

# FLEXIBLE ACCUMULATION: CHANGES IN THE LEGAL PROFESSION AND THEIR EFFECTS IN LEGAL EDUCATION

## ARTICLE

*Willmai Rivera-Perez\** and *Juan C. Garcia-Ellin\*\**

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### I. Introduction

In the summer of 2014, the LatCrit community convened the South-North Exchange on Theory, Culture and Law (SNX) creating a space for the interdisciplinary and comparative dialogue over the current state of legal education. We are thankful for the opportunity to contribute to this conversation.

Legal education is in crisis. With this phrase, numerous news articles, blogs, and academic works open the discussion of a topic that has transcended law schools, welcoming to the discussion even President Obama's view about the duration of the J.D. That legal education is in a crisis seems to be a cyclical topic that reappears whenever there is an economic crisis.<sup>1</sup> The 2008 recession is no exception. After reports of lawyers being fired from big firms, legal education became, once again, the culprit.

In this brief article we would like to discuss something that has been part of the analysis of the changes in the labor market in many disciplines but has not been fully

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\* Assistant Professor of Law at Southern University Law Center.

\*\* Assistant Professor, University of Puerto Rico-Ponce.

<sup>1</sup> See Bryant G. Garth, *Crises, Crisis Rhetoric, and Competition in Legal Education: A Sociological Perspective on The (Latest) Crisis of The Legal Profession and Legal Education*, 24 *Stan. L. & Pol'y Rev.* 503 (2013) (comparing and contrasting the current crisis rhetoric and the 1930's Depression era).

considered in the legal profession. The main objective is to start a discussion on how the changes in the global economic system have altered the ways in which the law profession is being practiced in the United States, and therefore have been influencing the proposals of modifying the legal education model that is currently used. A critical analysis of these axes tends to demonstrate a disconnection between the ailment and the proposed treatment.

Although this sounds like a very ambitious objective, we will only attempt to present a general blueprint of the situation with the intent of including this aspect of the current state of affairs within the general conversation of needed changes in the legal education model. This article only intends to be the starting point of the conversation and not its closure. Also, we hope that in the future we can expand in some of the aspects and points presented in this article in a much more detailed way.

This paper is organized in four sections. The first section intends to create a short recollection of the current situation of the perception of crisis in the legal profession and legal education in the United States. There is a perception that there is not enough work for lawyers in the United States and that legal education should be altered to reflect the reduced legal labor market. Whereas we can agree that some changes may be needed in the legal education model, the most popular proposals do not seem to respond to what the actual situation in the legal profession is. The so-called crisis in the legal profession is just part of the changes due to the restructuring in the regime of accumulation of the global economic system.

The second part of the paper will present, in a very brief manner, what have been the more recent changes in the global economic system. This section will explain the change from a Fordist regime of capital accumulation to a flexible accumulation model (also called Post- or Neo-Fordism) and the characteristics of those general changes.

The third section will discuss how the economics of the legal profession have changed in recent years and how those changes are part of the experience common to many other sectors of the economy. We will present some recent developments in the legal practice that are reflections of more general changes in the economic system and their impacts.

The final section will, in a succinct way, discuss how the changes proposed to the legal education model will not change the economic situation of the legal profession in any meaningful way. The proposed changes are not related to the causes of the crisis and do not solve the more important problem afflicting legal practitioners: to increase access to affordable legal services to a larger portion of the population.

## **II. Crisis in the Legal Profession**

In 2008, media outlets started reporting about a crisis in the legal profession. First, news regarding the firing of hundreds of lawyers from the largest law firms was re-

ported.<sup>2</sup> Then there were news reporting that large percentages of law school graduates could not find jobs that required bar passage.<sup>3</sup> Finally, reports came indicating the high number of law school graduates who are drowning in debt because of the high costs of attendance.<sup>4</sup> With the decrease in the number of high paying jobs, there was a reduction in the number of students enrolling in law schools.<sup>5</sup> This reduction in enrollment was primarily attributed to the perception that it was not worth it to invest around \$100,000 in a career that could not guarantee a salary worthy of that investment.

As a response to the perceived lack of jobs, many reasons have been presented to explain the “crisis”. The most popular of these are: 1- law school graduates are not “practice-ready”, that is, they do not take courses that help with the day-to-day minutiae of legal work;<sup>6</sup> 2- law school is too expensive, primarily because tenured academic-type professors make too much money;<sup>7</sup> and 3- the federal government hands out too much money in student loans with the result of tricking students, par-

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<sup>2</sup> Nathan Koppel, *Recession Batters Law Firms, Triggering Layoffs, Closings*, Wall Street Journal, A1 (January 26, 2009); *Law Firm Layoffs: February 2009*, Inhouse Insider, <http://www.inhouseinsider.com/law-firm-layoffs-february-2009-2000/> (accessed May 14, 2014); and Jonathan D. Glater, *Law Firms Feel Strain of Layoffs and Cutbacks*, New York Times, B1 (November 12, 2008).

<sup>3</sup> Karen Sloan, *NALP: Fewer legal jobs but pay holding steady*, The National Law Journal <http://www.nationallawjournal.com/id=1202463793827/NALP-Fewer-legal-jobs-but-pay-holding-steady-> (accessed on July 6, 2015); Karen Sloan, *Delay of Game: More incoming associates are put on hold*, The National Law Journal, 1 (March 23, 2009).

<sup>4</sup> Ameet Sachdev, *Tuition Hikes Spark Bubble Talk; Cost of law school rises as high-paying jobs disappear*, Washington Post, A06 (July 11, 2010); David Segal, *Is Law School a Losing Game?*, New York Times, BU1 (January 9, 2011).

<sup>5</sup> Karen Sloan, *Law School Enrollment Slump Continues*, The National Law Journal <http://www.nationallawjournal.com/id=1202663837843/Law-School-Enrollment-Slump-Continues> (accessed on July 6, 2015).

<sup>6</sup> Stephen J. Friedman, *A Practical Manifesto; Law schools are professional schools, so let's teach these students something*, The National Law Journal <http://www.nationallawjournal.com/id=900005436116/A-Practical-Manifesto> (accessed on July 6, 2015); Sandhya Bathija, *Common firm lament: give us real-life lawyers*, The National Law Journal <http://www.nationallawjournal.com/id=900005464194/Common-firm-lament-give-us-reallife-lawyers> (accessed on July 6, 2015); Stephen J. Friedman, *Legal education: Make it practice-oriented*, The National Law Journal <http://www.nationallawjournal.com/id=900005470813/Legal-education-Make-it-practiceoriented> (accessed on July 6, 2015); Susan Cartier-Liebel, *Don't let law schools off the hook*, The Connecticut Law Tribune <http://www.ctlawtribune.com/id=1202557051452/Susan-CartierLiebel-Commentary-Making-It-Harder-For-Solos-To-Stand-Out> (accessed on July 6, 2015); Zack Needles, *Law schools must adapt to new post-grad reality*, The National Law Journal <http://www.nationallawjournal.com/id=1202430516173/Panel-Law-schools-must-adapt-to-new-postgrad-reality?slreturn=20150506091841> (accessed on July 6, 2015); Robert J. Rhee, *Follow the M.B.A. model*, The National Law Journal [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=989348](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=989348) (accessed on July 6, 2015); Karen Sloan, *Professor: Ivory tower faculty undermines practical legal education*, The National Law Journal <http://www.nationallawjournal.com/id=1202471308808/Professor-Ivory-tower-faculty-undermines-practical-legal-education-> (accessed on July 6, 2015).

<sup>7</sup> Brian Z. Tamanaha, *Failing Law Schools* (University of Chicago Press 2012).

ticularly those attending non-elite law schools, into incurring in a debt that they have no chance in being able to repay.<sup>8</sup>

The solutions presented to solve these “problems” that are causing the “crisis” have all been directed at reforming legal education. Some of the more popular solutions are: 1- increasing the number of clinical or lawyering skills courses;<sup>9</sup> 2- eliminating tenure for law professors and substituting them for practicing attorneys to teach in an adjunct basis;<sup>10</sup> 3- changing the JD from a 3-year to a 2-year course of study;<sup>11</sup> and 4- reducing the number of law schools and limiting the availability of student loans.<sup>12</sup> These solutions are supposed to be directed at making law graduates more practice-ready, reducing the expenses of law schools so that they can lower tuition and to shrink the pool of applicants to law positions so as to decrease the percentage of unemployed lawyers.

When the data is examined closely, there is a clash between the statistics and the causes. For example, according to Figure 1, while the number of employment positions in law firms has been decreasing dramatically, the amount of payroll has been increasing. At the same time, Figure 2 shows that the percentage of law graduates who have found employment in firms with more than 100 lawyers has been decreasing on a yearly basis. Finally, the AmLaw 100 (the 100 largest law firms in the USA) generated over \$77 billion in 2014.<sup>13</sup> This means that there does not seem to be a problem with generating enough profits to sustain a larger number of employees. At the same time a large portion of the jobs that have been lost are of positions in larger law firms that can afford higher starting salaries. It is a contradiction that the largest

<sup>8</sup> William D. Henderson & Rachel Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?*, A.B.A. Journal [http://www.abajournal.com/magazine/article/the\\_law\\_school\\_bubble\\_how\\_long\\_will\\_it\\_last\\_if\\_law\\_grads\\_cant\\_pay\\_bills](http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills) (accessed on July 6, 2015).

<sup>9</sup> See n. 6. *American Bar Association Task Force on the Future of Legal Education: Report and Recommendations*, 3 (January, 2014) (Calling for attention to skills training, experiential learning, and the development of practice-related competencies). In March 2014, the ABA Council of the Section on Legal Education voted to require six credits of experiential courses, now Standard 303 (a)(3). ABA, *Revised Standards for Approval of Law Schools*, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/201406\\_revised\\_standards\\_clean\\_copy.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_clean_copy.authcheckdam.pdf) (accessed May 18, 2015).

<sup>10</sup> See *American Bar Association Task Force on the Future of Legal Education: Report and Recommendations*, 31 (January, 2014) (recommending the elimination or substantial moderation of Standard 405 relating to security position and tenure). In March 2014, the ABA Council of the Section on Legal Education voted down both alternatives to the current standards, thus retaining the current system of tenure and security of position pursuant to ABA Standard 405.

<sup>11</sup> Mitu Gulati, Richard Sander, Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. Leg. Educ. 235 (2001); Stefanie Shaffer, *The First Question on Third Year: Why?*, *The National Law Journal* <http://www.nationallawjournal.com/id=900005435181/The-first-question-on-third-year-Why> (accessed on July 6, 2015).

<sup>12</sup> Paul Campos, *Don't Go to Law School (Unless): A Law Professor's Inside Guide to Maximizing Opportunity and Minimizing Risk* 46 (CreateSpace Independent Publishing Platform 2012).

<sup>13</sup> Eric Press, *Am Law 100 Analysis: The Super Rich Get Richer*, *The American Lawyer*, 130 (April 28, 2014).

law firms are generating record profits and at the same time hiring a lower number of attorneys. With this increase in capital accumulation, what is the crisis really about?

### III. Changes in the Regime of Accumulation<sup>14</sup>

To better understand the changes in the legal profession, we must first understand the changes in the global economic system. In a very brief manner we will attempt to summarize the major characteristics and changes in the capitalist mode of production during the past few decades. These changes must not be understood as a change in the mode of production; after all, we are still living in a capitalist society. What we have experienced are changes in the regime of accumulation within capitalism. Simply put, the global economic system is still one in which capital accumulation is the main objective but the social organization and social regulation of that objective has changed since the advent of the industrial revolution.

After the Great Depression in the USA, the legal framework of the New Deal adopted much of the ideas brought forward by Milton Keynes regarding government regulation and control of the economy. This way the country transitioned from a *laissez faire* to a Fordist mode of regulation of industrial capitalism. The main characteristics of Fordism are: mass production of goods in which costs were reduced through economies of scale, large amounts of workers needed to be both producers and consumers of goods, and an extensive regulatory scheme (heavily influenced by Keynesian theory) in which the government would regulate the production and consumption process as well as the relationships between employers and employees.

The most recognizable characteristic of Fordism was the use of the assembly line in the production process. The main purpose of the assembly line is to alter the division of labor from one in which people or workers each build an entire product in an individual capacity, to a process in which each worker performs a very specific and non-descript task within the production process and therefore although one worker could not build one unit of the good being produced, but between all of them they can build multiple units. The larger the production (or assembly) line, known as ‘scale’, meant a higher number of units produced and a lower cost of production per unit, therefore the term ‘economies of scale’. This is also known as mass production.

The giant factories that housed large assembly line of automobiles in Detroit during the post-WWII era are the best example of a Fordist production process. These factories were places where the entire production process was located in a single place and were owned by a single person or entity. This way all of the tasks needed

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<sup>14</sup> This section is only intended as a brief summary, not as a comprehensive socio-historical analysis of the transition from Fordism to flexible accumulation. For a better and more detailed analytical account see the following sources from which most of the information in this section came from: David Harvey, *Condition of Postmodernity* (Wiley Blackwell 1989); Allen J. Scott, *New Industrial Spaces: Flexible Production, Organization and Regional Development in North America and Western Europe* (Pion 1988); and Alain Lipietz, *From the Regulation of Space to the Space of Regulation*, 44 *Geo Journal* 275 (1998).

to produce a particular good were controlled by a single owner. This type of organization is called ‘vertical integration’. The idea is to imagine the production process as a column in which the multiple tasks are aligned and in which the raw material is input at the bottom and the output is the good being produced (Figure 3). In the example of the automobile, the tasks include making the tires, the doors, the glass for the windshield, the steering wheel, the suspension, the chassis, and so on, and then putting it all together. The input would be steel, rubber, etc., while the output would be an automobile.

The entire Fordist regime was predicated on mass production and mass consumption of goods. Because people would be working in a specific place and performing a specific task there would be no time to produce anything else, which means that they would need to obtain all other goods in the marketplace. The massive amount of factory workers receiving high salaries meant a high amount of consumers with power to acquire other mass produced goods. The high salaries of the workers were guaranteed by the large body of legal protections awarded to workers with the advent of the New Deal and the effective work of large labor unions. Within the Fordist regime, full time work and benefits were needed to guarantee a large amount of consumers with economic power. Under this regime of accumulation, everything (clothing, food, housing, appliances, etc.) was massively produced, and to ensure a continuous increase of capital accumulation those goods needed to be massively consumed. At the same time, to lower the costs even more, through the application of strategies inspired by *Taylorism* a higher level of standardization was achieved to the production process as well as to the product design.

These last two circumstances brought about two problems within the Fordist regime: the possibility of overproduction, and the lack of attention to individual tastes and needs of consumers. Overproduction is a structural issue in the system because there are goods that will not be consumed at the rate they are produced. Think about how many automobiles or refrigerators people buy in their lifetimes. This creates an excess of production and a need for spaces of warehousing which increases the production costs. On the other hand, the effect of standardization on individual consumer needs is more of a cultural issue. If every product is the same due to standardization, then every consumer has the same things at the same time, which brings about issues for those who want things faster or who want a more personalized product or treatment or whose likings do not conform to the standardized version of the available good.

During the 1970s and after the oil crisis, Fordism began to change into what now is called Post-Fordism or Neo-Fordism. These changes are now also encompassed within the term of “flexible accumulation”. As the term suggests, this new regime is organized under the premise of more flexibility in the production of goods (and services) that would improve the capital accumulation process.

In our estimation, there are three main structural differences between the Fordist and the flexible accumulation regimes. First, niche markets became the norm. This

means that instead of merely relying on mass production of a particular good or service, the model will ask for diversifying the production process. Instead of producing massive amounts of a single product, multiple smaller batches would be produced of a variety of products to reach more customers or consumers.

Second, there was a change of migrating from economies of scale to economies of scope. This is related to the change to niche markets. By diversifying production, the firm can reach multiple markets that would not be accessible otherwise. Instead of relying on mass consumption which may create an overproduction crisis, the scope of production or delivery of services is increased without necessarily a large investment in infrastructure. For example, the delivery of cable TV, internet and phone services by the same company. Using an already existing infrastructure, cable TV companies now also offer other services for which they charge more. So, with minimum investment an increase in capital accumulation can be achieved.

Finally, the increase in the service sector of the economy and the decrease in the manufacturing or industrial sector takes place. This change is more evident in highly industrialized or, to use Wallerstein's terminology, core countries. There is an increase in the economic activities performed by the service sector and an increase in the number of workers ascribed to this sector. Similarly, industry and manufacturing appear to be less concentrated in highly developed countries and are more dispersed around the globe into more semi-peripheral and peripheral countries.

Understanding the process of vertical disintegration is essential to understanding these three main differences between Fordism and flexible accumulation. Through vertical disintegration, tasks that used to be part of the internal division of labor of the production line, and therefore performed by employees, become part of the social (or external) division of labor, and therefore performed by different firms altogether, and must be employed, acquired or sub-contracted through the market (Figure 3). Going back to the example of the automobile factory, a vertically integrated company would produce every single part that their vehicles would need. Through vertical disintegration, the company would stop producing some parts and instead would look to acquire them in the open market. So, car manufacturers will obtain multiple parts, such as A/C, sound system, oil filters, windshield wipers, fuel injectors, etc., in the open market instead of manufacturing them. On one hand, this process reduces costs by reducing payroll and expenses but also flexibilizes production because the parts can be acquired from whichever firm offers the best price and can deliver the inventory faster. These parts become both producer and consumer goods and their manufacturers have access to multiple markets and multiple sources of revenue. Finally, the more immediate effect of the strategies of vertical disintegration is the need of a lower number of workers. With the large assembly line no longer existing, those workers performing the eliminated tasks are no longer needed.

Through vertical disintegration, capitalism has become more decentralized. Because of this decentralization, the regime of flexible accumulation has: an increased

role of technology both as a product and in the production process;<sup>15</sup> an increasing dependence in technical knowledge; higher content of symbolic or cultural value-added in products;<sup>16</sup> globalization of the division of labor by outsourcing and offshoring; and increased de-regulation. To paraphrase David Harvey, the decentralization characteristic of the flexible accumulation regime has meant that with the need to better organize the economic process there is an increased demand on a couple of things. The first one is that there is a need to have better control and better quality of information. Better information means more efficient just-in-time distribution chains as well as faster availability of new distribution technologies. This is evident with the increasing number of tasks being outsourced and offshored by many firms. Without information on the local conditions and on delivery schedules, as well as the most current technology available to obtain and transmit the necessary information, it would be a logistic nightmare to maintain organized control of the capital accumulation process. At the same time information means more knowledge about research and development regarding new merchandise and new distribution technologies. Research and development continues to play an essential role in the contemporary global economic system.<sup>17</sup>

The second one is the reorganization and de-regulation of the financial system. With de-centralization comes a geographical dislocation of the market. This means a need for less regulation and easier exchange of financial products and instruments that must be available across political and legal boundaries with different norms and legal systems.<sup>18</sup>

Decentralization brought by vertical disintegration means that the production process will be re-distributed across multiple spaces to better reduce costs. This means that due to multiple factors, production costs are not the same in different places or countries. In this sense, capitalism attempts to take advantage of the spatial unevenness across the world. This is not unique for manufacturing or industrial processes; the service sector also takes advantage of this situation.

#### IV. The Legal Profession as an Economic Activity

For those of us who have practiced law, it can be fairly easy to forget that the law profession is an economic activity. Similar to any other economic activity it is influenced by the changes in the regime of capital accumulation.<sup>19</sup> For example, Henderson has argued that the practice of corporate law has changed from being dominated

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<sup>15</sup> Manuel Castells and Peter Hall, *Technopoles of the World: the Making of Twenty-first Century Industrial Complexes* (Routledge 1994).

<sup>16</sup> Allen J. Scott, *Social Economy of the Metropolis: Cognitive–Cultural Capitalism and the Global Resurgence of Cities* (Oxford University Press 2008).

<sup>17</sup> Harvey, *supra* n. 14, pages 159-161.

<sup>18</sup> *Id.*

<sup>19</sup> Joanne Bagust, *The Legal Profession and the Business of Law*, 35 Sydney L. Rev. 27 (2013).



by general practitioners, through specialists practicing their trade in large law firms, to finally one in which lawyers as project managers dominate the landscape.<sup>20</sup>

We will not attempt to explain the entire history of the legal profession in this few pages. Suffice it to say that similar to many other economic activities during Fordism, the largest law offices in the USA and the UK began utilizing practices associated with more industrial economic endeavors. This, of course does not mean that large law firms began working like an assembly line with the goal of mass producing legal briefs and documents. First of all, legal work does not lend itself to be organized in strict Fordist practices because it does not intend to mass produce one specific good. As we know, every case is different and every client is an individual with specific needs. Yet, most large law firms started using some standardization practices similar to Fordist production lines that mostly follow Ritzer's concept of *McDonaldization*.<sup>21</sup> This last concept tries to explain the process in which service providing firms attempt to standardize as much as possible the offering of services that are supposed to be an individualized activity.<sup>22</sup>

Large law firms provide a service: legal representation and counseling. Throughout the Fordist years the organization of law firms had some elements of standardization and tasks were internally organized so as to make their performance more effective. For example, many firms were divided in divisions or departments depending on the topic of the cases they would attend, such as Civil, Corporate, Contracts, Mergers, Criminal, etc. Also, the less experienced attorneys were tasked with the less specialized work, such as writing motions or reading case files, while more experienced attorneys would do the more specialized work like writing legal briefs and conducting trials or oral argumentations. The attorneys who are part of the firm are mostly divided in two groups: associates and partners. Associates are the most recently arrived to the firm and are salaried workers, while partners are those who have been with the firm for a longer period of time and earn a percentage of the firm's revenue. Finally, all tasks were performed by employees of the firm within the firm headquarters, under the supervision of the partners.

Until very recently, these large law firms with hundreds of lawyers have worked in a very similar structure. With the recent economic crisis, corporate clients have been attempting to reduce their legal fees as a way to reduce costs and therefore increase their profits. As part of the need to reduce costs large law firms have adopted the practices that other types of businesses had incurred into with the goal of flexibilizing their process of capital accumulation. Many of these practices started after law

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<sup>20</sup> William D. Henderson, *Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers*, 70 Md. L. Rev. 373 (2011).

<sup>21</sup> George Ritzer, *The McDonaldization of Society* (SAGE 1993).

<sup>22</sup> In the case of McDonald's they have created a process through which people order their food individually and through a series of standardized practices the workers deliver the specific order in a short amount of time.

firms began to hire management firms to help them with the cost reduction that they needed and that their corporate clients were asking for.<sup>23</sup>

Some of the earlier practices of the large law firms became the “evidence” of a crisis in the legal profession. These practices included: the dismissal and limited hiring of junior associates<sup>24</sup>, move from equity partnerships to salaried partnerships or career associates<sup>25</sup>, the unbundling of tasks performed<sup>26</sup>, and the changes in the billing system from charging billable hours to flat fees.<sup>27</sup> In simple terms the law firms began to fire employees, reduce benefits, alter working arrangements, and decrease prices. All of these maneuvers have become the standard operating procedure of many businesses and corporations since the advent of the flexible accumulation regime.

Of course, these are not the only practices implemented by law firms. They began to “vertically disintegrate” their operating structure. Similarly to Fordist factories, law firms began to eliminate departments or divisions and would only pay for specific services when needed via sub-contracting. This way, instead of paying a full time attorney to evaluate contracts, the firm outsources the performance of the task by sub-contracting a non-employee attorney just for this matter.

Outsourcing of services has not been limited to seldom-needed specialized legal counseling. Now law firms are outsourcing all sorts of tasks. Through the use of technology, law firms are outsourcing non-legal tasks to non-legal firms. Tasks such as answering services or client billing have been outsourced not only to an entirely different firm but in some cases they have been offshored to an entirely different country. Some non-specialized or basic legal tasks, such as organizing and archiving of case files, have been outsourced to non-legal firms. Some of this work would have been performed by junior associates and now is being performed by non-attorneys off-site.

The most significant tasks that have been outsourced, and in many cases offshored, have been some specialized legal tasks.<sup>28</sup> The most common type, of course is the sub-contracting of a highly specialized attorney or firm to handle a specific aspect or topic of one case. Yet, there are other law-related tasks that are performed by “legal services” firms. There are firms that specialize in the review, management and analysis of documents for large-scale litigation. Firms such as *Nexus Law* or

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<sup>23</sup> Bagust, *supra* n. 19, at pages 43-45.

<sup>24</sup> David Segal, *What They Don't Teach Law Students: Lawyering*, New York Times, A1 (November 19, 2011); Henderson & Zahorsky, *supra* n. 8.

<sup>25</sup> Catherine Rampell, *At Well-Paying Law Firms, a Low-Paid Corner*, New York Times, A1 (May 24, 2011).

<sup>26</sup> Unbundling refers to working on a particular aspect or performing a particular task (such as evaluating a contract) instead of working on all aspects of a single case.

<sup>27</sup> Meredith Hobbs, *'Best Lawyers' panels agree that law schools, firms need retooling*, The National Law Journal <http://www.nationallawjournal.com/id=1202430270716/Best-Lawyers-Panels-Agree-That-Law-Schools-Firms-Need-Retooling> (accessed on July 6, 2015).

<sup>28</sup> Rachel M. Zahorsky & William D. Henderson, *Who's Eating Law Firms' Lunch?*, A.B.A. Journal, 32 (Oct. 2013).

*TyMetrix* perform tasks that in the past would have been performed by junior associates in the large law firms. Similarly, other firms, like *Recommind* and *Kroll Ontrack* perform tasks such as electronic discovery and identification and preservation of documentation, also known as “predictive coding”. There is yet another group of firms that create standardized versions of legal documents. For example, *LegalZoom* and *RocketLawyer* have websites that, for a fee, will help with the drafting of documents, such as wills or special contracts. This means that prospective clients may avoid the law firm altogether by checking out these websites.

The most controversial of these outsourcing practices is the subcontracting of Legal Process Outsourcing firms (LPOs). These are firms that perform legal tasks for a law firm but the actual task of performed in another country. This offshoring of legal work has been questioned due to possible ethical violations but the ABA has expressed itself as having no objection to this type of outsourcing as long as attorney-client privilege is preserved.<sup>29</sup> Firms like *Pangea3*, *CPA Global* and *Integreon* are some of the better known LPOs and most of their work is performed in India. Some of the tasks these firms perform are legal research, contract management, intellectual property and even e-discovery. Similar to other types of businesses, law firms can benefit themselves through the exploitation of the spatial unevenness of global capitalism. With the offshoring of legal work, costs are being reduced and therefore capital accumulation expands.

All of the tasks performed by LPOs and other legal services firms used to be performed by attorneys, most of them junior associates, at law firms. Now, law firms can sub-contract these services and avoid the need to pay a lawyer salary to have these tasks performed to theirs and their clients’ satisfaction. Lawyers in the United States, particularly recent graduates, are experiencing what other types of workers have been experiencing for the past two decades. Flexible accumulation has caused a contraction of the local legal labor market due to the expansion of the global legal market through vertical disintegration of the large law firm.

## V. Effects on Legal Education

As discussed in the first section of this paper, there have been many proposals aimed at helping with the crisis in the legal profession. But as we have shown, all that has been going on is a restructuring in the regime of accumulation that has finally reached the purview of lawyers. This restructuring has meant that large law firms are not hiring as many lawyers as they used to and they are not paying the salaries they used to be paying.

How is this reduction in hiring by large law firms causing a problem for law schools? The answer is not that complicated. For decades, many law schools would

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<sup>29</sup> ABA Formal Opinion 08-541 (Aug. 5, 2008) (*Lawyer’s Obligations When Outsourcing Legal and Nonlegal Support Services*).

partially base their prestige in the amount of graduates who could find employment in large law firms and therefore receive a large salary. This view of prestige was supported by some of the ranking systems of law schools in the United States. The possibility (or reality for some law schools) of their graduates finding jobs in these large law firms was used as a way to justify constant increases in law school tuition and expenses. The argument goes that the increasing tuition was an investment that would guarantee the student with a good paying job at a large law firm.<sup>30</sup>

As mentioned before, with the restructuring of the regime of accumulation and the outsourcing and offshoring of legal work, there are fewer positions available for recent graduates at large law firms. Without the guarantee of a high paying job, enrollment in law schools starts to decrease. If the problem is that those students graduating from law school are not finding jobs, how do the proposed solutions attack that problem?

The short answer to the question is that they do not. The proposed solutions to the crisis in legal education do not address the supposed problem. First, the problem is not that law school graduates are not finding jobs, instead what is happening is that large law firms have fewer positions to fill due to the economic restructuring. So, it is not that law graduates cannot find jobs but that one possible place of work is less available.

Second, one of the solutions proposed is to change the curriculum so that graduates are more “practice ready”. Once again, this proposal does not help with the supposed problem of law graduates not finding jobs. With this solution, law firms are switching the burden to the recent graduates by telling them that they do not possess the necessary skills when in fact, that has nothing to do with this proposal. As explained before, with the reduction in positions in large firms, an increase in the supposed “necessary” skills will not improve the prospects of finding a job in one of those firms. After all there are fewer positions to fill and the graduates improving their resumes will not increase the amount of positions available. On the other hand, this solution is just another strategy through which law firms flexibilize their accumulation of capital. If the law schools cave in and change their curricula to satisfy, even more, the needs of the large law firms, then these firms will save time and capital that would otherwise be needed to train the new employees. By blaming law schools of the graduates’ lack of jobs, the law firms expect to have another entity assume the costs of training future employees so all they have to do is hire attorneys from whom they can just extract profits with minimum investment.

Third, another solution proposed is that the law career is reduced from three to two years. This proposal is supposed to reduce the amount of money students spend in tuition and therefore reduce the graduates’ student-loan debt. Whereas we agree in general terms that student debt should be reduced, this proposal does not necessarily

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<sup>30</sup> William D. Henderson & Rachel M. Zahorsky, *The Pedigree Problem: Are Law School ties choking the Profession?*, ABA Journal, 36 (July 1, 2012).

address the supposed problem. With a lower debt, graduates may be willing to look at lower paying positions and increase their job finding prospects, but a reduction in years may mean that law graduates will not necessarily be better candidates for the job market.

Fourth, the proposals of reducing tuition and of eliminating tenure for full time professors, which is geared to decrease costs and therefore lower tuition even more, are not unique to law schools. This is a problem that has been affecting higher education in the United States for the last decade. In general terms, college tuition has been increasing across all disciplines and at all educational levels. The problem of increasing tuition is affecting everyone who wants to attend college but who does not come from a privileged background. This problem is a much more complex one that should be analyzed and discussed at another time and should not be limited to law schools. The constant reduction in government spending in education, particularly to public universities, is the biggest cause of increasing tuitions. This, of course, is part of the post-Fordist discourse of limiting education to satisfy the needs of the market.<sup>31</sup> Also, the increasing use of part-time faculty as a cost-reducing practice is already common in the US academia with negative effects on the labor conditions of college professors and in the educational experience of students.<sup>32</sup>

Fifth, the proposals to limit the number of non-elite law schools and to reduce the availability of student loans are problematic on two fronts. On one hand they are based on the premise that the law school graduates who are not getting jobs in large law firms are those who attended non-elite schools. On the other hand, the subtext is that because of the “lack of jobs” it is not fair to let someone incur in a debt that he/she will not be able to repay, therefore only those people who can afford to pay for it should be the only ones attending law schools. These two proposals’ only consequence will be the closing of opportunities for those who cannot afford to attend an elite law school, therefore leaving only the privileged class with the chance to obtain a legal education and to shape legal doctrine in the future.

## VI. Conclusion

We should conclude this conversation with two main comments. To begin, when analyzing legal education, we should be aware of the socioeconomic changes in the legal profession before accepting proposals that do not address the actual problems that law graduates confront.

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<sup>31</sup> This is a very complex topic that must be analyzed separately. For more on this subject see: Noam Chomsky, *Chomsky: How America's Great University System Is Being Destroyed*, <http://www.alternet.org/corporate-accountability-and-workplace/chomsky-how-americas-great-university-system-getting> (accessed May 18, 2015); Angel Rodríguez-Rivera, *Post Fordist Universities: The development of a new social contract*, Paper presented at SNX 2014, Bogotá, Colombia.

<sup>32</sup> Matt Saccaro, *Professors on Food Stamps: The shocking true story of academia in 2014*, Salon [http://www.salon.com/2014/09/21/professors\\_on\\_food\\_stamps\\_the\\_shocking\\_true\\_story\\_of\\_academia\\_in\\_2014/](http://www.salon.com/2014/09/21/professors_on_food_stamps_the_shocking_true_story_of_academia_in_2014/) (accessed May 18, 2015).

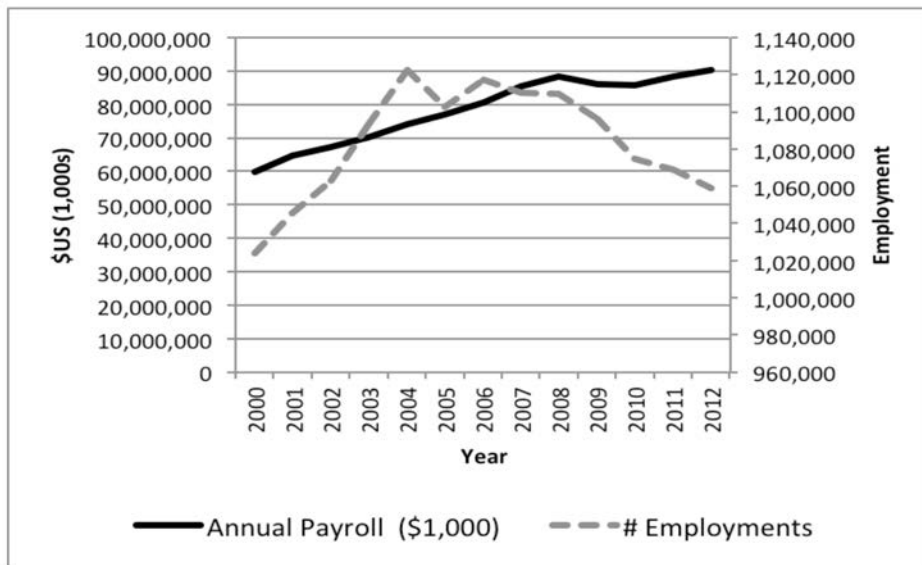
Finally, there is no “lack of jobs” for lawyers. A simple internet search will point us to the increasing needs of legal services, particularly representation in criminal matters, by the less privileged, immigrants, and those living away from large urban areas.<sup>33</sup> We should be looking into finding ways to have the continued flow of law school graduates help to fulfill the needs of such a large segment of the population. An increase in clinical courses directed at providing criminal and civil representation to underprivileged and working-class clients would help, as would an increase in subsidies, or forgiveness of student debt, to those willing to provide pro-bono work for indigents. Also, with all the technological tools now available, we should look into possible ways in which legal services firms could help those attorneys who work in Legal Aid Clinics or otherwise provide legal counsel for indigents or less affluent clients. Petitioning for an increase in public spending on education, to help with a reduction in tuition costs, should be on the table and should be included as part of the strategies being pursued towards making the legal profession more accessible to those who are more vulnerable to injustice. During this era in which capital accumulation has become more flexible and, therefore, easier we should not fall in the trap of contributing to that cause and focus on continuing to be aware of what are the real challenges within the legal practice today and work towards more social justice, not less.

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<sup>33</sup> Hannah Levintova, Jaeah Lee and Brett Brownell, *Charts: Why You're in Deep Trouble If You Can't Afford a Lawyer*, Mother Jones <http://www.motherjones.com/politics/2013/05/public-defenders-gideon-supreme-court-charts> (accessed May 18, 2015); Eleanor Acer and Jennifer Rizzo, *Addressing the Challenges of Immigrant Representation in Louisiana*, Human Rights First <http://www.humanrights-first.org/blog/addressing-challenges-immigrant-representation-louisiana> (accessed May 18, 2015); Gary P. Toohey, *Choosing the Road Less Traveled: Reversing the Rural Lawyer Exodus*, 8 *Precedent* 6 (2014); Audrey Dutton and Ethan Bronner, *Idaho's country lawyers are rare, and busy, breed*, *Idaho Statesman*, May 8, 2013; Ethan Bronner, *No Lawyer for 100 Miles, So One Rural State Offers Pay*, *New York Times*, A1 (April 8, 2013); Lorelei Laird, *In rural America, there are job opportunities and a need for lawyers*, [http://www.abajournal.com/magazine/article/too\\_many\\_lawyers\\_not\\_here\\_in\\_rural\\_america\\_lawyers\\_are\\_few\\_and\\_far\\_between](http://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between) (accessed May 18, 2015)

VII. Figures

Figure 1: Comparison of annual payroll and number of jobs in law firms



Source: US Census Bureau: County Business Patterns

Figure 2: Recent Graduates Employed by Law Firms with more than 100 lawyers

Source: US Census Bureau: County Business Patterns

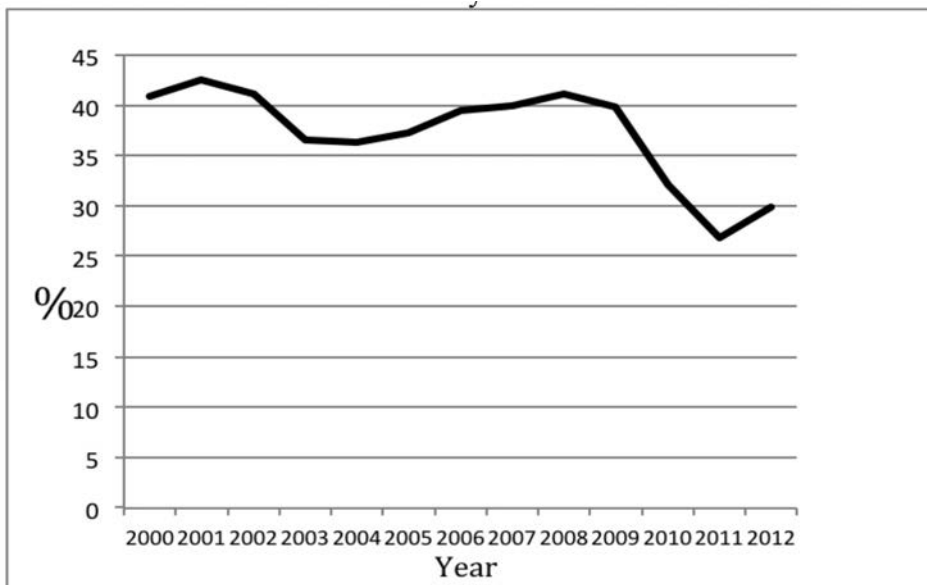


Figure 3: Vertical Integration

