, and laws have been enacted,⁷¹ because of the detrimental effects of monopolies. Susskind and Susskind

⁶⁵ Yoram Barzel, *Optimal Timing of Innovations*, 50 REV. ECON. & STAT. 348, 354 (1968).

⁶⁶ BARTLETT, *supra* note 14, at 8 (noting that expertise in Wall Street firms that consistently deal with the Securities Exchange Commission, and stating that “[i]t is impossible for most lawyers to acquire the sensitivity to securities regulation problems that a partner in a large Wall Street firm has at his fingertips.”).

⁶⁷ Barzel, *supra* note 65, at 354.

⁶⁸ See Montgomery, *supra* note 43, at 331 (citing A.B.A., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992)).

⁶⁹ But see David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 854–55 (1992) (dismissing these arguments as supporting lawyer independence).

⁷⁰ See, e.g., Christine Parker, *Regulation of the Ethics of Australian Legal Practice: Autonomy and Responsiveness*, 25 U.N.S.W.L.J. 676, 693 (2002) (“[T]he mainly self-regulatory nature of complaints investigation maintains the conflict between the legal professional association as ‘union’ and investigator-prosecutor for its own members.”).

⁷¹ See, e.g., *Competition and Consumer Act 2010*, c 4 (Austl.).

touched on the problems associated with monopolies held by professions including the legal profession and decried the view that “many professional services are inefficient, too costly, and have yet to be subject to the overhaul that the great majority of other industries have endured.”⁷² They did not directly draw the connection between the structures inherent in a profession as the cause of the monopoly in the first place. Neither did they deal directly with the problems in the literature that monopolies cause, just their ultimate effect.⁷³ It is therefore helpful to briefly touch on some monopoly theory to explain the impact that monopolies have had on the legal services market.

Apart from the misallocation of resources that they cause,⁷⁴ there are two other major problems with monopolies. First, they allow the monopolist to charge monopoly prices to extract a super profit. In law, there are constant reminders of this overcharging by lawyers.⁷⁵ It has been subject to almost universal criticism⁷⁶ but this has largely

⁷² SUSSKIND & SUSSKIND, *supra* note 3, at 34.

⁷³ *Id.*

⁷⁴ See, for example, the comments by Justice Finkelstein about the misallocation of resources caused by monopolies in *Application by Chime Communications Pty Ltd [No.2]* (2009) ACompT 2 (Austl.).

⁷⁵ See, e.g., Fiona Hudson, *Lawyer Banned Until 2020 for Excessively Overcharging Clients*, HERALD SUN (June 1, 2014), <http://www.heraldsun.com.au/news/law-order/lawyer-banned-until-2020-for-excessively-overcharging-clients/news-story/3ebca0807a94b231b6b5aad4155284e5> (citing instances of overcharging by lawyers); Richard Ackland, *Small Cases, Big Bills: Keddies Working Overtime to Kill Complaints*, SYDNEY MORNING HERALD (Nov. 18, 2011), <http://www.smh.com.au/federal-politics/political-opinion/small-cases-big-bills-keddies-working-overtime-to-kill-complaints-20111117-1nl5m.html> (providing details concerning a multi-million dollar lawsuit against an Australian law firm on grounds the firm overcharged clients); Gino Dal Pont, *Charging for Access to Justice*, VICTORIAN L. INST. J. (Sept. 1, 2017), <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/September-2017/Charging-For-Access-To-Justice> (“Overcharging damages the reputation of the legal profession.”).

⁷⁶ In *Simic v Norton* [2017] 1007 FamCA 3 (Austl.), his honor, addressing costs up front, said “the consequences of obscenely high legal costs are destructive of the emotional, social and financial wellbeing of the parties and their children. It must stop.” *Id.*; see also Steve Mark, *Billing Complaints—Are You Overcharging?*, Presentation to the Best Billing Practice Legalwise Seminar, Sydney (Mar. 24, 2009), http://www.olsc.nsw.gov.au/Documents/billing_compl

not changed the billing practices that foster the overcharging in the first place.⁷⁷ Second, monopolies cause a deadweight loss to society;⁷⁸ that is, the amount of product or service that could be provided at a lower price that the monopolist does not produce, and is not then available to the consumer who cannot afford the monopoly price for the service. In law firms, we see this as the legal services that would ordinarily be provided or consumed by society but that, because the price is too high, is not consumed by anybody—particularly those who can least afford it.⁷⁹ This has caused an enormous problem that is characterized as a problem of access to justice, but it can also be characterized as a deadweight loss caused by the lawyer monopoly.

Thirdly, there is no incentive for the monopolist to innovate to provide a better or more cost effective service. Indeed, Sheremata,

aints_are_you_overcharging.pdf (“[C]osts continue to be the most complained about issue at the OLSC. In 2006 – 2007, costs complaints comprised of 24% of all the written complaints we received. Of these complaints overcharging continues to be the most complained about issue in relation to costs (9.1%). This has been the case for many years now.”).

⁷⁷ I discuss the billing practices of the vast majority of law firms in Part IV. In discussions about billing practices while I was in practice, a common refrain was that “it is hard to argue against the business model of a person who makes \$1 million a year.”

⁷⁸ See Posner, *supra* note 16, at 807.

⁷⁹ This deadweight loss leads to a problem in that people cannot afford to obtain legal services. In 2016, the American Bar Association found that:

1. Most people living in poverty, and the majority of moderate-income individuals, do not receive the legal help they need
2. The public often does not obtain effective assistance with legal problems, either because of insufficient financial resources or a lack of knowledge about when legal problems exist that require resolution through legal representation
3. The vast number of unrepresented parties in court adversely impacts all litigants, including those who have representation.
4. Many lawyers, especially recent law graduates, are unemployed or underemployed despite the significant unmet need for legal services

A.B.A., REPORT ON THE FUTURE OF LEGAL SERVICES IN THE UNITED STATES 11–16 (2016) [hereinafter FUTURE OF LEGAL SERVICES REPORT], https://www.americanbar.org/content/dam/aba/images/abanews/2016F_LSRreport_FNL_WEB.pdf.

Associate Professor of Policy at York University in Canada, argued that “[m]onopolistic market structure[s] interact with network externalities to produce *barriers* to innovation.”⁸⁰ The American Bar Association Legal Futures Report noted that:

The billable hour model, which enables lawyers to earn more money if they spend more time on a matter, arguably provides less of an incentive to develop more efficient delivery methods than other ways to charge for services (for example, flat fees). This model also does not easily allow for innovations in scalability, branding, marketing, and technology that are found in most industries.⁸¹

The billing practices of law firms provide a good example of both a monopolist charging monopoly prices, and of the failure of monopolists to innovate. Nearly all law firms charge clients for the time that they spend on their matters in six minute increments.⁸² This has led to malaise in the legal profession that Susskind and Susskind recognized in all professions;⁸³ that “in most situations in which professional help is called for, what is made available may be adequate, good, or even great, but rarely is it world-class.”⁸⁴ Despite this, the lawyers’ monopoly over providing legal services has led directly to the profession becoming a business. It is worthwhile to reiterate the irony that the traits, or tenets, that mark out law as a profession that were spelled out in Part II have led directly to lawyers holding a monopoly. This has, in turn, led to law becoming a business with all of the problems that entail, as set out in Part IV. In a further irony, this business is incapable of displaying the ideals of a profession set out in Part II.

IV. LAW AS A BUSINESS

This Part outlines how the structures through which law is practiced have evolved to exacerbate the push for profit. In Part IV.A, I argue that the partnership model itself promotes internal

⁸⁰ Willow A. Sheremata, *Barriers to Innovation: A Monopoly, Network Externalities, and the Speed of Innovation*, 42 ANTITRUST BULL. 937, 972 (1997) (emphasis added).

⁸¹ FUTURE OF LEGAL SERVICES REPORT, *supra* note 79, at 16.

⁸² Kirby, *supra* note 48, at 258–59. In this way, firms are able to capture even the most inconsequential work.

⁸³ SUSSKIND & SUSSKIND, *supra* note 3, at 33–37.

⁸⁴ *Id.* at 36.

competition for greater profits. In Part IV.B, I describe how the push by law firm partners for greater profits has increased since around the 1950s. In Part IV.C, I show how this desire for profit has changed the practice of law from a profession to a business, and in Part IV.D, I give the example of incorporated legal practices as the epitome of this change.

A. *The Partnership Structure*

Whatever view one takes about the merits of the practice of law becoming a business, it clearly has done so.⁸⁵ As discussed in Part III, there has been no incentive for the monopolist law firms to decrease prices, to innovate, or to improve service to their customers. An example of the sameness of the provision of legal services is the model through which lawyers have chosen to provide their services—the partnership.⁸⁶ The structure adopted by most law firm partnerships can be viewed as a pyramid: there are a limited number of partners at the top of the pyramid who control the business, and, underneath these partners are employed lawyers of varying experience and expertise who are encouraged to clamor for partnership by meeting billing targets. George Beaton noted that early in the 20th Century, Paul Cravath of Cravath, Swaine & Moore LLP invented the “foundation for the contemporary BigLaw business model.”⁸⁷ That is, the structure of partners operating a

⁸⁵ Christopher J. Whelan, *The Paradox of Professionalism: Global Law Practice Means Business*, 27 PENN ST. INT’L L. REV. 465, 466 (2008).

⁸⁶ See *infra* Part IV.B (discussing the number of lawyers employed by partnerships).

⁸⁷ See Beaton, *supra* note 21. This is sometimes referred to as the Cravath model after the system developed in the early part of the 20th Century by Paul Cravath of Cravath, Swaine and Moore LLP. The firm’s website states that:

In the early twentieth century, when Paul Cravath was a young lawyer, the structure of American law firms was quite different from today’s. Associates were often trained as apprentices to another solo practitioner, and made a living based on the clients that they could bring into their practice. Paul Cravath recognized the inefficiency and shortcomings inherent in that prevailing law firm structure and decided he wanted to change it.

The System’s History, CRAVATH, SWAINE & MOORE LLP, <https://www.cravath.com/systemshistory/> (last visited Jan. 15, 2019).

partnership model where associates work to become partners from within the firm in a competitive environment.

Because lawyers have a monopoly on legal services and clients must use lawyers for legal advice, law firms have been able to charge monopoly prices for their services. Partners in a law firm take a share of the profit generated (the amount of revenue minus costs). This drives all the activities of the firm toward creating maximum profit to share between the partners. In a partnership, there is no requirement to distribute profits other than to the partners—such as to investors for example—and *all* profits can be distributed at the partners' choosing. That is, the partners can choose to divert all of the profits to themselves and not to reinvest into the business.

Profit can be increased in a number of ways, for example, by increasing the amount charged for the service or by reducing the costs incurred to provide that service. However, the typically small group of partners at the top of the partnership pyramid cannot create maximum profit by themselves. Profit at the top of the pyramid is created by “leveraging”⁸⁸ the amount charged out by those below them on the pyramid. Therefore, legal practice has become a game of mathematics where revenue equals the number of fee earners multiplied by hours billed per day, multiplied by the charge out rate, multiplied by the number of days in the year. Generally, increasing any one of these components increases the size of profit (depending on cost increases). It is not possible to increase the number of days in a year, so to increase profit, partners must increase either (or both) charge out rates or hours billed.⁸⁹ In that way, increasing the leverage, by increasing the number of junior lawyers and their

⁸⁸ Sean Larkan, *Low Leverage: A Low Road to Ruin for Law Firms?*, 6 *EDGE INT'L REV.*, no. 2, 2011, at 21, 21 (2011), <https://www.legalleadersblog.com/files/2011/10/Edge-International-Review-October-2011-Low-leverage-low-road-to-ruin-by-Sean-Larkan.pdf> (defining “leverage” as “the average ration between associates (in this context, all non-partner lawyer fee earners) and partners (total partners, including both equity and non-equity”).

⁸⁹ The system of billing in six-minute increments was pioneered by United States lawyer Reginald Herber Smith in the early 1940s. The idea was first proposed in Smith's book, *Law Office Organization* (1943). For a discussion about Reginald Herber Smith and the history of the billable hour, see RONALD J. BAKER, *IMPLEMENTING VALUE PRICING: A RADICAL BUSINESS MODEL FOR PROFESSIONAL FIRMS* 115–17 (2010).

charge out rates, results in increased partner profit. Similarly, the more hours billed by the junior lawyers, the more profit is created.

B. *The Push for Profit*

Because lawyers have had a monopoly on providing legal services for so long, lawyer costs have spiraled upward. It is now common to see competitions within firms over hours billed, either in the form of overt competition tables or simply by publishing hours billed weekly by each employee. This pressure on lawyers to maintain or increase hours billed again leads to unhealthy work practices. There is little wonder that the general public sees lawyers as greedy⁹⁰ and psychopathic.⁹¹ This incentive to bill creates some perverse behaviors. For example, the longer it takes to complete a job the higher the bill and the better it is for the individual lawyer and the firm. A solicitor who takes longer to complete jobs will appear more valuable to a firm than a solicitor who completes jobs quickly.⁹² As Justice Kirby noted, “[t]he system of billable hours can reward the slow-witted lawyer. It can penalize the experienced, wise and efficient.”⁹³ Similarly, it must be hard for junior lawyers to resist the urge at times to put the thumb on the scale and charge just one more unit per matter in order to make their individual monthly budgets. Also, the annual pay increase discussion for employed lawyers is immovably tied to, and is more than covered by, an increased charge out rate.

⁹⁰ See, e.g., Stephen Glover, *A Plague on Lawyers: Stephen Glover's Blisteringly Provocative Critique on the Greed, Self-Importance and Lack of Scruples of Britain's Last Unreformed Vested Interest Group*, DAILY MAIL (Feb. 11, 2017), <http://www.dailymail.co.uk/news/article-4213998/A-critique-greed-Britain-s-lawyers.html> (citing a recent American poll that ranked lawyers as being the most greedy profession). The comments to this article from readers are telling on the thoughts of the general public about lawyers.

⁹¹ See Eric Barker, *Which Professions Have the Most Psychopaths? The Fewest?*, TIME (Mar. 21, 2014) (citing KEVIN DUTTON, *THE WISDOM OF PSYCHOPATHS* (2012)), <http://time.com/32647/which-professions-have-the-most-psychopaths-the-fewest/> (noting lawyers as ranked second, behind only CEOs of companies). I question whether CEO is a profession based on the definition given earlier, but nevertheless, second!

⁹² Kirby, *supra* note 48, at 259.

⁹³ *Id.*

This trend towards increasing partner profits gained impetus in the United States around 1985 when the magazine *The American Lawyer* began publishing the annual profit per partner figures for law firms.⁹⁴ Instead of competition leading to reduced prices as one might expect in a healthy competitive environment, the competition among law firms has become to increase profits per partner. Thirst for greater personal profits leads people to act in certain ways and it is no accident that partner incomes increase year upon year.⁹⁵ These metrics of firm performance have themselves become a commodity. Thomson Reuters, for example, provides “competitive legal benchmarking” on law firms around the world on its “Peer Monitor” platform.⁹⁶ Currell and Henderson use the returns to partners as their measure of law firm success. They reason that this is “because industry health is generally measured by market value or profits, not by total employment or whether everyone who wants a job can get one on the terms they want.”⁹⁷ Conversely, I suggest that this approach to measuring success in the legal profession is precisely why the profession is in such dire circumstances.

This focus on profit sharing among groups of lawyers has driven an unhealthy approach to the provision of legal services. To become a partner, a lawyer must demonstrate a consistent level of client billings. If billing clients large sums of money is the incentive to lawyers’ progress within the firm, then this is exactly what will happen. Sometimes, though, despite lawyers reaching billing benchmarks, partners will seek to maintain the extreme profits of the partnership for themselves and often make joining the partnership a

⁹⁴ See, e.g., Noam Scheiber, *The Last Days of Big Law*, NEW REPUBLIC (July 21, 2013), <https://newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries>.

⁹⁵ Partner salaries have recently become more balanced. See Katie Walsh, *Law Firm Partner Salaries Stall but Are Still \$1m a Year*, FIN. REV. (Aug. 4, 2017), <http://www.afr.com/business/legal/law-firm-partner-salaries-stall-but-are-still-1m-a-year-20170802-gxo5yc>. But, one million dollars a year (after rent, labor costs, and reinvestment)—is any lawyer worth that much? This is a monopolist price.

⁹⁶ *Peer Monitor*, THOMSON REUTERS, <http://legalsolutions.thomsonreuters.com/law-products/solutions/peer-monitor> (last visited Jan. 15, 2019).

⁹⁷ Daniel G. Currell & M. Todd Henderson, *Can Lawyers Stay in the Driver’s Seat?*, INT’L REV. L. & ECON., June 2014, at 18 n.7.

continuously disappearing horizon for these lawyers. This can lead to the senior lawyers in a firm becoming disenchanted.

This quest for profit has diverted the legal profession from its professional roots and it has become a business instead. I do not mean to say, and neither could I, that all lawyers within firms have lost their professional character. There is a worrying, and perhaps growing, perception of lawyers as greedy and sharp, and this is leading clients to look for alternatives. Those on the outside of the law firm tent are more than happy to provide those alternatives and to disrupt the BigLaw model.

C. *Law Firm Statistics Show that Law has Become a Business*

We should not let BigLaw define the entire legal profession.⁹⁸ There are many sole practitioners, community legal centres, Legal Aid lawyers and not-for-profit legal service providers that truly do exist to provide a service to the community. However, lawyers are predominantly employed in law firms. There are 1,338,678 lawyers in the United States,⁹⁹ which means that there is one lawyer for every 244 people.¹⁰⁰ It is difficult to get an accurate picture of the number

⁹⁸ See George Beaton, *Will It be the LPOs That Drive #BigLaw Business Model Change?*, BEATON CAP. (June 22, 2012), <http://www.beatoncapital.com/2012/06/will-it-be-the-lpos-that-drive-biglaw-business-model-change/>.

According to Beaton, BigLaw is:

short-hand for the large law firm, partnership-based law firm business model. These firms represent some \$200billion in revenues around the world and number between 200 and 300, depending on how 'large' is defined. Many are still single jurisdiction firms, but an increasing number are globalising. The largest are \$2billion+ in size and the smaller ones ~\$100million . . . (From the perspective of a single jurisdiction, like Australia for example, perhaps 30-40 firms constitute #BigLaw.).

Id.

⁹⁹ See A.B.A., ABA NATIONAL LAWYER POPULATION SURVEY: LAWYER POPULATION BY STATE (2018), https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_by_State_2018.pdf.

¹⁰⁰ The current population is 327,167,434 according to the United States Census Bureau. *United States: 2018 Population Estimates*, U.S. CENSUS BUREAU, <https://www.census.gov/search-results.html?q=population&page=1&stateGeo=none&searchtype=web&cssp=SERP> (last visited Jan. 15, 2019).

of lawyers employed in law firms,¹⁰¹ but one account estimates that it is approximately 75%.¹⁰² In Australia, where, because of the smaller market more fine-grained figures are recorded, a similar proportion of lawyers in law firms is observed. On this closer analysis, it is clear that law firms are the dominant employer of lawyers. A report on the profile of lawyers in Australia conducted for the New South Wales Law Society by Urbis in 2016 showed that, in October 2016 there were 71,509 lawyers in Australia.¹⁰³ Around 70% (or 50,000) of these lawyers were employed in private practice.¹⁰⁴ Further, 70% of these lawyers worked in a law firm of between 2 and 40+ partners. These figures indicate that it is the law firm model that employs by far the most lawyers and thus should attract most attention.

Law firms are typically divided by reference to their size. The world's largest law firms are in the United States and the United Kingdom.¹⁰⁵ Through mergers (both international and local), some of the world's largest law firms have become mega law firms with over \$2 billion in revenue.¹⁰⁶ Large firms continue to amalgamate and take over smaller firms around the world and a growing number of ultra large law firms now conduct business on a global scale. In

¹⁰¹ For example, the Bureau of Labor Statistics published data on the group "Legal Services." See NAICS 541100 – Legal Services, BUREAU OF LAB. STAT., https://www.bls.gov/oes/current/naics4_541100.htm (last visited Jan. 16, 2019). However, this group includes lawyers, law clerks, judges, magistrates, judicial workers, arbitrators, mediators, conciliators, paralegals, and legal assistants. See *id.*

¹⁰² Sally Kane, *Working in a Private Practice Law Firm*, BALANCE CAREERS (Jan. 12, 2019), <https://www.thebalancecareers.com/law-firm-life-2164667>.

¹⁰³ URBIS PTY LTD, NATIONAL PROFILE OF SOLICITORS 2016 REPORT 2 (2017). [hereinafter URBIS REPORT], <https://www.lawsociety.com.au/sites/default/files/2018-04/NATIONAL%20PROFILE%20OF%20SOLICITORS%202016.compressed.pdf>.

¹⁰⁴ *Id.* at 19.

¹⁰⁵ Staci Zaretsky, *The Global 100: Fractured Futures At The Richest Law Firms In The World* (2017), ABOVE THE LAW (Sept. 25, 2017, 1:35 PM), <https://abovethelaw.com/2017/09/the-global-100-fractured-futures-at-the-richest-law-firms-in-the-world-2017/>.

¹⁰⁶ George Beaton, *Will We See a \$10 Billion BigLaw Firm?*, BEATON CAP. (May 11, 2015), <http://www.beatoncapital.com/2015/05/will-we-see-a-10-billion-biglaw-firm/>.

the protected environment within the monopoly on legal services, law firms have been able to form these cartels among firms that have now developed law as a multi-billion dollar business.¹⁰⁷ From his window, it would be difficult for the man on the Clapham omnibus to perceive the tenets of professionalism in these multinational firms.

D. *Incorporated Legal Practices*

Another more recent aspect of law firms that shows the shift from law as a profession to law as a business is the incorporated legal practice. In the United States, paragraph (d) of Rule 5.4 of the Model Rules of Professional Conduct restricts ownership of law firms to lawyers. This applies also to law firms set up as Professional Limited Liability Companies (PLLCs) that operate on a similar basis to normal limited liability companies that cannot issue stock. In other jurisdictions, legal practices or firms of lawyers have been allowed to incorporate and issue shares in the incorporated entity, for example, in the United Kingdom since 2007, and Australia since 2001.¹⁰⁸ This takes the law as a business model one step further away from a profession. Rationales for this practice include that it limits liability for partners for the wrongs of their co-partners and gives autonomy to partners in law firms to choose the structure under which they operate.¹⁰⁹ However, other reasons are more financial in nature and include to “reduce tax on law firm profits . . . [build] a capital base for expansion . . . and [create] a more efficient and effective management structure.”¹¹⁰ Thornton argued that this initiative to allow law firms to incorporate “reveals perhaps more clearly than any other the extent to which legal practice has been imbued with the spirit of competition, which threatens to leave professionalism languishing in the rear. Shareholders, after all, are

¹⁰⁷ Beaton, *supra* note 98.

¹⁰⁸ See *Legal Profession Amendment (Incorporated Legal Practices) Act 2000* (NSW) (Austl.).

¹⁰⁹ Christine Parker, *Law Firms Incorporated: How Incorporation Could and Should Make Firms More Ethically Responsible*, 23 U. QUEENSL. L.J. 347, 350 (2004).

¹¹⁰ *Id.* at 351.

primarily investors interested in maximizing the return on their investment.”¹¹¹

The incorporated partnership is often ultimately still controlled by the same group—the partners of the firm. Being a partner in a monopoly law firm provides no training for success as a business person. In 2007, Slater and Gordon was the first law firm in the world to go public.¹¹² In 2010, Andrew Grech, formerly the Chief Executive of Slater and Gordon, noted:

that the profession is increasingly embracing the concept of conducting the business of a law practice through the incorporated legal practice model . . . should be no surprise when the benefits are considered. These include limited liability, less disruptive entry and exit from ownership, the inclusion of non-lawyer owners as contributors to the success of the enterprise, and greater capacity to raise debt and equity.¹¹³

None of those proposed benefits mention a better or more efficient service to clients or the tenets of professionalism. Mr. Grech continued: “Incorporation has a number of advantages, but it highlights the tensions between the role of the legal profession in the administration of justice and upholding the rule of law, and the demands on legal practitioners who are also charged with responsibility for conducting a successful business enterprise.”¹¹⁴

In 2017, ten years after Slater and Gordon initially went public in pursuit of its “successful business enterprise[,]” its share price collapsed, and it was acquired by a consortium of international hedge funds.¹¹⁵ In relation to Slater and Gordon’s demise, Adele Ferguson in the *Sydney Morning Herald* noted that:

¹¹¹ Margaret Thornton, *The New Knowledge Economy and the Transformation of the Law Discipline*, 19 INT’L J. LEGAL PROF. 265, 271 (2012).

¹¹² Catherine Ho, *A Law Firm IPO? Not So Fast.*, WASH. POST (Feb. 16, 2015), https://www.washingtonpost.com/business/capitalbusiness/a-law-firm-ipo-not-so-fast/2015/02/16/d8085ff6-b09b-11e4-827f-93f454140e2b_story.html?noredirect=on&utm_term=.213bd62e7ceb.

¹¹³ Andrew Grech, *New Legal Practices Embracing Incorporation*, AUSTRALIAN (July 9, 2010, 1:00 AM), <http://www.theaustralian.com.au/business/legal-affairs/new-legal-practices-embracing-incorporation/news-story/1e8b55f2703cfbdb04a376444b5bd046>.

¹¹⁴ *Id.*

¹¹⁵ Adele Ferguson, *Ex-Slater and Gordon Chief Andrew Grech Earns 5 per cent of Company’s Value in Pay*, SYDNEY MORNING HERALD (Sept. 1, 2017, 6:32

Slater and Gordon went on a debt-fuelled acquisition binge that almost destroyed it. But along the way it forgot its core values, which include deep ties with the labour movement and representing the underdog, the victim.

Britain is a tough market, with a number of Australian companies losing a fortune. Hubris and greed would add Slater and Gordon to the list.¹¹⁶

Technology played no part in Slater and Gordon's demise but hubris and greed did. This change to law as a business, as exemplified by Slater and Gordon's, has eroded the professional character of the legal profession and the professionalism of lawyers. It is no surprise then that it is the dysfunctional business model of the law firm that disruptive enterprises have targeted. It is not technology alone that will mean the end of the profession, which, as discussed, has been in a long decline brought about in part by the very structures through which it is practiced. What is left to disrupt is the BigLaw business model.

There are now at least five broad forces working towards disrupting the legal practice market. As discussed, the problems facing the profession, now in the form of disruption from NewLaw and new technologies, derive in part from the change from law as a profession to law as a business after years of monopolist practices. This drive for profit has forced a reaction from clients as consumers of legal services. There are a number of clear trends in the legal services market now that make it ripe for disruption from smaller, more nimble suppliers.

V. FIVE FACTORS DISRUPTING THE LAW FIRM MODEL

As noted in Parts III and IV, the legal profession, with its monopoly on providing legal services, has become a business. This Part identifies five factors that, together, have begun to disrupt the legal services business. Predominant among these forces is the pressure that clients are exerting on law firms to charge less and to use alternative fee models (AFM) such as fixed fees and retainer agreements. However, there are a number of other interrelated trends impacting the way big firms are having to deliver their

PM), <http://www.smh.com.au/business/exslater-and-gordon-chief-andrew-grech-earns-5-per-cent-of-companys-value-in-pay-20170901-gy8znt.html>.

¹¹⁶ *Id.*

services, that is: increasing numbers of NewLaw providers, the increase in law graduates, the explosion in the number and types of new technologies directed at law,¹¹⁷ and the freer access to the law itself—what I call the “AustLII effect” and which is explained in Part V.E below. This presents a threat to the incumbent legal service providers, because it dilutes the legal profession’s monopoly.

Furlong noted the danger that the legal profession was failing to maintain relevance.¹¹⁸ He argued that there were two preconditions for the profession to maintain its privileged status: “First, the fiduciary relationship between the lawyer guild and the society it served had to remain intact; second, lawyers had to be the only viable option for the provision of legal services.”¹¹⁹ I have discussed the failure of the profession to maintain its professional roots—Furlong’s first precondition. The second condition proffered by Furlong is also, as discussed in this Part, under extreme threat from a number of forces that are operating to destroy the monopoly and allow other providers into the market for legal services.

It will take perhaps a generation to completely destroy the monopoly. Frey and Osborne argued that change at this scale was difficult, not because of “the lack of inventive ideas that set the boundaries for economic development, but rather powerful social and economic interests promoting the technological status quo.”¹²⁰ Law is a profession with a long history and deep and entrenched interests in maintaining the status quo and holds great influence on political power. However, disruption is insistent and, in the case of the legal services industry, multi-faceted.

¹¹⁷ Christensen calls this continual onslaught of technology the “technology mudslide.” See CLAYTON CHRISTENSEN, *THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL* 7 (2013).

¹¹⁸ Furlong, *supra* note 28, at 421.

¹¹⁹ *Id.*

¹²⁰ Carl Benedikt Frey & Michael A. Osborne, *The Future of Employment: How Susceptible are Jobs to Computerisation?*, 114 *TECH. FORECASTING & SOC. CHANGE* 254, 256 (2017) (citing J.A. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* (1962)).

A. *Client Reactions to Overcharging*

Under the protection of the monopoly, lawyers and law firms have been able to overcharge for legal services. Clients have begun to respond to this behavior in a number of significant ways. In an extreme example, in 2017, a Silicon Valley company, tired of paying the fees charged by law firms, created its own law firm and intends to use new technologies to streamline the work previously performed by their external lawyers.¹²¹ Corporate clients are also trying to minimize legal spending in other, less dramatic ways, including, as discussed below, reducing the amount they spend on external lawyers and doing more work in-house using new technologies and freer access to the law.

1. *Reducing the Amount Spent on Lawyers*

Furlong noted that “the longstanding asymmetry of knowledge between lawyers and clients is rebalancing fast, and this will realign the power dynamics between the two just as quickly.”¹²² As an example, powerful and tech-savvy clients such as Microsoft are already withdrawing legal work from traditional law firm suppliers and demanding alternative models of legal service delivery.¹²³ Currently around 60% of Microsoft’s external legal matters are dealt with by firms using fee structures other than the traditional billable hour. Microsoft intends to increase that to 90% within two years.¹²⁴ How law firms will respond to this push from corporate clients is still unknown but reports of heavy discounting of legal bills are beginning to emerge that may provide some clues.¹²⁵

¹²¹ Elizabeth Dwoskin, *This Silicon Valley Start-up Wants to Replace Lawyers with Robots*, WASH. POST (Sept. 14, 2017), https://www.washingtonpost.com/news/innovations/wp/2017/09/14/this-silicon-valley-startup-wants-to-replace-lawyers-with-robots/?utm_term=.be17b1511311.

¹²² Furlong, *supra* note 28, at 431.

¹²³ David Ruiz, *Microsoft Rethinks Law Firm Relationships as 13 Join Alternative Billing and Diversity Initiative*, LEGAL WK. (Aug. 8, 2017, 8:11 AM), <http://www.legalweek.com/sites/legalweek/2017/08/08/microsoft-rethinks-law-firm-relationships-as-13-firms-join-alternative-billing-and-diversity-push/>.

¹²⁴ *Id.*

¹²⁵ See, e.g., MELBOURNE LAW SCHOOL & THOMSON REUTERS, 2015 AUSTRALIA: STATE OF THE LEGAL MARKET 12 (2015) [hereinafter STATE OF THE LEGAL MARKET], http://law.unimelb.edu.au/__data/assets/pdf_file/0006/168915

This is an international phenomenon. For example, in 2014, the Canadian Bar Association published a report titled *Futures: Transforming the Delivery of Legal Services in Canada*. The *Futures* report noted that clients were calling for lower legal costs and certainty in billing.¹²⁶ These changes are having an effect on the lawyers' monopoly too, as large law firms are being forced to innovate to retain clients.

As discussed in Part III, a lack of incentive to innovate is a recognized problem with monopolies.¹²⁷ That law firms are responding to client pressure on fees and seeking to innovate may indicate that the monopoly is dissipating. The 2017 State of the Legal Market report noted that: "many firms have added or elevated innovation as a major element of their business strategy. There is no uniform approach, but many firms are experimenting with innovation committees, shark-tank-type innovation competitions, hackathons, app development and incubators."¹²⁸

In-house counsel and other legally trained corporate advisers are also weaponized by the easy access to eager NewLaw lawyers who can use the latest legal technologies, but without the overheads.

2. Work Moving In-House

Increasingly, companies are bringing legal work in-house rather than spending on external law firms. In Australia, the 2017 Urbis Report noted an increase in the number of in-house legal counsel between 2011 and 2016 of over 45% from 7,325 to 11,675.¹²⁹ According to another report, this one prepared by Mahlab, on Corporate Counsel, the impact of growing in-house teams within corporations:

3/2015AUREportFINAL1.pdf ("The Asian Lawyer, January 1, 2015 reported that HWL Ebsworth's growth could be attributed to aggressive lateral partner hires and pricing. They cited the firm willing to offer a 40 to 50% price discount to comparable firms in order to win work.").

¹²⁶ CANADIAN BAR ASSOC., *FUTURES: TRANSFORMING THE DELIVERY OF LEGAL SERVICES IN CANADA* 20 (2014), https://www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Legal%20Futures%20PDFS/Futures-Final-eng.pdf.

¹²⁷ MOTTA, *supra* note 15, at 56–57.

¹²⁸ STATE OF THE LEGAL MARKET, *supra* note 125, at 9.

¹²⁹ URBIS REPORT, *supra* note 103, at 21.

is significant and ongoing. The big law firms are meeting these challenges by reshaping their services to offer more flexible fee structures and increase efficiency, and relying on outsourcing (usually offshore) to provide more streamlined and cost-effective offerings. However, there has been a circa 30% decrease in briefs to private law firms, with the average individual external legal spend by Australian corporations now sitting well below AUD \$2 million. External lawyers are generally sought for specialist advice on key projects or for the firepower required for a multi-million or billion dollar transaction. Even then, corporations are flexing muscle, hiring specialists in order to keep the work in-house.¹³⁰

In-house counsel can themselves also use new technologies that are able to interrogate the laws and provide concise advice far faster than law firms. In response, law firms continue to look for ways to retain clients by offering reduced fees and by themselves adopting new technologies.

B. *Too Many Lawyers*

In 2016, The New York Times reported that after access to loans to students was made freer in 2006, “[l]aw schools jacked up tuition and accepted more students, even after the legal job market stalled and shrank in the wake of the recession.”¹³¹ This resulted in two outcomes, a “drastic drop in law school applications since 2011 . . . [and that] to maintain enrolment numbers, law schools have had to lower their admissions standards and take even more unqualified students.”¹³² Note that they did not reduce the number of law students entering law schools from those numbers inflated after 2006. In 2016, the American Bar Association issued its *Report on the Future of Legal Services in the United States*¹³³ which noted that “data from the U.S. Bureau of Labor Statistics indicate that unemployment for recent law graduates remains significantly higher compared to the national average across other labor categories.”¹³⁴

¹³⁰ MAHLAB, *supra* note 32, at 4.

¹³¹ *The Law School Debt Crisis*, N.Y. TIMES: EDITORIAL BOARD (Oct. 24, 2015), <https://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html>.

¹³² *Id.*

¹³³ FUTURE OF LEGAL SERVICES REPORT, *supra* note 79.

¹³⁴ *Id.* at 16 (citing Dwoskin, *supra* note 121) (highlighting the paradox that an increase in law graduates has not rectified a deficit in access to justice).

Jordon Furlong highlighted “a total population of unemployed and underemployed American lawyers in the tens of thousands, one that swells a little more every year.”¹³⁵

In a similar trend, the number of law graduates in Australia has increased significantly in the past 20 years,¹³⁶ and this trend is set to continue.¹³⁷ Australia now has 39 Law Schools, some of which have intakes in first year of over 1,200 students.¹³⁸ In 2015, after reports that the number of law graduates in Australia had increased to around 15,000, the Council of Australian Law Deans (CALD) sought to assuage concerns by publishing the “actual” number of law graduates in 2015 as only 7,583.¹³⁹ Whatever the correct figure is, the number is arguably greater than is required by existing law firms.

As discussed in Part IV, there are now 71,509 lawyers in Australia—or 1 lawyer for every 343 people. On one reckoning, continually increasing the number of lawyers in the market reduces the profit available to, and dilutes the market dominance of, incumbent law firms. This is in fact what we are witnessing as the increased number of NewLaw suppliers that are stemming from this rash of new law graduates eats into the legal services market dominated by BigLaw.¹⁴⁰

¹³⁵ Furlong, *supra* note 28, at 417.

¹³⁶ Thornton, *supra* note 111, at 266–67; ROSS, *supra* note 5, at 72; Woelert & Croucher, *supra* note 26, at 491–94.

¹³⁷ Gwilym Croucher & Peter Woelert, *How Australia Got So Many Law Schools*, UNIV. MELBOURNE, <https://pursuit.unimelb.edu.au/articles/how-australia-got-so-many-law-schools> (last visited June 22, 2018).

¹³⁸ See *Australia’s Law Schools*, STUDYING LAW IN AUSTRALIA, <https://cald.asn.au/slia/australias-law-schools/> (last visited Feb. 8, 2019).

¹³⁹ COUNCIL OF AUSTRALIAN LAW DEANS, DATA REGARDING LAW SCHOOL GRADUATE NUMBERS AND OUTCOMES (2015), https://cald.asn.au/wp-content/uploads/2017/11/Factsheet-Law_Students_in_Australia-1.pdf.

¹⁴⁰ At every law and technology function I have attended recently, I have met another young lawyer more than willing to show me his or her newly developed app that can perform anything from preparing a will to providing tax advice. For example, at one recent event, I met Adrian Cartland, a young lawyer who established Ailira. See *Ailira*, CARTLAND L., <https://www.cartlandlaw.com/ailira/> (last visited Feb. 8, 2019). Ailira is touted as the “first law firm without lawyers.” See Emma Ryan, *Law Firm Without Lawyers Opens Its Doors*, LAW. WKLY.

C. *NewLaw and Non-Law*

This oversupply of lawyers leads to the next pressure on the big law firm monopoly on providing legal services; new entrants to the market, eager to provide an alternative model to the law firm, have begun to make inroads into the legal services business. In the following subparts of Part V.C, I describe some of the disruptive forces affecting the market, including NewLaw providers, those who are not lawyers but are now able to provide services that law firms used typically to provide, and the growing prevalence of onshoring and offshoring that law firms can now use to cut down on overheads and duplication.

1. *NewLaw*

There are almost daily reports of new NewLaw legal service providers entering the market.¹⁴¹ The term NewLaw was coined in 2013 by Beaton Capital analyst Eric Chin,¹⁴² who described them thus:

These firms are designed around virtual work spaces and rely on the rise of supertemps. Supertemps are lawyers who have been trained by traditional BigLaw firms who are now looking for flexible work arrangements. These alternative business model (ABM) legal services providers are able to provide the same or similar service levels to BigLaw—but at or below incumbents' break-even points.¹⁴³

The idea of what NewLaw is has evolved in the last four years to include a range of start-up firms or sole practitioners that provide legal services in innovative ways using (either new or existing)

(Nov. 15, 2017), <https://www.lawyersweekly.com.au/sme-law/22256-law-firm-without-lawyers-opens-its-doors>.

¹⁴¹ For example, see generally the reports on ARTIFICIAL LAW., <https://www.artificiallawyer.com/> (last visited Mar. 17, 2019).

¹⁴² Eric Chin, *2018: The Year Axiom Becomes the World's Largest Legal Services Firm*, BEATON CAP. (Sept. 13, 2013), <http://www.beatoncapital.com/2013/09/2018-year-axiom-becomes-worlds-largest-legal-services-firm/>.

¹⁴³ *Id.* This is the textbook definition of disruption. See Christensen, Raynor & McDonald, *supra* note 1, at 46.

technology.¹⁴⁴ NewLaw providers include LegalZoom¹⁴⁵ and RocketLawyer¹⁴⁶ in the United States, and LawPath and Nexus Law Group in Australia.¹⁴⁷ LegalZoom and NexusLawyers provide lawyers on demand to deliver legal work at a contracted price outside of the traditional law firm partnership model. Because they do not have the overhead costs of law firm office space, employee costs, or law firm artworks, they are able to access and use the vast array of technology that is currently available to provide legal services at a significantly reduced cost. More and more lawyers who have become disillusioned with the fading prospects of partnership in traditional law firms are joining the ranks of NewLaw. These

¹⁴⁴ See Jordan Furlong & Sean Larkan, *A Brief Inventory of NewLaw in Australia*, AUSTL. LEGAL PRAC. MGMT. ASS'N (Aug. 25, 2014), <https://www.alpma.com.au/a-survival-guide-for-legal-practice-managers/inventory-of-new-law-in-Australia>.

¹⁴⁵ See LEGALZOOM, <https://www.legalzoom.com/country/au> (last visited Feb. 8, 2019) (“LegalZoom provides the legal solutions you need to start a business, run a business, file a trademark application, make a will, create a living trust, file bankruptcy, change your name, and handle a variety of other common legal matters for small businesses and families.”).

¹⁴⁶ See ROCKET LAWYER, <https://www.rocketlawyer.com/home.rl> (last visited Feb. 8, 2019). RocketLawyer allows clients to type in a legal query which is answered by a lawyer within a network of lawyers around the United States who provide the advice at low cost. *Id.* The site also provides a document review system the same way or allows you to create a new document (such as a contract) quickly and easily online without the need for a lawyer. *Id.*

¹⁴⁷ See NEXUS LAW GROUP, <https://www.nexuslawyers.com.au/> (last visited Feb. 8, 2019). Nexus Law Group’s website claims that:

OpenLaw™ is a unique cloud-based practice management system that connects a network of senior specialist lawyers into a single operating platform, allowing them to work together seamlessly as one firm for the benefit of the client. OpenLaw enables Nexus to connect high-end, independent expertise with clients under a ‘direct access model’, more cost effectively than traditionally structured firms. The system incentivises collaboration and specialisation, which results in better outcomes for both lawyers and clients, without traditional firm overheads.

Id.

NewLaw providers are attractive to in-house lawyers who are under increasing pressure to reduce legal spending.¹⁴⁸

2. *Non-law Legal Service Providers*

Another recent trend is the proliferation of alternative suppliers of services that were traditionally performed by law firms. These not only include the resurrected multi-disciplinary firms set up by the big four accounting firms,¹⁴⁹ but, because of the ubiquity of new technology, also companies that were not traditionally seen as competitors to law firms who can now provide services that were traditionally performed by law firms. For example, ANZ bank now advertises that it can set up everything a business needs to create a modern company:

ANZ Business Ready® powered by Honcho can turn your business idea into reality quickly and easily. In a few guided steps you can receive your ABN, register your business name, set up a website, organise banking for your business and more.¹⁵⁰

Many of these tasks were traditionally performed and charged for by law firms when new businesses sought their advice—for significantly more than \$26 per month. This trend, aided by the availability of new technologies, looks set to continue to increase the pressure on law firms worldwide. Susskind and Susskind also reported that, in England:

[R]esearch suggests that almost two thirds of individuals would prefer to receive legal help from high-street brands than from conventional law firms. The Co-Op Bank in England has said that it will offer legal services from around 350 of its bank branches, while other well-known non-legal businesses, like BT, the telecommunications company, and the AA, the motoring association, have also committed to providing a range of everyday legal services. The solo lawyer is under threat.¹⁵¹

¹⁴⁸ Emma Ryan, *The New Face of Corporate Counsel*, LAW. WKLY. (Oct. 20, 2017), <https://www.lawyersweekly.com.au/features/22100-the-new-face-of-corporate-counsel>.

¹⁴⁹ See Sol Dolor, *Big Four Firm Launches Legal Services Market Assault*, AUSTRALASIAN LAW. (Jan. 12, 2018), <https://www.australasianlawyer.com.au/news/big-four-firm-launches-legal-services-market-assault-245444.aspx>.

¹⁵⁰ *Start a Business*, AUSTL. & N.Z. BANKING GROUP LIMITED, <https://www.anz.com.au/personal/> (last visited Jan. 21, 2019).

¹⁵¹ SUSSKIND, *supra* note 10, at 67 (internal citations omitted).

New technologies are making access to law more available, not only to the average citizens, but to other service providers who are able to perform legal tasks, once the domain of law firms, at a reduced cost and in an attractively packaged form. Although these new service providers sound ideal, one thing that might be lacking in this service arrangement from the client's perspective, is the familiarity with the client's business and ways of working that law firms have obtained because they have traditionally been the only provider.

3. *Offshoring and onshoring*

Another trend mostly evident in BigLaw firms is to "offshore"¹⁵² everyday work to jurisdictions that provide services at a far cheaper price than paying junior lawyers. Some law firms now send document review, discovery or document drafting to providers in, say, India, who will often provide a better service for a much cheaper price. Firms are still working on client confidentiality and client legal privilege issues that arise so that they can send more work offshore in this way, but this trend is obviously attractive to reduce costs for a limited range of work for law firms.

Another similar trend for multi-national firms is to onshore work. Onshoring is similar to offshoring but the firm sets up its own factory of paralegals, hired by the firm in a cheaper jurisdiction to do work provided by lawyers within the firm in offices around the world.¹⁵³ This factory of paralegals can provide twenty-four-hour service and, because the workers are retained by the firm, issues of confidentiality and privilege do not arise.

The ubiquity of new (and sometimes not-so-new) technologies has allowed NewLaw providers and non-lawyers to do increasing amounts of work that was traditionally performed by law firms. Examples of not-so-new technologies include the smartphone and the home computer. These devices are now incredibly powerful and

¹⁵² See Alan S. Blinder & Alan B. Krueger, *Alternative Measures of Offshorability: A Survey Approach*, J. LABOR ECON., Apr. 2013, at S117 (estimating that approximately 23.6 percent of all professional and related occupations could be offshored).

¹⁵³ See Loyita Worley, *Outsourcing, Offshoring, Nearshoring, Onshoring – What's Going On?*, LEGAL INFO. MGMT., Apr. 2012, at 11.

versatile tools that have unlimited access to the internet and can allow providers of all types to access the law and provide legal services from anywhere in the world at any time. The increasingly available range of new technologies directed at the legal services market that can be accessed through these devices multiplies the impact on the traditional legal services providers. Without even discussing *new* technologies, these old(er) devices have also opened up the legal services market to almost anyone. Furlong coined the term self-navigators to describe:

the growing population of people and businesses that make use of the developing suite of tools and providers outside of law firms - the emerging legal support ecosystem. These people and businesses are not engaged in traditional “self-representation”; they are simply taking on basic and straightforward aspects of the legal process while leaving the more complex issues to lawyers.¹⁵⁴

The diverse and growing range of NewLaw providers and the work being done by self-navigators and non-law firm providers continues to eat away at the law firm monopoly.

D. *New Technologies*

Susskind and Susskind argued that the high prices charged by lawyers because of their monopoly restricted access to the law. They argued that the increasing commoditization of traditional law jobs and new technology would combine to destroy the monopoly and end the profession. However, if we peel a layer more than Susskind and Susskind do,¹⁵⁵ we can see that the problems associated with monopolies have created the very basis of, and the reasons for, the disruption of the legal profession. This fatal flaw in the historical structures of the profession and the way the structures have been manipulated by lawyers for nearly a century has left the profession open to disruption. This particular chink in the armor of the legal profession has nothing to do with technology. But it is the new technology that is being used to disrupt the business of law.

There is already a proliferation of technology tools on the market that offer to make every aspect of legal practice faster, more accessible to a broader range of providers and clients, and more

¹⁵⁴ Furlong, *supra* note 28, at 428.

¹⁵⁵ SUSSKIND & SUSSKIND, *supra* note 3, at 33.

efficient.¹⁵⁶ It is not the law nor lawyers that are being directly threatened but the law firm businesses that have been overcharging. The attacks are surgically directed at the very barriers to the legal service market identified earlier. They are driven by a reaction to the issues raised in this part but are directed to providing greater and cheaper access to the law.

Rodney Brooks, Australian roboticist and Panasonic Professor of Robotics (emeritus) at MIT, identified the need for pragmatism when discussing the impact of new technologies and cited what has been termed Amara's law: that "[w]e tend to overestimate the effect of a technology in the short run and underestimate the effect in the long run."¹⁵⁷ While the potential of technology to disrupt the legal profession outlined in this Part is great, the work required to design, create, and train these tools is hard and laborious. Because law is a complicated social construct, technologists must conquer computer engineering bottlenecks in creative and social intelligence.¹⁵⁸

Artificial intelligence (AI) legal tools are becoming increasingly sophisticated and have demonstrated an ability to undertake certain legal tasks traditionally within the sole purview of a lawyer or paralegal. The most prominent developments have occurred in the areas of document review in discovery¹⁵⁹ and contract analysis,¹⁶⁰

¹⁵⁶ Stanford Law School CodeX Index has collated 771 companies that provide technology for the legal services market. *See Discover Legal Technology*, STAN. L. SCH., <https://techindex.law.stanford.edu/> (last visited Feb. 8, 2019).

¹⁵⁷ Rodney Brooks, *The Seven Deadly Sins of Predicting the Future of AI*, RODNEY BROOKS (Sept. 7, 2017), <https://rodneybrooks.com/the-seven-deadly-sins-of-predicting-the-future-of-ai/>.

¹⁵⁸ Frey & Osborne, *supra* note 120, at 262.

¹⁵⁹ *See, e.g.*, RELATIVITY, <https://www.relativity.com/> (last visited Jan. 15, 2019) (providing an example of an eDiscovery firm).

¹⁶⁰ *See, e.g.*, KIRA, <https://kirasystems.com/> (last visited Feb. 8, 2019) (giving an example of a contract review firm); LAWGEEX, <https://www.lawgeex.com/> (last visited Jan. 15, 2019) (providing an example of a contract review firm).

legal research,¹⁶¹ case outcome prediction,¹⁶² and expertise automation.¹⁶³

1. Document Review

Law firms have embraced AI applications in the document review area. While document review processes, particularly in discovery, have been targeted for automation by various vendors in the past, new AI applications have been shown to enhance the process. Natural language processing (NLP), machine learning, and other AI techniques are being applied to many aspects of the contract life cycle, including discovery, analysis, and due diligence.¹⁶⁴ These programs are able to process legal documents and identify contract provisions and critical data, including in non-standard formats like tables and forms.

Machine learning is most often associated with e-discovery applications but also underpins contract analysis and case predictions.¹⁶⁵ Machine learning is a sub-field of artificial intelligence which has advanced exponentially in the last twenty to thirty years because of increases in computer power, large available datasets, massive investment in learning and development, and better algorithms.¹⁶⁶ Computers are now adept at processing vast amounts of data, such as cases and journal articles, and at retrieving relevant data more accurately and efficiently than a human lawyer.¹⁶⁷ Computer scientists are actively working on creating applications

¹⁶¹ See, e.g., ROSS INTELLIGENCE, <http://www.rossintelligence.com/> (last visited Jan. 15, 2019) (giving an example of legal research provider).

¹⁶² See, e.g., LEX MACHINA, <https://lexmachina.com/> (last visited Jan. 15, 2019) (providing an example of a case prediction provider).

¹⁶³ See, e.g., NEOTA LOGIC, <https://www.neotalogic.com/> (last visited Jan. 15, 2019) (giving an example of an expert system developer).

¹⁶⁴ Michael Mills & Julian Uebergang, *Artificial Intelligence in Law: An Overview*, PRECED. SYD. NSW, Mar.–Apr. 2017, at 35.

¹⁶⁵ See Harry Surden, *Machine Learning and Law*, 89 WASH. L. REV. 87, 108–10 (2014); Mills & Uebergang, *supra* note 164, at 35.

¹⁶⁶ See Michael Guihot, Anne F. Matthew & Nicolas P. Suzor, *Nudging Robots: Innovative Solutions to Regulate Artificial Intelligence*, 20 VAND. J. ENT. TECH. L. 385, 403–04 (2017).

¹⁶⁷ See THE LAW SOC'Y OF NEW S. WALES, *THE FUTURE OF LAW AND INNOVATION IN THE PROFESSION* 41 (2017), <https://www.lawsociety.com.au/sites/default/files/2018-03/1272952.pdf>.

that can recognize principles in legal judgments,¹⁶⁸ and training computers to solve legal problems.¹⁶⁹ Through a process of training machines to identify and classify certain characteristics of documents for example, the machine, once trained, can process a very large number of documents extremely quickly and much more efficiently than a room full of junior lawyers. In contract analytics, Kira Systems¹⁷⁰ claims that “users consistently report time savings of 20–40% the first time using the software, and up to 90% or more with experience.”¹⁷¹ LawGeex claims that using its product to review contracts results in a time saving over more traditional methods of 80% and a cost saving of 90%.¹⁷² LawGeex also conducted a test comparing the performance of AI against twenty human lawyers in reviewing standard non-disclosure agreements. The lawyers and LawGeex’s AI reviewed five non-disclosure agreements to identify risks in the terms of the agreement. The human lawyers were able to do this with 85% accuracy. The AI was 94% accurate. The human lawyers took on average 51 minutes to complete the review of the five agreements. The AI took 26 seconds.¹⁷³

Technology assisted review uses statistical models, natural language processing and machine learning to electronically classify

¹⁶⁸ See, e.g., Olga Shulayeva, Advait Siddharthan & Adam Wyner, *Recognizing Cited Facts and Principles in Legal Judgements*, 25 ARTIF. INTELL. L. 107, 109–11 (2017) (reporting on studies using supervised machine learning to annotate sentences containing legal facts and principles in cases).

¹⁶⁹ See, e.g., L. Karl Branting, *Data-centric and Logic-based Models for Automated Legal Problem Solving*, 25 ARTIF. INTELL. L. 5, 6 (2017) (“In recent years, a new area of research has emerged that performs legal problem-solving using knowledge induced from collections of legal documents or other large data sets.”).

¹⁷⁰ See KIRA, *supra* note 160.

¹⁷¹ See KIRA: BENEFITS, <https://www.kirasystems.com/benefits/law-firms/> (last visited Feb. 8, 2019).

¹⁷² LAWGEEX, *supra* note 160.

¹⁷³ *AI vs. Lawyers: The Ultimate Showdown*, LAWGEEX, <https://www.lawgeex.com/AIvsLawyer/> (last visited Aug. 1, 2018). For a full version of the report, see LAWGEEX, *COMPARING THE PERFORMANCE OF ARTIFICIAL INTELLIGENCE TO HUMAN LAWYERS IN THE REVIEW OF STANDARD BUSINESS CONTRACTS* (2018), <http://ai.lawgeex.com/rs/345-WGV-842/images/LawGeex%20eBook%20AI%20vs%20Lawyers%202018.pdf>.

documents based on input from expert reviewers.¹⁷⁴ With repeated use, the program learns more sophisticated review techniques and becomes more adept at finding and collating only relevant documents. As these systems develop, they are increasingly accepted as not only more efficient than manual review but also as more accurate.¹⁷⁵

These are undoubtedly complex tasks, but it is likely that machines will quickly become better at these tasks than human lawyers. This document review was work that was traditionally done by teams of junior lawyers, holed up in data rooms for months at a time to review documents and then manually enter information into a report for the client. Law firms relished this type of work because they could bill the client for the work of the junior lawyers and make more profit. Junior lawyers would benefit from reviewing sometimes thousands of different legal documents and from meeting budget. Because of this, clients would pay handsomely for the review process. They are no longer willing to do so and if there are machines that can do the same, or a better, job with an 80% saving, then clients will insist on using the machines. This will indubitably affect the profits of law firms and firms will resist change for this reason. It will take a culture shift or an alternative billing model to convince lawyers to abandon the leveraging model. However, as discussed, these changes appear inexorable.

2. *Legal Research*

Another job traditionally given to junior lawyers was legal research. It was much cheaper for a junior lawyer to research the latest law on a given matter at a lower charge out rate than a partner. Now, AI driven programs are revolutionizing legal research, building upon the digitalization that has occurred over the last 20 years.¹⁷⁶ A number of companies have developed applications that are able to conduct legal research and this process will improve the

¹⁷⁴ Mills & Uebergang, *supra* note 164, at 35.

¹⁷⁵ Maura R. Grossman & Gordon V. Cormack, *Technology-Assisted Review in E-Discovery Can Be More Effective and More Efficient than Exhaustive Manual Review*, 17 RICH. J. L. & TECH. 1, 48 (2011).

¹⁷⁶ Sherry Xin Chen & Mary Ann Neary, *Artificial Intelligence Legal Research and Law Librarians*, AALL SPECTRUM, May–June 2017 17.

more it is used. The providers of legal research applications include Ravel Law, ROSS Intelligence, Lexis Answers, Westlaw Answers, and Blue J Legal, all of which claim to offer artificial intelligence, machine learning, and natural language processing to identify key cases, and to extract relevant passages of judgments based on natural language search terms. Already, these applications are providing faster and more relevant answers to legal searches than any junior lawyer could. For example, ROSS Intelligence uses the NLP power behind IBM's Watson cognitive computer program to allow natural question and answer style legal research from the desktop. NLP and machine learning allows the program to understand the context and meaning of the user's question, and deliver more relevant results than Boolean or NLP processes alone.¹⁷⁷

Preparing the systems needed to conduct research that appears effortless takes time and effort. It takes time to clean the data and train the algorithms, but as the big repositories of the law are opened up to better and faster AI legal research tools, trained on larger and larger data sets, this way of researching will likely become more available and cheaper. This will allow not only law firms, but corporations to use platforms such as ROSS to circumvent law firms for their legal research. It will also eat at the work traditionally performed by junior lawyers.

3. *Case Prediction*

Combining access to large, structured data sets with AI techniques such as NLP and machine learning, legal technology developers are producing analytical tools that can predict likely case outcomes with greater accuracy than legal experts.¹⁷⁸ LexisNexis' Lex Machina is a litigation data platform originally developed to use data mining and predictive analytics techniques to forecast outcomes of United States intellectual property litigation. LexisNexis' "Professional Services" package is currently able to provide early IP case assessment. It can also prepare profiles on the

¹⁷⁷ DAVID HOULIHAN, ROSS INTELLIGENCE AND ARTIFICIAL INTELLIGENCE IN LEGAL RESEARCH 11 (2017).

¹⁷⁸ Nick Hilborne, *AI Crunches Lawyers in Case Prediction Challenge*, LEGAL FUTURES (Oct. 31, 2017), <https://www.legalfutures.co.uk/latest-news/ai-crunches-lawyers-case-prediction-challenge>.

parties, law firms, and judges involved and assess likely damages awards and lawyer fees.¹⁷⁹ In case prediction, Lex Machina claims that it “mine[s] litigation data, revealing insights never before available about judges, lawyers, parties, and the subjects of the cases themselves, culled from millions of pages of litigation information.”¹⁸⁰ The information available allows Lex Machina to predict:

[h]ow likely . . . a judge [is] to grant or deny a specific motion . . . , how long . . . case[s] [might] take to get to a grant of a permanent injunction, to trial, or to termination before a judge [and] how likely . . . a judge [is] to find infringement of a patent, fair use of a trademark, or a Securities Act violation.¹⁸¹

Clients will be able to predict the outcome of a case with a relative degree of certainty much earlier than the day of the hearing—the traditional timeframe.¹⁸² This will save clients money but, again, will erode law firm profit margins even further. While the results of the machine analysis of large amounts of data seems to create accurate predictions, this way of mining data, particularly about personal attributes of judges and participants is troubling, not the least because it has the potential to introduce forum shopping and biases.¹⁸³ Nevertheless, its attractiveness to clients who will be able to relatively accurately predict the outcome of litigation before they commit large sums of money is undeniable and will further circumvent the preparatory work of law firms. This preparatory work was not only profitable for the law firm in preparing for the initial stages of litigation, but it also ultimately created a dilemma

¹⁷⁹ *What We Do*, LEX MACHINA (2017), <https://lexmachina.com/services/> (last visited Sept. 27, 2017).

¹⁸⁰ *Legal Analytics Platform*, LEX MACHINA, <https://lexmachina.com/legal-analytics/> (last visited Jan. 15, 2019).

¹⁸¹ *Id.*

¹⁸² See Nikolaos Aletras et al., *Predicting Judicial Decisions of the European Court of Human Rights: A Natural Language Processing Perspective*, PEERJ COMPUTER SCI., Feb. 2016, at e93 (discussing judicial analytics and case prediction in the European Court of Human Rights); Daniel L. Chen, *Judicial Analytics and the Great Transformation of American Law*, ARTIFICIAL INTELLIGENCE & L. (2018), <https://doi.org/10.1007/s10506-018-9237-x> (last visited Jan. 15, 2019) (discussing the challenges in reducing the bias in the process).

¹⁸³ Further analysis on this point is outside the scope of this paper.

for clients in that they would spend and commit to the litigation past the point of no return. An accurate prediction of the outcome of the case before this money and effort is spent will allow clients to tactically retreat before committing large sums of money to law firm work from which there is no return.

4. *Expertise Automation*

Expertise automation refers to the development of programs that combine the expertise of a lawyer in a particular area with an artificially intelligent platform to automate the processes of that expert. These automated processes are making once specialized legal services more consistent and accessible to clients at lower cost. Expert systems include web-based systems prepared by legal experts to provide scripted answers to structured questions.¹⁸⁴ The structured interrogation tends to follow a flow chart style of question/response until either a solution is provided or the client is directed to a live expert. At each stage of the interaction, the questioner is provided, or can access, information to inform them of the law or their legal rights. A good example of a company that provides expert systems is Neota Logic, which offers “an AI-powered platform and comprehensive toolset that allows professionals to rapidly build and deploy application solutions that automate their expertise.”¹⁸⁵

These expertise systems are able to systematise repetitive tasks that lawyers would normally spend time on each time they engaged a client. Allowing the expertise system to provide this mundane and repetitive service frees the lawyer’s time so that they can concentrate on more important matters (or altogether, depending on who you ask). For example, King & Wood Mallets has adopted a Neota Logic application that, through a series of answers to set questions, helps international clients determine whether their deals require Foreign Investment Review Board approval.¹⁸⁶ King & Wood

¹⁸⁴ See Richard E. Susskind, *Expert Systems in Law: A Jurisprudential Approach to Artificial Intelligence and Legal Reasoning*, 49 MOD. L. REV. 168, 172 (1986).

¹⁸⁵ See NEOTA LOGIC, <https://www.neotalogic.com/> (last visited Jan. 15, 2019).

¹⁸⁶ See Nicola Berkovic, *King & Wood Mallets Turns to AI for Clients’ Needs*, AUSTRALIAN (Nov. 1, 2016),

Mallesons said that the application allowed the firm “to make the most efficient use of its experts by enabling junior lawyers to take on more of the grunt work You’re absolutely not making them redundant, in fact it means that we’re getting the right work to the right person.”¹⁸⁷

The question is, what is the grunt work that these junior lawyers are doing and what is the right work? Will junior lawyers be able to gain the experience they once acquired from taking months to painstakingly review thousands of legal documents and then participate in drafting a report on those documents, or will the machines continue to learn so that it can perfect its review and reporting techniques? Are lawyers freer to concentrate on more important matters, or do they become redundant in the case of junior lawyers, or a slave to the profits created by the machine in the case of law firm partners? Lawyers and law firms are grappling with these questions now. These and other new and powerful tools are leading to a shift in the way legal work is being conducted and offered and further erodes the lawyers’ monopoly on providing legal services.

E. *Freer Access to Law – The Austlii Effect*

Another trend that is pressuring the traditional work of law firms is the increased free access to the law itself. As recently as around 20 years ago, the only way that a company or firm could obtain a copy of the primary sources of law that affected or controlled that company’s conduct was to consult lawyers who held hardcopies of legislation and cases in their firm libraries. Lawyers would then consult the hard copies, and prepare (often lengthy) advice to the company controllers setting out the law and how it might apply to the company’s situation. This was typically (and I suspect still is) the way that lawyers would issue legal advice. It is time consuming and costly, and, therefore, profitable for law firms. It also does not often adequately address the issue that the client was concerned

<http://www.theaustralian.com.au/business/legal-affairs/king--wood-mallesons-turns-to-ai-to-meet-clients-needs/news-story/2784a2f7f3948d9c213a63b96526f81c>.

¹⁸⁷ *Id.*

about. It is also usually carefully delineated, which requires follow-up advice and, hence, more cost.

Austlii was developed in the late 1990s and since then has made every statute in Australia and every case considered in Australian courts in most jurisdictions freely accessible online.¹⁸⁸ It has since spread to cover over 200 countries.¹⁸⁹ Austlii's stated aim is to improve access to justice.¹⁹⁰ Its website claims that it has "over 700,000 hits daily."¹⁹¹ It also competes against commercial providers such as Westlaw and LexisNexis but has the distinct advantage of being free to access.

It also has another effect. The free access to law that it provides has taken the law out of the hands of the law firms and placed it at the feet of not only citizens, but the law firms' clients and NewLaw providers. It gives every citizen the ability to read and interpret the laws that govern them quickly and for free. The Austlii effect has created a number of generations of lawyers now who have never known that laws were once locked up inside a law firm or university law library. It has, along with the other trends set out above, served to demystify the law, a trend that will continue to work against the law firm monopoly.

The five forces that have been outlined in this Part, separately, and all of them together, are having the effect of eroding the legal

¹⁸⁸ See *About AustLII*, AUSTLII, <http://classic.austlii.edu.au/austlii/> (last visited Mar. 17, 2019). This service has been replicated in jurisdictions around the world. See, e.g., BAILII, <http://www.bailii.org/> (last visited Mar. 17, 2019); CANLII, <https://www.canlii.org/en/>, (last visited Mar. 17, 2019); see also Graham Greenleaf, Andrew Mowbray & Philip Chung, *AustLII: Thinking Locally, Acting Globally*, 19 AUSTL. L. LIBR. 101, 102 (2011) ("AustLII now publishes decisions of over 150 Australian courts and tribunals, and we are aiming to publish the decisions of all courts and tribunals which are of legal interest and relevance.").

¹⁸⁹ See *Countries*, WORLDLII, <http://www.worldlii.org/countries.html> (last visited Jan. 15, 2019). Governments too have begun to provide free access to the official online versions of the laws they make. See, e.g., *Federal Register of Legislation*, AUSTL. GOV'T, <https://www.legislation.gov.au/> (last visited Mar. 17, 2019) (providing Acts, Bills, and explanatory materials online, free for anyone to access, read and interpret).

¹⁹⁰ *Id.*

¹⁹¹ See *About AustLII*, AUSTLII, <http://classic.austlii.edu.au/austlii/> (last visited Jan. 15, 2019).

services industry's monopoly on providing legal services. As anti-trust and competition laws around the world recognize, monopolies are inherently bad in that they drive up prices, stunt innovation and create a deadweight loss to society. It is unfortunate that the legal services industry has taken the path it has in the pursuit of the business dollar. However, these forces militating against the monopoly practices of large law firms might not yet spell the death of the profession as some have predicted, but, instead, see a rebirth of the professional ideals that mark out a profession in the first place—only not in the form that one might envision.

VI. HOW WILL DISRUPTION CHANGE THE PROFESSION?

Up until now, I have argued that BigLaw businesses have strayed from the path of professionalism by exploiting the monopoly over legal services for profit at the expense of clients. In its pursuit of profits, the profession has lost the ideal of service to the community from which it emanates. It might even be argued that the profession as once envisioned, is already dead. The irony of all of this is that the lawyer monopoly flourished *because* law is (or was) a profession. Because it was formed as a profession, its members were able to set barriers to entry, to carefully curate its membership and to self-regulate.

It is unfortunate that the profession was not sufficiently diligent to ward off the detrimental impacts of a monopoly and to maintain the altruistic notions of a true profession. Instead, the traits of economic professionalism and narcissism noted by Dawson and Halliday¹⁹² have grown to define the profession. These should have been decried and rejected as they arose rather than adopted as descriptors of the profession.

However, since at least the early 1990s, the legal profession, as represented by BigLaw, has adopted them with gusto as set out in Part IV. Clients have long borne the brunt of the monopoly overcharging and failures to innovate. Society has also worn the deadweight loss caused by the lost supply of services to those who cannot afford to access the law. Increasingly, clients and NewLaw providers have reacted to these monopoly practices and have led the

¹⁹² See *supra* text accompanying notes 51–52.

disruption of the legal services market; armed with greater knowledge of the law, freer access to it, new technologies to help find and interpret it, and NewLaw providers. So it is not the profession as such, or the tenets of professionalism, at which the disruption is aimed, but at the BigLaw firm business model.

This Part sets out some possible changes to the BigLaw model, how NewLaw might develop and what change will mean for the work of lawyers. It also makes some bold claims about the how lawyers might be replaced by new technology as the new legal profession. Based on current trends and the predictions already made in the literature, this Part seeks to predict what the future of law firms, lawyers and the legal services market might look like in the next twenty to thirty years' time.

A. *The Impact on the BigLaw Firm Model and the Business of Law*

Ribstein, then Associate Dean and Professor at University of Illinois College of Law, predicted the “Death of Big Law” in 2010.¹⁹³ He argued that there were eight pressures on BigLaw including the rise of in-house counsel, increasing global competition, “deprofessionalization” of the law practice and the decline of hourly billing.¹⁹⁴ He ultimately concluded that “the real problem with Big Law is the non-viability of its particular model of delivering legal services.”¹⁹⁵ He could not have foreseen the level of degradation in the profession, the ferocity of client responses, nor the exponential improvements in new technology directed at disrupting the BigLaw model in the succeeding 8 years that will inexorably change the BigLaw model. Brooks argued that the impact of that technological change in the long run can extend “beyond where the original expectations were aimed.”¹⁹⁶ That is not good news for BigLaw. As a result of the current and impending disruption, the BigLaw

¹⁹³ Larry E. Ribstein, *The Death of Big Law*, 749 WIS. L. REV. 751–52, 777, 813 (2010).

¹⁹⁴ *Id.* at 760–71.

¹⁹⁵ *Id.* at 752.

¹⁹⁶ Brooks, *supra* note 157.

business model is under threat, and the changes look to be unstoppable.

It is clear that a good part of the systematized work of the junior lawyer such as research, discovery review and contract review for due diligence, for so long the entrée into legal work for lawyers, will eventually be performed by machines involving also perhaps only a supervising senior lawyer. Furlong noted in 2017 that the decisions that had been made to cut lower-ranked lawyers in the years after the financial crisis in 2008 “have evolved into long-term trends away from hiring new lawyers and towards the eventual elimination of the traditional associate role in law firms. This trend is likely to continue for at least the next five to ten years.”¹⁹⁷ He also noted that “associate leverage, which was once 3:1 and 4:1 in many large firms, has fallen to 1:1 or even less.”¹⁹⁸ Larkan, a law firm consultant, argued that consistent low leverage leads to a range of unsatisfactory outcomes for partners, lawyers, and clients including that: “[p]artners are forced to do work that would normally be delegated down to the lowest competency level. This may mean higher write-offs, where certain types of work do not justify high rates, and unhappy clients.”¹⁹⁹

Larkan ultimately predicted that “the trend towards lower leverage is widespread and now well-entrenched [and has] serious implications for the long-term health of the legal profession in the U.S. . . . I’m not certain the profession can get itself out of this situation.”²⁰⁰ As discussed in Part VI, high partner profits are driven by their ability to leverage the work of junior lawyers. This drop-in leverage then will have a significant impact on partner profits.

In 2013, in a more optimistic economic analysis of the legal services market, Currell and Henderson noted that “the continuing success of BigLaw is in part because of its ability to adjust quickly to changes in demand by hiring and firing staff”²⁰¹ and that “by quickly adjusting the supply of hours, law firms continued to grow

¹⁹⁷ Furlong, *supra* note 28, at 418.

¹⁹⁸ *Id.* at 436.

¹⁹⁹ Larkan, *supra* note 88, at 23.

²⁰⁰ *Id.* at 26.

²⁰¹ Currell & Henderson, *supra* note 97, at 17.

their rates and in many cases increase their profits per partner and overall earnings.”²⁰² Indeed, Currell and Henderson trumpeted the success of modern day BigLaw firms “by returns to owners, not employees.”²⁰³ Unconvincingly, they argued that “[o]n this traditional metric, law firms are doing just fine.”²⁰⁴ This model is unsustainable and the ability of BigLaw firms to fire their way out of economic distress and to raise charge out rates and the hours worked by partners (sometimes at \$1000 per hour) are coming to an end.

Boston Consulting Group predicted that in 5-10 years from 2016:

The traditional pyramid model (few partners at the top and many junior lawyers and associates at the bottom) will likely give way to an organization shaped more like a rocket. That new configuration will be characterized by fewer junior lawyers and associates per partner. Indeed, the use of technology solutions to handle standard, low-skill legal tasks could reduce the ratio of junior lawyers to partners by up to three quarters of the ratio seen in the current pyramid model. However, the law-firm rocket would be supplemented with other employees who are not lawyers, such as project managers and legal technicians. Consequently, the number of employees per law firm would remain similar to today, while the ratios of high-skilled, specialized legal professionals would decline.²⁰⁵

All of these changes to the structure of law firms will force them to develop a different way of billing: a different business model. The loss of leverage and the cost of retaining new employees who are not fee earners will eat into the law firm bottom line. Law firm profits will continue to fall unless an alternative billing system is devised that creates the same level of profit as the current billable hour system. For so long, law firms have been able to set and forget the billing system, but now they will have to create new and

²⁰² *Id.* at 21.

²⁰³ *Id.* at 20.

²⁰⁴ *Id.*

²⁰⁵ CHRISTIAN VEITH ET AL., BOSTON CONSULTING GRP. & BUCERIUS LAW SCH., HOW LEGAL TECHNOLOGY WILL CHANGE THE BUSINESS OF LAW 10–11 (2016), http://www.bucerus-education.de/fileadmin/content/pdf/studies_publications/Legal_Tech_Report_2016.pdf.

innovative billing systems that recoup the same amount of profit as the billable hour model. I am not sure one exists.

Apart from job losses at the lower level and some changes at the senior level, there will be other changes to the legal services model. It is likely that large law firms will survive by taking on more and more specialized and creative legal work. These law firms will provide specialist legal advice to companies and will charge a premium fee for their expertise and skill. The largest companies in the world such as Google, Amazon, Facebook and Apple will need to retain these law firms to ensure that regulations are developed to suit them, to protect their power by destroying any claims made against them, and by providing an effective insurance policy. The divide between those that can afford power and influence and those who are its subjects will become extreme. There will be little or no difference between these firms and the businesses they protect and serve, and the markings of a profession will cease to apply to these businesses at all.

The forces outlined in Part V have already led, and will inevitably continue to lead, to law firms hiring fewer junior lawyers, but all levels of legal service from the BigLaw to the sole practitioner will be disrupted. Technologists, with the help of lawyers, will continue to commoditize legal work and new and newer technologies will continue to perform more and more cognitively complex work. As set out in Part V.D, technology is taking the place of traditional lawyers, whether they are in the bottom half of a large law firm pyramid or sole practitioners. Despite the fact that BigLaw and its business model have created the conditions for disruption, it is possible that these larger law firms will be able to weather the disruption better in the short term than sole practitioners and small firms. Larger firms have the financial strength and depth of clients that will give them a buffer until they can adjust their business models while the disruption takes full effect. So, in the short term (say over the next 10-15 years), they will be able to continue to charge premium prices for bespoke legal advice in specialized areas to a large (but decreasing) number of established clients. At the same time, BigLaw firms will continue to merge in an effort to find efficiencies until there are fewer and fewer mega-firms servicing only the richest and most powerful

companies—the Amazons of law if you will. In the ultimate irony, only BigLaw firms will be able to afford to adopt all of the legal technology available and they truly will have a monopoly on the provision of high end legal service.

BigLaw firms have become hothouses for developing new technologies. By providing the training ground for these new technologies, BigLaw firms are hastening their development, and by doing so, are also shrinking the scale and scope of the work that can be performed by all lawyers. There is a danger that, as is often the case with new technologies, once these technologies have been developed and tested in the larger firms, the price for the technologies will fall and they will be dropped onto the general market for legal services with potentially devastating effects on all lawyers. Thus, it remains to be seen whether the BigLaw firms, by incubating new technologies, are also hastening their own demise.

B. *NewLaw Firms, Small Firms and Sole Practitioners*

It is likely that the NewLaw structure under which lawyers are retained on contract to perform commoditized tasks on demand for a specified price will become the norm. These lawyers may need to take on other jobs to supplement their diminishing legal work. Furlong considered that lawyers in NewLaw firms will have to operate in teams of lawyers, non-lawyers, and clients. He said that lawyers retained on contract with NewLaw firms would “work from home, on the road, or at clients’ premises” and to “work wherever, whenever, so long as the work gets done.”²⁰⁶ This generation of NewLaw firms would also need to be hyper-responsive to client demands and “understand . . . the realities of customer service-based work.”²⁰⁷ Culturally, law firms will be required to jettison entrenched systems of working such as “billable hours, associate leverage, hand-crafted solutions, [and an] individualistic ethos.”²⁰⁸

The type of legal work that can be commoditized and performed by new technologies makes up a greater proportion of the work of

²⁰⁶ Furlong, *supra* note 28, at 439.

²⁰⁷ *Id.* at 440.

²⁰⁸ *Id.* at 441.

sole practitioners and small law firms. These small firms and sole practitioners are likely to suffer greater losses over the short term as technologies continue to improve, and clients' willingness to shop around for the best legal advice at the lowest price continues to squeeze the margins. Taking these paths to one possible conclusion, in around 30 years' time, the legal services industry will likely be made up of two broad legal structures: a diminishing number of BigLaw firms, and other providers. Those lawyers who choose to continue to practice law will join any number of disparate providers of varying legal and administrative services using (or more likely monitoring) the technologies that will outperform humans in the medium term. Lawyers will not cease to exist, but there will be less work for them to perform and there will be very little money paid for the type of work that will be required of them.

The other forces I set out in Part V such as client reactions to overcharging, NewLaw providers and new technologies, are likely to have a compounding effect on the employment prospects of a larger range of lawyers. As new technologies increase in power and become more effective, the tasks that they will be able to do will broaden to include not just manual and systematic tasks, but also many cognitive and creative tasks.²⁰⁹ When this becomes more effective, the work of even more senior lawyers will be taken over by new technologies.

C. *Lawyers' Work*

When the edifice of monopoly structures fall and access to law is open and free, what of the lawyers? Our society will still need lawyers to create the laws that will respond to new challenges, to interpret those laws, and to facilitate human transactions. Machines are not (yet) capable of conscious thought or of understanding the intricacies of humanity; what it means to be human and to interact in the world.²¹⁰ Neither can they be truly creative. Human lawyers will need to continue to work in the short and medium terms and,

²⁰⁹ See discussion *supra* Part V.D.

²¹⁰ See Harry Haroutioun Haladjian & Carlos Montemayor, *Artificial Consciousness and the Consciousness-Attention Dissociation*, CONSCIOUSNESS & COGNITION, Oct. 2016, at 211.

perhaps alongside new technologies, provide a professional service to clients—but at a lower cost.

Clients will demand more and different services from the new generation of lawyers. Furlong, a “leading analyst of the global legal market and forecaster of its future development[,]”²¹¹ called the current generation of lawyers the Pivot Generation because it is entering law at a time at “which the old legal market collapsed, and the new legal market coalesced. We will see how one law firm model faded away and another grew in its place.”²¹² He argued that clients will:

seek basic, sufficient products and services rather than expensive, deluxe solutions. They will be stringent judges of value for money, and they will not hesitate to haggle or to walk away To succeed, Pivot Generation lawyers must make themselves affordable to this market segment—or they will be rendered invisible.²¹³

Furlong argued that future law firms must “position themselves within an array of viable competing service options”²¹⁴ and that they must “redefine what ‘availability’ will mean to clients in the coming years [M]aking a few lawyers and staff available on evenings and weekend hours should be strongly considered.”²¹⁵ He anticipated that customers of the future will want to know “the accurate price—not the billable hour rate or a guesstimate . . . and expect to be able to compare the prices charged by several lawyers quickly and easily online.”²¹⁶ He recognized that this market is one of “unprecedented competitiveness.”²¹⁷

On a somewhat more optimistic note, Furlong argued that, while this generation of new lawyers is the most vulnerable to the changes that are affecting the legal services market, they “will not be victimized by change in the legal market, but will instead lead it, taking control of and driving this transitional process.”²¹⁸ However,

²¹¹ See *About Jordan*, LAW21, <https://www.law21.ca/about/> (last visited Feb. 8, 2019).

²¹² Furlong, *supra* note 28, at 418.

²¹³ *Id.* at 429.

²¹⁴ *Id.* at 430.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at 431.

²¹⁸ *Id.* at 418.

it is not all that clear that the new law firm model will be a place where lawyers want to work. What will the lawyer of the future be required to do to fit in with this new way of working?

Lawyers have for so long measured their value in their expert knowledge of the law, and have been able to commoditize and sell it. Lawyers acquired that knowledge over at least three years of postgraduate study at university, and then continually developed that knowledge throughout their careers. According to Furlong, that knowledge will form only one small component of a lawyer's value in the future. He outlined the other work that he saw would be required of lawyers of the future, including:

- “knowledge engineers” who display “legal expertise, but also business intelligence regarding costs and workflow[;]”
- “legal project managers” who would “apply process improvement techniques to their workflow and systems[;]”
- “pricing officers” who calculate profitability, assess market intelligence, and “set fixed and ranged fees for their services[;]”
- “artificial intelligence programmers” with “logical minds with legal knowledge as well as with basic coding skills[;]”
- “inside counsel” where “institutional, ‘one-client’ employment will surpass law firm employment as the primary salaried role for lawyers[;]”
- “operational specialists” who could “enhance the effectiveness and productivity of traditional legal tasks and workflow[;]”
- “flex-time lawyers” who would “work on a project or contract basis, often from home” and would “operate on flexible hours that suit both the buyer and seller of the services[;]” and
- “preventive lawyers” to minimize “a client’s potential exposure to legal damages, creating compliance and training systems to improve the legal behaviour of institution, and drafting checklists or regimens of healthy legal choices.”²¹⁹

²¹⁹ *Id.* at 441–43.

If this list is not foreboding enough, Furlong reminded us that lawyers are part of a profession and, as well as displaying all of the characteristics outlined above, they must also exemplify the values of “the duty to serve the interest of others, the duty to advance human dignity, and the duty to defend the rule of law.”²²⁰ Professionals such as lawyers, he argued, exemplify “service, selflessness, higher purpose, and making life better for others. . . . serving the interests of others, prioritizing those interests above our own for a greater cause.” He argued that new lawyers should “gear [their] market interactions, office relations, client deliverables, and community activities towards improving other people’s situation.”²²¹ It is difficult to see who would undertake the arduous list of tasks *and* do it selflessly in service of a higher purpose. Like taxi drivers who have faced disruption from Uber and truck drivers who face disruption from driverless trucks, lawyers must ask themselves whether it is financially viable for them to continue to practice law, with all its obligations, including fiduciary obligations to clients, or find another means of employment. And there is the rub. Who will be prepared, or even able, to provide all of the services that Furlong argued that the lawyer of the future will be required to undertake, and who will be able to do it while still living the ideals of a professional? That person will also have to do all this within a business model that replaces the hourly rate—one which, I suggest, will lead to a drastic reduction in profits.

D. *The Professional Algorithm*

The ideal entity that will be able to perform or display all of these characteristics and qualities will be a computer—or a range of new technologies combined in one platform to seamlessly address all of a client’s legal needs. This platform of legal technologies will eventually be able to perform many, if not all of the tasks that Furlong has set out as those that will be required of the future lawyer. Computers have knowledge and skills that, if they have not already, surpass human knowledge. They selflessly work for the good of the client, seven days a week, twenty-four hours a day

²²⁰ *Id.* at 443.

²²¹ *Id.* at 444.

without guile or the need for money. They can be programmed to serve the clients' needs above their own and to work to the benefit of society to make life better for others. This is a large part of the requirements of a profession. The problem with professions as discussed in this paper is that they have been populated by humans, whose "hubris and greed"²²² has led to them manufacturing a monopoly and then a business for the pursuit of profit. This has ultimately led to the downfall of the profession and the disruption of the law firm model. Computers do not display hubris or greed.

Leaving aside the fact that failures in morals and ethics are human failings that have seen the downfall of the legal profession, one has to consider whether computers can provide an adequate replacement. There are ongoing debates about whether computers are able to attain or display morals or ethics—two characteristics that are arguably required of professionals.²²³ Stahl ultimately determined that:

There are considerable problems with computers as moral agents even if one narrows the question down to cognitivist ethics and if one neglects all of the agency and personhood questions by relying on the Moral Turing Test (MTT). But even if computers could overcome these, if they indeed developed an understanding of the meaning of the data they process, the next question would then be whether this would suffice to pass a more general MTT. Maybe emotions, physical and spiritual equality with human beings are necessary for reasoning in a sufficiently human way. The conclusion of this paper is therefore that moral agency of computers is not in sight. While it may be principally possible it is not to be expected soon.²²⁴

Therefore, while computers may be able to replicate the knowledge, skills, and the service aspects of professionals, it may be some time before a computer fully replaces lawyers as the arbiters of our laws.

A shift from a human professional to a computer one will not therefore be an immediate one, but may well develop over time. Like automated vehicles, this transition from human lawyer as professional to computer could pass through several stages from

²²² See Ferguson, *supra* 115.

²²³ See Bernd Carsten Stahl, *Information, Ethics, and Computers: The Problem of Autonomous Moral Agents*, 14 MINDS & MACHINES 67, 68–69 (2004).

²²⁴ *Id.* at 81–82.

level 0 for no computer use, to level 5 which will be completely autonomous.²²⁵ At level 5, each corporation and each person will have access to this platform so that access to, and the interpretation of, our laws will be free, reliable, and consistent and provided professionally. In this way, the members of our society will have free access to the laws that govern them. Surely this is an aim of a civilized society.

VII. CONCLUSION

Susskind questioned whether the proliferation of technology capable of performing legal work could spell the end of lawyers,²²⁶ or the death of the profession.²²⁷ The law has shown itself to be vulnerable to disruption—not only because of technology but because of the reactions from clients to the consistent overcharging by lawyers who have had a monopoly on legal services for over one hundred years. At the same time, law will become more freely accessible and will be accessed more accurately and quickly by machines. Technology is merely the tool used to implement the disruption. A side effect of disruption is redundancy. Today's lawyers could be the truck drivers and the taxi drivers of the next decade. Despite this ominous prediction, disruption can also drive positive change. Lawyers should not be amassing troops at the barricades to stave off the advent of new technologies; it is not the technology that is at fault. The problem lies with something much deeper in the relationship between a society and those chosen to develop, interpret and administer its laws.

It should be a goal of society that its citizens, including companies, should have free access to the laws that govern them at their fingertips without the need to pay exorbitant fees. Taking the profit motive out of providing legal services and opening the law up for free access may just have the effect of returning the law to its professional roots. The professionals that will prosper in a new era will be those doing so from a calling, not from a desire to amass

²²⁵ See Lindsay Brooke, *U.S. DOT Chooses SAE J3016 for Vehicle-autonomy Policy Guidance*, SAE INT'L (Sept. 20, 2016), <http://articles.sae.org/15021/>.

²²⁶ SUSSKIND, *supra* note 10.

²²⁷ SUSSKIND & SUSSKIND, *supra* note 3.

great personal wealth. Society will still need lawyers to create the laws that respond to new challenges because machines are not (yet) capable of conscious thought or of understanding the intricacies of humanity; what it means to be human and to interact in the world. In this way, lawyers and legal academics can be part of the rebirth of the legal profession.

This brings us back to our initial discussion of law as a profession, as a service to the community. Should we regret or mourn the demise of the current model of law firm culture? Why more so than the demise of the taxi and trucking industry? We should welcome free access to the law without the exorbitant fees attached to the money men who have guarded the monopoly for so long. By losing these monoliths, we get closer to law as a profession, as a service to our fellow man. Surely this should be the aim of a civilized society—to have its laws available, understood and analyzed consistently for the benefit of society. In this way, the wheels of industry will turn and our society will continue to function, but without the overpriced transaction costs of lawyers. We should embrace the new paradigm in which law and legal services are far different, and a more accessible and cheaper option for the many rather than the cloistered enclave of the privileged few.