2012

Organizational Alliances by U.S. Law Schools

Elizabeth Chambliss

Recommended Citation
Elizabeth Chambliss, Organizational Alliances by U.S. Law Schools, 80 Fordham L. Rev. 2615 (2012). Available at: http://ir.lawnet.fordham.edu/flr/vol80/iss6/11

This Symposium is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.
ORGANIZATIONAL ALLIANCES
BY U.S. LAW SCHOOLS

Elizabeth Chambliss*

INTRODUCTION

U.S. law schools increasingly are forming organizational alliances with other training providers, such as foreign law schools, 1 business schools, 2 large law firms, 3 and other employers, 4 in the interests of market expansion and/or consolidation. This trend is most pronounced among the most highly-ranked law schools as they develop tailored and accelerated programs for global business lawyers; 5 however, cost pressures coupled

* Professor of Law, New York Law School. Thanks to Rick Abel, Swethaa Ballakrishnen, David Johnson, Frank Munger, Becky Roiphe, Carole Silver, Laurel S. Terry, David Trubek, Louise Trubek, and David Wilkins for their very helpful comments on this Article, and to Michael Roffer for his library magic.


4. See infra Part I.A.
with calls for more “practical” (i.e., vocational) training have led other law schools to seek various forms of organizational alliance as well. Evidence from other professional contexts, and legal education in other countries, suggests this trend will likely accelerate and spread throughout the legal services industry.

What are the implications of these organizational alliances? There are a number of potential benefits for lawyers, clients, and schools. Alliances between training providers create opportunities for specialization, professional networking, and market access that cannot be fully exploited by any single provider. Alliances also provide opportunities for accelerated training and credentialing, which increases flexibility for lawyers and clients to respond to changes in market conditions, and may help reduce the cost of legal education. Not least, alliances may provide law schools with new sources of revenue and a basis for market differentiation in an increasingly volatile and competitive educational market.

There are also potential dangers, however. One danger is further segmentation and perhaps fragmentation of U.S. J.D. education into separate, specialized niches: global versus local, corporate versus individual, private versus public, and litigation versus transactional

6. See infra Part I.B.
8. See Mansfield & Trubek, supra note 4, at 372–73 (discussing the benefits of joint training by law and business schools).
10. See Randolph N. Jonakait, The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools, 51 N.Y.L. SCH. L. REV. 863, 864 (2006–2007) (calling for separate J.D. training for corporate versus personal services lawyers); Brian Tamanaha,
practice. Such segmentation arguably threatens the foundations of professional socialization and the profession’s capacity for self-regulation.

A related danger is the capture of legal education by clients—particularly traditional market elites such as large law firms and their multinational corporate clients. To the extent that professional independence is bolstered by unified training and licensing, the development of specialized and proprietary training threatens to undermine it. Access to legal services, too, may be undermined by specialized and/or proprietary training narrowly tailored to the functional needs of organized clients. Although there are many ready training partners for elite law schools serving global corporate markets, there are fewer for law schools primarily serving local and consumer markets; and increased segmentation will diminish cross-subsidies for training aimed at those markets.
Thus, law school alliances lead to questions about the boundaries of unified legal education and, ultimately, the legal profession. Although U.S. law schools currently enjoy a robust regulatory monopoly in support of a unified three-year J.D. degree, there are increasing economic and political pressures for segmentation and deregulation, and modest if not radical changes are imminent. Regulatory changes also are brewing in a number of other countries, as the unified graduate model of legal education, typified by the U.S. J.D., bumps up against the polycentric undergraduate model, typical outside of the United States. A number of countries recently have changed or are considering changing their system of legal education, with movement both toward24 and away25 from the unified graduate model. Thus, U.S. law schools are part of a broader context for rethinking the bases and timing of specialization and segmentation in legal education. Within this context, law schools’ organizational strategies may play a significant role in shaping the future quality and distribution of legal services.

21. Id. at 7 (arguing that U.S. law schools should shrink the boundaries of the unified J.D. degree, while continuing to develop specialized pre- and post-J.D. training).


23. See Flood, supra note 1 (reviewing regulatory developments in the United Kingdom, Canada, Australia, India, China, and Europe).


So far, there has been little research on law schools’ organizational alliances or their outcomes for lawyers, clients, and schools. This Article begins such research and identifies issues for future study. Part I examines emerging alliances between U.S. law schools and other training providers, and speculates about likely future patterns. Part II considers the implications of such alliances for the structure of U.S. legal education. The Article concludes by calling on law schools and regulators to invest in tracking alliances, in order to guard against market failures in legal education.

I. PATTERNS OF ORGANIZATIONAL ALLIANCE BY U.S. LAW SCHOOLS

There are no centralized sources for tracking alliances between U.S. law schools and other training providers. Although the ABA regulates and requires reporting on foreign exchange relationships, joint degree programs, and changes in organizational structure (such as mergers), it does not publish the data; and the ABA does not track law school training alliances with employers. Thus, mapping the emergence of law school alliances requires the aggregation of press releases, news coverage, law school marketing materials, and anecdotal reports.

What follows is a preliminary analysis, offered mainly to suggest directions for more systematic assessment. That being said, even a preliminary analysis of law school alliances points to familiar sources of stratification in legal education, as well as potential new sources of segmentation among law schools.


30. See Ferguson, supra note 27, at 25 n.14 (urging the ABA to publish the number of J.D. students who study abroad).
For instance, much of law schools’ alliance activity mirrors patterns of stratification and segmentation among large corporate law firms. The very top law schools are focused primarily on expanding their markets: both horizontally, through alliances with elite law schools and business schools in other countries; and vertically, through alliances with multinational law firms and clients to provide executive education and other types of post-graduate training. Thus, like elite law firms, elite law schools are competing for “global” status and the educational equivalent of “bespoke” or “high-margin” work (i.e., the best students, taught in face-to-face, resource-intensive settings, training for highly profitable and/or high-status work).

Outside this top group, emerging law school alliances are aimed primarily at market protection and/or consolidation: horizontally, through mergers and more limited partnerships with other law schools; and vertically, through alliances with graduate and, increasingly, undergraduate programs to provide accelerated J.D.-LL.M. and B.A.-J.D. degrees. Some law schools are also experimenting with training alliances with solo and small firm practitioners, hospitals, and courts. Third- and fourth-tier law schools, especially, are seeking new forms of alliance in order to reposition themselves within a contracting and increasingly segmented market, raising interesting possibilities for industry change from below.

31. See Bernard A. Burk & David McGowan, Big But Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy, 2011 COLUM. BUS. L. REV. 1, 110 (arguing that “law schools will, and to a significant degree already do, exhibit a stratification pattern analogous to the one emerging among elite firms”).
32. See infra notes 50–86 and accompanying text.
33. See infra notes 87–95 and accompanying text.
37. See infra Part I.B.1.
38. See infra Part I.B.2.
Outside the top group, however, most law schools are grappling with multidimensional changes in the legal services market and a variety of potential bases for market alliance and specialization. Many law schools face increasing pressure to move away from their traditional strategy of diversification—providing a variety of specialized courses, clinics, concentrations, and degree programs within (or on top of) a formally unified J.D. curriculum—and toward a strategy for institutional and market specialization. This is, of course, a longstanding issue in U.S. legal education: the value of unified versus specialized training in a diverse legal market. But law schools are under increasing pressure to hone their strategic missions and choose partners for the market-to-be. Thus, the following outline, albeit preliminary, points to the growing importance of law school alliances for shaping future patterns of specialization and segmentation in the profession.

A. Race to the Top: The Competition for Global Status and High Margin Work

Many U.S. law schools have longstanding and well-developed international programs, including exchange relationships with foreign law schools. New York University established its Hauser Global Law School Program in 1995, including training partnerships between “academics, government, NGO lawyers, and practitioners” at law schools in Latin America.

---

40. See Chambliss, supra note 20, at 12 (discussing competing sources of segmentation in the profession).
42. See ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 57–59, 406–18 (1921) (rejecting the possibility of a unified bar and calling for the segmentation of legal training along functional lines); ABA SECTION ON LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 86 (1992) [hereinafter MACCRATE REPORT] (discussing the “ideal of a unitary profession”); Root Report, supra note 19, at 681 (arguing that all areas of legal practice require “substantially the same intellectual preparation”).
America, Africa, and Asia.\textsuperscript{45} Georgetown University Law Center has had a
Global Law Scholars program since 2000,\textsuperscript{46} and draws upon an
international consortium of eleven law schools in its London study abroad
program.\textsuperscript{47} \textit{U.S. News \& World Report} has been ranking law schools’
international programs since 1991.\textsuperscript{48}

As with law firms, however, the globalization of the corporate legal
services market has led to a new “global” category of law schools,\textsuperscript{49} with
the top schools in each domestic market moving to claim a global position,
in part through strategic alliances with other elite, “global” schools.\textsuperscript{50} For
instance, Harvard Law School has formal exchange agreements with more
than half a dozen foreign law schools,\textsuperscript{51} most of which are also aiming to
expand their profile in the global economy.\textsuperscript{52} In 2009, Harvard teamed up

\begin{itemize}
\item \textsuperscript{45} Reaching Out to Global Partners, N.Y.U. SCH. L., http://www.law.nyu.edu/global/
globalpartnerships/index.htm (last visited Apr. 21, 2012). According to its website, these
global partnerships “go well beyond the scope of other law school exchange programs and
research activities to create long term institutional partnerships.” Id.
\item \textsuperscript{46} Global Law Scholars, GEO. L., http://www.law.georgetown.edu/gls/ (last visited
Apr. 21, 2012).
\item \textsuperscript{47} Ferguson, supra note 27, at 11.
\item \textsuperscript{48} Ted Gest, \textit{In Law, The Case for Change}, U.S. NEWS \& WORLD REP., Apr. 29, 1991,
at 75 (ranking the top five U.S. law schools in international law as Harvard, Columbia, Yale,
Georgetown, and Michigan); see also \textit{International Law Top Law Schools}, U.S. NEWS \&
WORLD REP. (2011), http://grad-schools.usnews.rankingsandreviews.com/best-
graduate-schools/top-law-schools/international-law-rankings (ranking the top five schools as
NYU, Columbia, Georgetown, Harvard, and Yale).
\item \textsuperscript{49} See Chen, supra note 13 (announcing a new global ranking of law schools); David
(2004) (discussing the emergence of “premier” global law degrees at both the J.D. and post-
J.D. levels).
\item \textsuperscript{50} See John B. Attanasio, \textit{Partnerships, Joint Ventures and Other Forms for Building
Global Law Schools}, 18 DICK. J. INT’L L. 483, 486 (2000) (discussing the importance of
individual faculty initiatives in building organizational alliances between schools); Sexton,
supra note 44, at 453 (discussing the development of the NYU program).
\item \textsuperscript{51} Harvard Law School has exchange relationships with the University of Sydney Law
School, the Fundação Getulio Vargas (FGV) Schools of Law in Brazil, the University of
Chile School of Law, Fudan University Law School in Shanghai, Institut d’EtudesPolitiques
de Paris (Sciences Po), the University of the Witwatersrand School of Law in Johannesburg,
and the University of Geneva Faculty of Law, as well as with the University of Tokyo and
the Graduate Institute of International and Development Studies in Geneva. \textit{Handbook of
Academic Policies, Additional Academic Opportunities (J.D. and Graduate Programs),
school-studies/2011-12-additional-academic-opportunities.html (last visited Apr. 21, 2012).
Harvard also recently established a joint J.D.-LL.M. program with the University of
Cambridge in England. Harvard Law School and the University of Cambridge J.D./LL.M.
Joint Degree Program, HARV. L. SCH., http://www.law.harvard.edu/academics/degrees/
special-programs/study-abroad/joint-degree-program.html (last visited Apr. 21, 2012).
\item \textsuperscript{52} See, e.g., David M. Trubek, \textit{Reforming Legal Education in Brazil: From the Ceped
Experiment to the Law Schools at the Getulio Vargas Foundation} 6 (Univ. Wis. L. Sch.,
Schools focusing on “global” law and lawyering); Emilie Biland, From Business to Law: A
French Business School within the Legal Job Market, Annual Meeting of the Law \& Society
Association, San Francisco (June 2011) (unpublished paper) (on file with author) (discussing
the creation of graduate law programs at Sciences Po); Rachel Vanneuville, The Role of
Lawyers in the Reshaping of French Contemporary Higher Legal Education, Annual
with Jindal Global Law School (JGLS)—“India’s First Global Law School”53—to host two conferences on the globalization of legal education and the legal profession, the first of which was held in New Delhi.54 Harvard hosted another conference on global legal education at Harvard in March 2012.55 In 2010, Harvard Law School’s Program on the Legal Profession launched a collaborative research initiative on the globalization of law and legal education in India, China, and Brazil.56

Yale Law School likewise has extensive alliances with foreign law schools, particularly in China and India. Yale Law School’s China Law Center has offices at both Yale University and Peking University Law School in Beijing, and “works extensively with . . . China’s leading law schools at Peking University, Renmin University, Tsinghua University, China University of Politics and Law, [and] Shanghai Jiaotong University.”57 In 2008, Yale University launched an ambitious “India Initiative,”58 leading to new alliances between Yale and various Indian schools. In 2010, Yale cosponsored a conference on globalization with JGLS, which JGLS officials say will form “the basis of a formal engagement.”59 Yale already has formal alliances with the Indian Institute of Technology and the Indian Institute of Management.60

Other U.S. law schools, too, are contending for global status through organizational alliances with foreign law schools. In 2009, Indiana University Maurer Law School, which has a formal alliance with JGLS, launched its “Center on the Global Legal Profession,” with the aim of


59. Kian Ganz, Jindal Global Law School Strengthens Bonds with Yale as Second Year Admissions Positive, LEGALLY INDIA (Nov. 1, 2010), http://www.legallyindia.com/201011011466/Law-schools/jindal-global-law-school-strengthens-bonds-with-yale-as-second-year-admissions-positive (quoting O.P. Jindal Global University Vice-Chancellor Raj Kumar). JGLS has been especially active in pursuing international alliances with elite law schools. In addition to Harvard and Yale, JGLS lists “international collaborations” with Indiana University Maurer School of Law, the University of Michigan Law School, and University of Texas at Dallas School of Management. See Leading International Collaborations of Jindal Global Law School, JINDAL GLOBAL L. SCH., http://www.jglsls.org/jg_cms.aspx?this=3&mid=167 (last visited Apr. 21, 2012). JGLS also lists collaborations with more than half a dozen elite schools outside the United States. Id.

60. Ganz, supra note 59 (stating that Yale recently signed collaboration agreements with the two schools).
giving Indiana law graduates “a seat at the table." American University School of Law has exchange relationships with twenty-five foreign law schools; Columbia University Law School has exchange relationships with fourteen foreign schools; and Fordham University School of Law has exchange relationships with eight foreign schools. Based on ABA data, thirty percent of “cooperative programs” between U.S. and foreign law schools—that is, those involving more than twelve students within a consecutive three-year period—involve law schools ranked among the top twenty-five in U.S. News and World Report.

U.S. law schools are also increasingly forming alliances with foreign law and business schools to provide tailored LL.M.—and increasingly J.D.—training to foreign students. U.S. law schools traditionally have had an advantage in the LL.M. market, because LL.M. study allows foreign lawyers to sit for the New York bar exam. However, New York recently tightened the LL.M. standards for foreign lawyers, and some evidence points to increasing brand consciousness among foreign lawyers seeking a U.S. degree. Moreover, other countries are reforming (or contemplating

62. Ferguson, supra note 27, at 12.
64. Ferguson, supra note 27, at 12; see also Cooperative Study Abroad Programs, SEC. LEGAL EDUC. & ADMISSIONS TO B., ABA, http://www.americanbar.org/groups/legal_education/resources/foreign_study/cooperative_programs.html (last visited Apr. 21, 2012).
65. More than 100 U.S. law schools offer the LL.M. degree, typically as a one-year, stand-alone, source-based program. See Overview of LL.M and Post J.D. Programs, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO B., http://www.americanbar.org/groups/legal_education/resources/llm-degrees_post_j_d_non_j_d.html (last visited Apr. 21, 2012). Some programs attract both U.S. and foreign law graduates, whereas others are aimed exclusively at the graduates of foreign law schools. See Silver, supra note 34, at 17–18. The LL.M. degree is the most common U.S. law degree among foreign law graduates. Id. at 5.
66. See Flood, supra note 1, at 7–8 (discussing the advantages of a U.S. LL.M.); Silver, supra note 34, at 18–20 (examining the role of U.S. LL.M.s as an element of global professional capital). There is no entrance exam for the LL.M. and no standardized curriculum. The only standards to which “nearly all LL.M. programs for foreign law graduates adhere” are those defined by New York’s rule on bar eligibility. Silver, supra note 34, at 19.
68. See Silver, supra note 34, at 10–11 (discussing the importance of elite credentials in the hiring practices of international law firms); Van Zandt, supra note 49, at 217–18 (stating that “the general LL.M. degree actually may become a commodity” and that “American law schools are seeing increasing competition from U.K. and Australian law schools”).
reforming) their licensing systems to compete with the relative ease of access offered by the American system.69

Top U.S. law schools have responded to the increasing competition for foreign lawyers by offering more tailored LL.M. programs70 in alliance with elite law and business schools. For instance, New York University and the National University of Singapore offer a dual LL.M. program for global business lawyers, with study in Manhattan, Singapore, and Shanghai.71 (“One Year, Two LL.M. Degrees, Three Cities.”72) The National University of Singapore bills itself as “Asia’s Global Law School.”73 Northwestern Law School offers a dual LL.M. program in law and business in partnership with Northwestern’s Kellogg School of Management,74 as well as an accelerated summer LL.M. program,75 both aimed at business lawyers educated outside of the United States. Among the eighty-two U.S. and foreign law schools listed by the Financial Times as offering LL.M. programs,76 close to 40 percent partner with a business school to deliver joint courses.77

U.S. law schools also increasingly offer J.D.-M.B.A. and accelerated J.D.-M.B.A. degrees aimed at foreign students. For instance, Northwestern offers an accelerated, three-year J.D.-M.B.A. with the Kellogg School of Management, which emphasizes its “active alliances” with business schools in Belgium, China, India, Japan, and Thailand.78 Duke offers an


74. Graduate Program in Law and Business (LLM/Kellogg), NW. UNIV. SCH. L., http://www.law.northwestern.edu/academics/llmkellogg/ (last visited Apr. 21, 2012). Graduates of the program are awarded an LLM. degree and a certificate in business administration.


77. Palin, supra note 2.

accelerated J.D.-M.B.A.\textsuperscript{79} and a J.D.-Master’s in Global Business Law with Institut d’Etudes Politiques de Paris (“Sciences Po”), which qualifies students to sit for the French national bar exam.\textsuperscript{80} Yale offers a three-year J.D.-M.B.A. as part of the Yale Law School Center for the Study of Corporate Law.\textsuperscript{81} Many law schools also offer business law certificates as part of their J.D. or LL.M. programs.\textsuperscript{82}

Finally, U.S. law schools increasingly offer Executive LL.M.s and other short forms of executive education in alliance with foreign law and business schools.\textsuperscript{83} For example, Northwestern offers Executive LL.M. programs in partnership with IE Law School in Madrid, KAIST School of Innovation and Hallym School of Graduate Studies in Seoul, and Tel Aviv University.\textsuperscript{84} Washington University in St. Louis recently launched a joint, twelve-week Executive LL.M. Program with Korea University.\textsuperscript{85} St. Gallen University outside Zurich offers an Executive Master of Business Law that utilizes a “flying faculty,” with nine one-week modules “in locations such as St. Gallen (Universität St. Gallen), Shanghai (Fudan University), Tokyo (Waseda University), Austin, Texas (University of Texas), Cambridge, Massachusetts (Harvard Law School), Luxembourg (seat of ECJ) and New York (NYU School of Law).”\textsuperscript{86}

In addition to geographic expansion through alliances with foreign law schools, elite law schools also have begun a process of vertical expansion, reaching further into post-graduate training through alliances with large law firms and clients. For instance, a number of top U.S. law schools offer tailored (firm-specific) executive education for corporate lawyers.\textsuperscript{87}


\textsuperscript{83} V. Wish, Executive LL.M Programs: Offering Flexibility, Not Short Cuts, LLM GUIDE (July 22, 2010), http://www.llm-guide.com/article/514/executive-llm-programs-offering-flexibility-not-shortcuts (reporting increasing alliances among business schools to offer “joint, executive-style M.B.A programs” and speculating that law schools will follow suit with “international, executive” LL.M.s).

\textsuperscript{84} Executive LL.M. Programs, NW. UNIV. SCH. L., http://www.law.northwestern.edu/llmexec/ (last visited Apr. 21, 2012).


\textsuperscript{87} See, e.g., Executive Legal Training Programs, UC BERKELEY SCH. L., http://www.law.berkeley.edu/10796.htm (last visited Apr. 21, 2012) (offering year-round customized training programs for “lawyers, general counsel, corporate executives, government officials and other professionals”); Programs, EXEC. EDUC., HARV. L. SCH,
Harvard was one of the first U.S. law schools to offer such training, building on a program developed at Harvard Business School. Initially, the program was aimed at law firm managing partners and other executive-level lawyers, who paid as much as $12,000 each to attend a customized, two-week program taught by Harvard law and business faculty. Recently, however, Harvard has expanded its post-graduate training ambitions to include “cradle to grave” professional development for corporate lawyers. In May 2011, Harvard launched a professional development program for mid-level associates at Milbank, dubbed “Milbank@Harvard." Harvard also has teamed up with Goodwin Procter and Pfizer to deliver various forms of tailored post-graduate training.

Other top law schools also have launched executive education programs with the aim of forming post-graduate training alliances with particular law firms. Georgetown University Law Center recently signaled its plans to offer executive education, with the appointment of James Jones, former chair of the Hildebrandt Institute, the research arm of Hildebrandt International (now Hildebrandt Baker Robbins), a legal consulting firm. In May 2011, JGLS announced an alliance with White & Case to provide firm-specific executive and continuing legal education.

Thus, at the top of the market, U.S. law schools are allying with elite foreign law schools, business schools, and large law firms to provide increasingly customized training for global business lawyers. This pattern of alliance mirrors that of the top law schools in Asia, Canada, the U.K., and Europe, which also offer tailored graduate and post-graduate business


90. Wilkins et al., supra note 3, at 1–2.
91. See Henderson, supra note 3 (describing the program); Programs, supra note 87.
92. Wilkins et al., supra note 3, at 4–6.
training.96 Taken together, these developments suggest the emergence of a global corporate market for legal education, and increasing segmentation between “global” and other schools.

This is not to say that the top U.S. law schools are focused only on the corporate market and have no other educational mission. Like U.S. law schools generally, top law schools traditionally have aimed to prepare J.D. graduates for a variety of private- and public-sector careers. Empirically, however, global corporate practice is peopled with the graduates of elite U.S. law schools,97 and top schools send over half of their J.D. graduates into corporate practice.98 Thus, elite law schools have many ready partners and suitors seeking alliance to increase their own access to the global corporate market.

B. Alliance Strategies Among Non-elite Schools

While the very top law schools have a clear target for market alliance and specialization, and can count on continuing demand for the costly, tailored training they offer, law schools outside this top group face a contracting and increasingly segmented market, and thus a more complex strategic challenge. On the one hand, law schools face growing pressure to deliver “practical” training, through resource-intensive clinics, skills courses, and other forms of experiential learning.99 Yet, for most schools, a diverse portfolio of specialized, resource-intensive programs is increasingly unsustainable,100 and all evidence suggests that cost pressures on law schools will only increase.101

96. See Della Bradshaw, Learning the Law Business, FIN. TIMES (Nov. 25, 2011, 4:28 PM), http://www.ft.com/intl/cms/s/2/772ee59e-1641-11e1-a691-00144feabdc0.html#axzz1p0mfU4J.
97. See Silver, supra note 34, at 10–11 (discussing the importance of elite U.S. credentials in the hiring practices of international law firms).
On the other hand, market specialization is risky and potentially unsustainable, too. There are few organized training partners outside of the bespoke corporate market, and those that exist tend to be unwilling (or unable) to subsidize law school training. Moreover, it is not obvious what role(s) law graduates will play in emerging “commodity”¹⁰² corporate and “unbundled”¹⁰³ consumer markets. Traditional skills training is based on a model of individualized lawyer-client interaction that itself is likely to change significantly in the coming years.¹⁰⁴ Thus, most law schools (like their students) face a rapidly changing market without a blueprint for how to respond.

This section surveys emerging strategies for organizational alliance and specialization within this context, and speculate about likely future patterns. As this survey suggests, there are no easy answers, especially for incumbents of traditional markets in denial about the implications of change. Some analysts have given up on law schools’ ability to respond strategically to changes in market conditions¹⁰⁵—at least law schools run


¹⁰². See SUSSKIND, supra note 35, at 28–33 (explaining the movement toward commodity work); Furlong, supra note 36 (defining “commodity” work as work traditionally provided by large law firms that can be provided at a significantly lower cost by contract lawyers, lawyer staffing companies, or legal process outsourcing companies).

¹⁰³. See Mansfield & Trubek, supra note 4, at 379 (describing emerging models for limited and unbundled legal assistance); Jessica K. Steinberg, In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services, 18 GEO. J. ON POVERTY L. & POL’Y 453, 454 (2011) (discussing increasing efforts to deliver limited and unbundled legal services as a “conscious and deliberate access to justice strategy”).


¹⁰⁵. See David Barnhizer, Redesigning the American Law School, 2010 MICH. ST. L. REV. 249, 253; see also id. at 252 (“It seems delusional to contemplate a situation in which traditional law faculties will collectively decide on coherent and effective strategies that will inevitably alter their workplace conditions and focus . . . . It is outside forces and external institutions that will force the process.”).
Clearly, however, the market is changing, and law schools capable of strategic action will have a market advantage. A more important question is whether law schools, collectively, can deliver high-quality, affordable training outside of the bespoke corporate sector.

1. Collaboration, Consortia, and Mergers

One potential market strategy for non-elite law schools is closer collaboration with other U.S. law schools around particular subject areas, distance learning platforms, or other institutional interests. Yet there is little history of institutional collaboration between U.S. law schools to provide J.D. training. Although law schools collaborate on particular courses, advocacy projects, and recruiting events, and law school reformers increasingly call for collaboration and cost-sharing among schools, for the most part, sustained training alliances between U.S. law schools by faculty under a collegial (or “partnership”) model. Clearly, however, the market is changing, and law schools capable of strategic action will have a market advantage. A more important question is whether law schools, collectively, can deliver high-quality, affordable training outside of the bespoke corporate sector.

---


110. See Matsas, supra note 9, at 1623–24 (identifying cooperation between law schools as a key strategy for lowering the costs of legal education); Rachel M. Zahorsky, Law Schools Need to Partner Up to Help Deflate Rising Tuition, Dean Says, A.B.A. J. (Mar. 29, 2011, 9:04 AM), http://www.abajournal.com/news/article/law_schools_need_to_partner-up_to_help_deflate_rising_tuition_Dean_Says (discussing calls for “[s]hared faculty appointments, facilities, and technology”); see also Anne Trubek, Wither the Liberal Arts College, MILLER-MCCUNE (Sept. 27, 2011), http://www.miller-mccune.com/education/
schools have been stymied by unstable funding and/or competition between schools.

For instance, in the late 1980s, a group of law faculty organized the Interuniversity Poverty Law Consortium, aimed at establishing a network of law schools to promote poverty law teaching and advocacy.\footnote{See Louise G. Trubek, Introduction to the Symposium on New Approaches to Poverty Law, Teaching, and Practice, 4 B.U. PUB. INT. L.J. 235, 235 (1995) (describing the history of the consortium).} Funded by the Ford Foundation, the consortium began with three law schools in 1989\footnote{Id. The initial members were Harvard Law School, UCLA, and the University of Wisconsin Law School. See Lessard, supra note 108, at 57–58.} and later expanded to include thirty schools.\footnote{Id. at 236.} The consortium focused primarily on linking poverty law teaching and scholarship to poverty law advocacy,\footnote{Id. at 235–36. As Trubek describes it, “Each member conducted a project on poverty law through a case-study method at her own school. The Project Group met periodically to discuss their work, analyze their success and share their resistances. A volume of nine of these case studies was published in 1992.” Id.} in part through peer exchanges between schools.\footnote{Id. at 236 (describing eleven peer exchanges between ten law schools in 1993–94).} These peer exchanges prompted advocacy projects and the first-ever poverty law casebook.\footnote{Id. at 242.} Once the Ford money ran out, however, the consortium languished. The last edition of the consortium newsletter, Consorting, was issued in 1994.\footnote{Id. at 235 n.3; see also Lessard, supra note 108, at 61–62.}

A similar effort, the Law School Consortium Project (LSCP), was launched in 1997, with grants from the Open Society Institute’s Program on Law & Society.\footnote{See LSCP, supra note 108.} Founded by four law schools and later expanded to seventeen,\footnote{Id. (follow “Membership” hyperlink). The founding members were CUNY Law School, Northeastern University School of Law, St. Mary’s University School of Law, and the University of Maryland School of Law. Id.} “[t]he LSCP was conceived as an experiment to design, evaluate, and promote programs that extend the educational and professionalism missions of law schools beyond graduation to provide training, mentoring, and other support to solo and small-firm lawyers.”\footnote{Id. (follow “History of the LSCP” hyperlink).} Its central focus was the development of practitioner networks to provide resources to solo and small-firm lawyers committed to serving low and moderate-income clients. But the grants ran out and, in 2009, the LSCP “went into a state of rest.”\footnote{Id. (stating that the LSCP had “achieved its goal of establishing successful practitioner networks to assist solo and small-firm lawyers serving low and moderate-income individuals and communities nationwide”).} According to a description of the project on the University of Maryland Law School website, “Local and regional LSCP initiatives continue to work together on an ad-hoc basis, furthering the mission and goals of LSCP and networking to increase access to justice.”\footnote{Id.}
More recently, law schools have attempted to form consortia to advance distance learning initiatives, with disappointing results. In 2011, as part of the culmination of the Future Ed project, a year-long contest of ideas for innovation in legal education,123 New York Law School announced the formation of a “discussion group” to consider the development of a shared platform for distance learning and the creation of legal games and software, and invited other law schools to join.124 Five other deans agreed to discussions and were listed in the initial press release,125 but the effort floundered almost immediately when schools were reluctant to put up funds. Richard Matasar, who led the initiative, has since left his position as Dean and President of New York Law School to become Vice President for University Enterprise Initiatives at New York University.126

One possible solution to the funding problem is corporate ownership and the development of proprietary consortia. For instance, the InfiLaw System is a consortium of independent, for-profit law schools aimed at establishing “student-centered, ABA-accredited law schools in underserved markets.”127 The consortium includes Florida Coastal School of Law, Phoenix School of Law, and Charlotte School of Law, all of which are ABA-accredited.128 Member schools operate as independent institutions, managing all admissions and academic programs, while InfiLaw administers non-academic functions and advises members about best practices and opportunities for innovation.129 InfiLaw is backed by Sterling Partners, a private equity firm “with approximately $4 billion of assets under management.”130 Some observers predict the emergence of additional


125. Press Release, N.Y. Law Sch., Six Law School Deans Form a Discussion Group on Ways to Collaborate on More Effective Use of Technology in Legal Education (Apr. 18, 2011), http://www.nyls.edu/news_and_events/releases/dean_discussion_group/. The six schools were Australian National University College of Law, IIT Chicago-Kent College of Law, the University of Miami School of Law, New York Law School, the University of the Pacific McGeorge School of Law, and Southwestern Law School.


129. About Us, supra note 128.

130. Id.
proprietary consortia, as well as the sale of some existing university law
schools to corporations.131

Merger is another “collaborative” solution for independent and/or cash-
strapped law schools, as historic132 and recent examples suggest. In
addition to the direct economic benefits of shared infrastructure, affiliation
with a name university tends to buoy the reputation of independent law
schools and improve graduates’ employment prospects.133 For instance, in
1995, facing declining enrollments, the Detroit College of Law affiliated
with Michigan State University and, in 1997, the law school relocated to the
Michigan State campus in East Lansing.134 In 2004, the law school
changed its name to Michigan State University College of Law.135
Although the law school remains administratively and financially
independent, applications have “zoomed” since the move, and students
view the affiliation with a state university as a significant boost to their
careers.136

Dickinson School of Law is another example of a merger with
reputational benefits. In 1997, “[i]n the face of increasing demand for high-
cost technology, for costly, labor-intensive clinical education, and high-
quality faculty,”137 the Dickinson School of Law in Carlisle, Pennsylvania—then listed in the unranked third tier by U.S. News & World
Report,138—decided to merge with Pennsylvania State University, 100
miles away.139 Applications to “Penn State Law” increased nearly thirty
percent in 2000, the year that the merger was complete.140 In 2008, the law

131. See, e.g., Barnhizer, supra note 105, at 298–99 (stating that financial pressure may
lead both public and private university law schools to enter “‘public-private’ partnership
arrangements in which they sell their law schools to corporations to operate for profit or
enter management contracts with private companies to run existing law schools”).

132. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO
THE 1980S 5 (1983) (discussing mergers between proprietary law schools and universities in
the 1820s).

The private law schools were interested in the affiliation largely because it gave
prestige and because, in most states, only universities were empowered to give
degrees. Why the universities were interested in the arrangement was less clear.
Perhaps it gave them greater influence among the local elite . . . . The
arrangements certainly cost the universities nothing.

Id.

133. See Michael Ariens, Law School Branding and the Future of Legal Education, 34
ST. MARY’S L.J. 301, 338–43 (2003) (discussing the rebranding of independent law schools
through mergers with universities).

134. See Merger to Bring Law School to Michigan State Campus: The Detroit College of
Law Will Be Brought to the East Lansing University, GRAND RAPIDS PRESS, Feb. 28, 1995, at
A9.

135. MSU Law School Name Change Reflects Integration and Collaboration, MICH. ST.


137. Charles Thompson, Dickinson Trustees Felt Now Was the Time: Changes in Legal
Business Helped Prompt Merger with Penn State, HARRISBURG PATRIOT, Jan. 19, 1997, at
B3 (quoting Dickinson President Robert Frey).


139. Jacques Steinberg, Penn State Merges with Dickinson Law, N.Y. TIMES, Jan. 22,

140. Ariens, supra note 133, at 341.
school opened a second location in a new building on the Penn State campus in State College.\textsuperscript{141} In 2012, “Pennsylvania State University (Dickinson)” was ranked 76 by U.S. News.\textsuperscript{142}

Of course, universities may be cash-strapped, too, making planners wary. In 1998, South Texas College of Law in Houston proposed an affiliation with Texas A&M University,\textsuperscript{143} but was denied by the Texas Higher Education Coordinating Board.\textsuperscript{144} Merger talks also stalled between Nashville School of Law and Tennessee State University, due to the law school’s concerns about “the state’s persistent budget troubles.”\textsuperscript{145} In 2010, the San Diego Union reported that U.C. San Diego and California Western Law School had entered preliminary negotiations to merge or affiliate under one name,\textsuperscript{146} but talks were suspended fifteen months later due to concerns about the state's fiscal crisis.\textsuperscript{147}

Notwithstanding these examples, law school merger activity will likely increase as the market continues to tighten. Merger activity has increased significantly among law firms seeking a sustainable platform, especially regional mergers in Sun Belt markets such as Los Angeles, Houston, and Charleston, South Carolina.\textsuperscript{148} Law schools, too, can be expected to seek an expanded presence in these markets through merger and branching,\textsuperscript{149}

\begin{enumerate}
\item[141.] Visit Penn State Law, PENN ST. L., http://law.psu.edu/prospective_students/visit_penn_state_law (last visited Apr. 21, 2012).
\item[145.] Law School, Tennessee State End Merger Negotiations, BLACK ISSUES HIGHER EDUC., May 9, 2002, at 20, available at 2002 WLNR 5204786. The merger negotiations were “required by the settlement of a desegregation lawsuit against Tennessee’s higher education system.” Id. Tennessee faced a $350 million shortfall in the fiscal year ending June 30, 2002. Id.
\item[146.] Yet Another Law School Merger? UC San Diego, Meet Cal Western, FAC. LOUNGE (Jan. 29, 2010), http://www.thefacultylounge.org/2010/01/yet-another-law-school-merger-ucsd-meet-cal-western.html (stating “there is talk of entering into a Michigan State / Detroit College of Law agreement which allows for a single name, but separate corporate entities”).
as well as the start-up of new proprietary schools. Meanwhile, merger talks are on the table even at state university law schools, such as Rutgers University in Camden, New Jersey. Thus, while U.S. law schools have shown little appetite for institutional collaboration to deliver basic (J.D.) training, law schools, like law firms, may be headed for more radical changes in ownership and organizational form.

2. Accelerated Degrees

Another emerging market strategy among non-elite as well as elite law schools is the development of accelerated degrees. As is the case among elite law schools, many of these initiatives are aimed at the LL.M. market in specialty areas such as business and tax. Accelerated programs allow students to begin LL.M. study while pursuing a J.D. degree, to save time and tuition costs—and, ideally, to give students a leg up in the employment market. For instance, Boston University offers an accelerated J.D.-LL.M. program in taxation, reporting that “[e]mployers seeking help in the tax area are increasingly citing the degree as a prerequisite, and students often find that the broad range of tax issues explored in the Graduate Tax Program cannot be learned on the job.” Three law schools, Dayton University School of Law, Northwestern, and Southwestern Law


151. See Joe Green, New Jersey Lawmakers Await Plan on Merger of Rowan, Rutgers-Camden, GLOUCESTER COUNTY TIMES (Jan. 27, 2012, 4:00 AM), available at http://www.nj.com/gloucester-county/index.ssf/2012/01/new_jersey_lawmakers_wait_pla.html (discussing Governor Christie’s endorsement of a proposal to merge Rutgers-Camden with Rowan University as part of an overhaul of the state’s higher education system); Joe Cooney, Rutgers Law Students Decry Merger Plan, COURIER-POST (Jan. 31, 2012), available at 2012 WLNR 2108610 (reporting students’ concerns about the reputational costs of losing the Rutgers name).


153. But see Karen Sloan, Big Firms Don’t Care About Your LL.M., Recruiter Warns, NAT’L L.J. (Jan. 10, 2012), http://www.law.com/jsp/nlj/PublicArticleNlj.jsp?id=1202537948154 (stating that, except in the area of tax, LL.M.s do not help and may actually hurt the job prospects of U.S. law graduates, because they “may signal uncertainty about their career paths or attempts to avoid the reality of a difficult job search”).


School, also offer stand-alone, accelerated J.D. degrees, allowing students to compress three years of study into two years and three summers.

As part of this trend, a number of law schools have begun to partner with other graduate programs to develop accelerated, post-graduate degrees. For instance, as discussed above, many U.S. law schools partner with their university’s business school to offer accelerated J.D.-M.B.A.s. Some law schools also have begun to partner with outside institutions to offer accelerated J.D.-M.A. programs in new specialty areas. For instance, New York Law School recently announced an alliance with the John Jay College of Criminal Justice to provide a dual J.D.-M.A. program in law and forensic psychology. The program allows students to complete both degrees in four years instead of five. Northeastern University School of Law recently introduced four-year J.D.-M.A. degrees in Sustainable International Development, in partnership with Brandeis University, and in Environmental Law and Policy, in partnership with Vermont Law School.

Non-elite law schools are also increasingly partnering with undergraduate schools to provide accelerated B.A.-J.D. degrees. Such programs, referred to as “three plus three” programs, allow students to combine some requirements of the bachelor’s degree with the requirements of J.D. study so as to complete both degrees in six years instead of seven. Typically, students receive their bachelor’s degree after the first year of law school. At least sixteen law schools offer three plus three programs, all but three of which are ranked below the top fifty by U.S. News & World Report.

156. Accelerated J.D., NW. UNIV. SCH. L., http://www.law.northwestern.edu/academics/ajd/ (last visited Apr. 21, 2012) (stating that it is “the first top tier law school to offer an accelerated JD program”).
160. See id.
163. See Accelerated JD Program, WIKIPEDIA, http://en.wikipedia.org/wiki/Accelerated_JD_program (last visited Apr. 21, 2012) (listing schools that offer an accelerated J.D. degree, and linking to more information about each school’s program). Law schools offering three plus three programs in partnership with undergraduate schools are Albany Law School, IIT Columbia Law School, Creighton University School of Law, Florida Coastal School of Law, Fordham University School of Law, Georgia State University College of Law, Hamline University Law School, Hofstra Law School, IIT Chicago-Kent College of Law, Rutgers School of Law–Camden, Seton Hall Law School, Southwestern Law School, Tulane Law School, University of Pennsylvania Law School, University of St. Thomas School of Law,
One law school has even created its own, two-year feeder college aimed at students who have not completed a traditional undergraduate degree.\textsuperscript{164} The single-subject college, the American College of History and Legal Studies (ACHLS), is billed as a “sister school” to the Massachusetts School of Law, and intended “for students with two years of community college, people who dropped out of a traditional four-year college, or people who are returning to school following a long absence.”\textsuperscript{165} Tuition at the college is modest, only $10,000 per year,\textsuperscript{166} with full-tuition scholarships for students who enroll for their junior year in 2012.\textsuperscript{167} ACHLS students with a GPA of 2.3 or higher are automatically eligible for admission to the law school, and may opt into the law school’s three plus three program, combining their second year at the college with the first year of law school.\textsuperscript{168}

The move toward accelerated J.D. degrees in alliance with undergraduate schools suggests a potential new source of segmentation within U.S. legal education, between an entry-level undergraduate-oriented J.D. (or LL.B.) degree and a more specialized graduate J.D. (or J.D.-plus) degree. Such a split has many potential advantages in a diverse legal market in which, currently, most J.D. graduates incur $100,000 or more in educational debt.\textsuperscript{169} A number of commentators have called for shortening or even eliminating the J.D. requirement for admission to the bar,\textsuperscript{170} and many
countries outside the United States offer law as an undergraduate degree. Ultimately, re-sequencing basic versus specialized legal training may be a better approach to restructuring U.S. legal education than the further segmentation of J.D. programs according to the characteristics of initial employers.

Currently, ABA accreditation standards limit the potential for accelerated J.D. training to the “three plus three” and “two year/three summer” models described above, and most states require bar applicants to have graduated from an ABA-accredited law school (or to have passed a bar exam in another state). However, market developments are likely to increase demand for regulatory changes as well as new forms of pre-law credentialing, and most law schools have market incentives to diversify beyond the J.D. degree. Thus, the move to accelerate J.D. training should be viewed as evidence—and a harbinger—of increasing downward pressure on U.S. legal education and licensing requirements.

3. Alliances with Local Market Constituents

A third market strategy among non-elite law schools is the formalization of training alliances with solo and small firm practitioners and other local market constituents, including (most notably) hospitals and courts. These typically small-scale alliances take many forms, most of which grow out of the clinical movement in legal education and suffer from the same resource limitations as law school clinics. Like clinics, however, they suggest potential training partners outside of the corporate market, and potential strategies for subsidizing “local” legal training.

For instance, a number of law schools have sought formal alliances with solo and small firm practitioners by providing tailored continuing legal

 McGinnis & Mangas, supra note 22 (suggesting that law be an undergraduate degree); Aric Press, Fixing Law School, AMLAW DAILY (Sept. 7, 2011), http://amlawdaily.typepad.com/ amlawdaily/2011/09/fixing-law-school.html (calling upon the ABA to end the “six-semester tyranny” and provide more “freedom to experiment”).

 171. See supra notes 23–25 and accompanying text.

 172. See Chambliss, supra note 20, at 3 (arguing for rethinking the sequencing of U.S. legal education, to create more flexible entry and exit points at various stages of specialization).

 173. ABA STANDARDS, supra note 27, http://www.americanbar.org/content/dam/aba/ publications/misc/legal_education/Standards/2012_standards_chapter_3.pdf (Standard 304, establishing the minimum period of academic instruction required for graduation; and 305, regulating credit for field placement programs and other study outside the classroom); see also Christopher T. Cunniffe, The Case for the Alternative Third-Year Program, 61 ALB. L. REV. 85, 87–94 (1997) (discussing the history and justifications for the ABA’s duration and location requirements).


 175. See Chambliss, supra note 20, at 16–20 (discussing downward pressure on legal education and licensing standards).

 176. See Barnhizer, supra note 105, at 309 (stating that “many people want to possess legal knowledge even if they don’t want to practice law”); Matasar, supra note 9, at 1621–22 (discussing the market for training certificates and ancillary degrees).
education (CLE), either in traditional, face-to-face formats or in partnership with online CLE providers. Pace Law School, for instance, has developed a customized CLE program in legal writing in collaboration with small firm practitioners, who in turn are encouraged to mandate employees’ completion of the program.177 Likewise, Villanova has created a Writing in Practice Partnership with local practitioners, as well as customized CLE training for specific employers.178 In 2011, New York Law School launched a partnership with Lawline.com, a major provider of online CLE materials run by a 2006 New York Law School graduate.179

Such programs are designed to foster closer bonds with alumni and potential employers by addressing the post-graduate training needs of “small- to medium-sized regional employers.”180 CLE partnerships also may create an important revenue stream for the law school, and a platform for potential expansion into the online legal information market.181 In many respects, such initiatives parallel elite law schools’ initiatives to provide executive education. Moreover, CLE training is mandatory for lawyers in most jurisdictions.182 Thus, law school alliances to provide CLE training are well positioned to capitalize on built-in market demand.

Another emerging form of alliance between law schools and solo and small firm practitioners are “solo practice incubators”: in-house law firms created and supported by law schools to serve low- and middle-income clients and to help recent graduates learn how to start their own practices. In the past five years, at least four law schools have launched solo practice incubators, including the City University of New York School of Law, the University of Missouri-Kansas City School of Law, the University of Maryland School of Law, and Pace Law School.183 In a related development, the University of Utah S.J. Quinney College of Law is piloting an alliance with a standalone, “low bono” law firm, in an arrangement intended to “mirror the clinical configuration of the University’s medical school and adjoining hospital.”184

177. See Littman & Mooney, supra note 4, at 2–3 (describing the program). Lawyers who complete the program receive five hours of CLE credit and a Legal Writing Skills Certificate. Id. at 3.
178. Id. at 5–7.
180. Littman & Mooney, supra note 4, at 6.
181. Press Release, supra note 179 (stating that the goal of the alliance is to “bring online legal learning resources to law students,” as well as to develop “short, targeted segments” for a popular audience).
The incubator model is reminiscent of fee-generating law clinics, which at least one law school has used successfully to offset the high costs of clinical training. This model has renewed appeal in an increasingly cost-conscious market, with reformers clamoring for hands-on training. The question is to what extent such programs are scalable, or capable of attracting sustained subsidies from external constituents. Whatever their benefits, solo practice incubators and “low bono” law firms cannot, on their own, produce enough revenue to substantially reduce or subsidize the costs of traditional J.D. education. Instead, such initiatives need organizational partners—or patrons.

Hospitals are one possible partner for some types of clinical training. The National Center for Medical-Legal Partnerships counts 235 medical-legal partnerships based in hospitals and community health centers, and forty participating law schools. Such partnerships take a variety of forms but share a core mission of improving public health by delivering integrated medical and legal services to “vulnerable individuals, children, and families.” This shared mission has facilitated the rapid replication of the medical-legal partnership model, as well as access to a potentially broad range of funding and resources.

Courts are another potential partner for training alliances in specialized practice areas, especially those increasingly involving self-representation by litigants, such as family courts. For instance, several law schools have developed clinics to support and evaluate the effects of “unbundled” legal services in family law cases, with the goal of providing law students with training in limited assistance relationships, as well as assessing the value of different levels of assistance. Such efforts fill a growing need for evidence-based assessment of full-service versus other models of legal services.
In the end, however, specialized clinics serving vulnerable and low-income clients are likely to face increasing challenges of scaling and sustainability. Although low-income clinics are (more or less) viable as part of unified system of J.D. education, in which most students who pay tuition never participate in a clinic, it is unclear how such clinics will be funded in an increasingly segmented market, with diminishing cross-subsidies between corporate and other employers and clients. As others have noted, “there is a big difference between unmet legal needs and legal demand.” Thus, as Part II argues, further segmentation of J.D. programs according to the resources of employers and clients is not a viable long-term strategy for U.S. law schools, individually or collectively. Instead, law school deans and regulators face increasing pressure to look beyond the needs of incumbent organizational clients and develop educational strategies for a more diverse—and less regulated—legal services market.

II. IMPLICATIONS

Perhaps the most obvious implication of the patterns outlined above is the increasing pressure on U.S. law schools for market differentiation and specialization. At the top of the market, U.S. law schools are seeking to brand their positions within the global economy by forming alliances with elite foreign law schools, business schools, and corporate law firms and clients. Schools outside of this market are moving to establish alternative niches through formal alliances with solo and small firm practitioners, CLE providers, and other organizations serving low- and middle-income consumers, as well as through the development of accelerated and/or specialty degrees. Schools at all levels are increasingly emphasizing the “practical” (i.e., immediate market) value of the training they offer rather than the rigor or value of “professional” legal training per se. Clearly, then, we can expect increasing—and increasingly formal—differentiation and specialization by U.S. law schools in years to come.

The bases for law school specialization, however, currently are very much in play. U.S. law schools, like U.S. lawyers, traditionally have been differentiated primarily according to the type of client served—particularly

---

193. Mansfield & Trubek, supra note 4, at 379.
195. See Richard A. Matasar, The MacCrate Report from the Dean’s Perspective, 1 CLINICAL L. REV. 457, 488–91 (1994) (arguing that, given the high costs of clinical education, the fee-generating approach is the only way to offer quality in-house live-client clinical opportunities to a large number of students).
196. Barnhizer, supra note 105, at 257.
their access to large corporate employers and clients. The introduction of the U.S. News & World Report law school rankings, coupled with the rapid growth of large law firms in the 1980s and 1990s, has led to a progressively rigid and commodified ranking of law schools, in which schools are differentiated primarily by quantifiable inputs (first year student credentials) and outputs (associate positions in Am Law 200 law firms), rather than by the substance, methods, or quality of training they offer.197

This system worked well enough (for law schools) as long as students could afford tuition and/or imagine paying off law school loans with sizable large firm salaries.198 Since 2008, however, the global recession and contraction of the large firm associate market have exacerbated and made more transparent the costs of this highly stratified but otherwise undifferentiated system, to the point that plaintiffs’ firms are targeting non-elite law schools in class action lawsuits for consumer fraud.199 Access to corporate employers and clients—which, in the bubble years, extended to nearly 25 percent of all U.S. law school graduates200—is increasingly limited to the top graduates of the very top schools201 and likely to remain so “indefinitely.”202 Other law schools, increasingly urgently, need to come up with an alternative plan.

But what does Plan B look like for U.S. law schools? Collectively, it undoubtedly includes some downsizing and market consolidation.203 Some law schools will fail, others will merge, and others will shrink (by surprise or design) to adjust to the loss of large law firm jobs and the penumbra they provided. But no dean ever got appointed by proposing to shut down the law school, and downsizing does not address the pressure for market


199. See Karen Sloan, Plaintiffs’ Firms Target Another 20 Law Schools, Alleging Fraud, NAT’L L.J. (Mar. 14, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202545575181&Plaintiffs_firms_target_another_law_schools_alleging_fraud (announcing attorneys’ intention to file class action lawsuits against twenty law schools for fraud, in addition to the fourteen such lawsuits already filed). All but two of the filed and contemplated law suits are against law schools outside the top fifty, as ranked by U.S. News & World Report. Id.


201. See Burk & McGowan, supra note 31, at 110; Karen Sloan, Elite Firms Seem to Have Lost Their Appetites, Nat’l L.J. (Feb. 27, 2011), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202543428334&slreturn=1 (discussing the increasing concentration of large firm associate hiring from the very top schools).

202. Burk & McGowan, supra note 31, at 105; see also Henderson & Zahorsky, supra note 101 (predicting enormous and lasting structural change). One consultant predicts that over twenty-five percent of the 65,000 non-partner positions at the nation’s largest law firms will be cut or re-categorized over the next five to seven years. See Debra Cassens Weiss, 17,500 BigLaw Jobs Are at Risk Due to Cost Pressures, Consultant Says, A.B.A. J. (Sept. 27, 2010), http://www.abajournal.com/news/article/17500_biglaw_jobs_are_at_risk_due_to_cost_pressures_consultant_says/.

203. See Burk & McGowan, supra note 31, at 107 (arguing that some “contraction in the number of [U.S. law schools] seems probable and likely would be efficient”).
differentiation. Moreover, reducing the size and number of law schools in response to the corporate downturn does not address the need for affordable legal training in other markets. Thus, unless the U.S. J.D. mission is to be defined entirely by the staffing needs of large law firms, downsizing alone is not a viable individual or collective strategy for U.S. law schools.

Many reformers also call for increasing investment in “practical” training, and many law schools have responded in some fashion, as discussed above. However, the call for practical training raises the question, training for what? Practical training requires some vision of the practice of law—whether it be a unified, functional vision of research, writing, negotiation, and advocacy; a substantive vision of a niche practice (such as tax, health care, family law, and the like); or an entrepreneurial vision based on emerging markets in legal information engineering—yet much of the current clamor for practical training dodges this issue. Read closely, the call for “practical” training tends to be a proxy for other reform agendas, such as a critique of legal scholarship or non-elite law schools, rather than a coherent strategy for law school investment.

Ultimately, then, neither downsizing nor the call for practical training suggest a strategic direction for law schools. Instead, as Part I indicates, law schools’ market strategies will likely be organized around two axes: a horizontal axis, on which J.D. programs will compete for specialized niches within the entry-level employment market; and a vertical axis, on which law schools will compete to offer accelerated non-J.D., J.D., and J.D.-plus credentials. This section analyzes the possibilities for further differentiation on each axis, and speculates about likely future developments.

A. Specialization by Initial Employer

Much of the current movement toward specialization by employer is organized around the traditional divide between large corporate law firms and solo and small firm practice, and some call for a more explicit segmentation of law schools around this divide. For instance, Randolph Jonakait argues that there is a “sharp and unbridgeable chasm” between the careers of “graduates of high-prestige law schools [who] primarily work on the corporate side,” and the graduates of “local law schools” who primarily represent individuals.204 and that “‘[i]ntelligence,’ at least as indicated by LSAT scores, has become more concentrated at the highest ranked schools.”205 According to Jonakait, personal services lawyering requires different skills than corporate lawyering, in that “[p]ersonal-client attorneys seldom face legally complex matters, and seldom write briefs or memoranda, but, unlike corporate attorneys, they must be able to deal with difficult human problems and relations.”206 Jonakait therefore urges local law schools to focus on skills training for the personal client sector, and to

204. Jonakait, supra note 14, at 864.
205. Id. at 880.
206. Id.
abandon efforts to place their students at large law firms where they are “unlikely to become partners.”207

Brian Tamanaha likewise argues that given corporate law firms’ preference for elite law school graduates, non-elite law schools “ought to develop a different model of education that better matches the jobs and careers of their graduates,”208 such as decreasing investment in scholarship209 and limiting the number of students admitted.210 According to Tamanaha, writing in 2007, law school “is still a good investment for graduates of elite law schools, who are in line for lucrative (albeit life-draining) corporate law jobs. The same cannot be said for graduates of non-elite law schools.”211

There are, however, a variety of problems with these two-tier proposals on both functional and normative grounds. First, even if we imagine a profession that is neatly divided between private practice for corporate versus individual clients—that is, not counting criminal practice, government service, public interest practice, academia, consulting, or the myriad other settings in which modern lawyers practice (or might soon practice)—it is debatable whether these two types of practice require functionally different skills. Is it true that lawyers for individuals “seldom face legally complex matters”?212 Or is it simply that individual clients are less likely to be able pay for such services? Is it true that corporate practice does not involve “human problems and relations”?213 Certainly most corporate lawyers would debate this. In fact, elite law schools are scrambling to develop J.D. and executive education courses on emotional intelligence, problem solving, and law office management214—some of the very skills that Jonakait identifies as necessary for solo and small firm practice.215


208. Tamanaha, supra note 14.

209. Brian Tamanaha, Why the Interdisciplinary Movement in Legal Academia Might Be a Bad Idea (For Most Law Schools), BALKINIZATION (Jan. 16, 2008), http://balkin.blogspot.com/2008/01/why-interdisciplinary-movement-in-legal.html (stating that knowledge of the social sciences, in particular, is “irrelevant to the practice of law”).


211. Tamanaha, supra note 14.

212. Jonakait, supra note 14, at 864.

213. Id.


Further, even if we embrace the distinction between corporate and individual practice, and simply strive to tailor legal education to client interests, it is not obvious what private clients will want from law graduates in the coming years. Many “complex matters” that large law firm associates traditionally have performed in fact have turned out to be subject to automation and commoditization, leading to increased competition from foreign lawyers and non-legal service providers, and a drop in large law firms’ demand for new graduates. Corporate clients, likewise, have loudly declared that they do not want to pay for services from first- and second-year lawyers, and some corporate clients have begun to sidestep large law firms altogether for much of their work. Meanwhile, personal services lawyering is increasingly subject to competition from nonlawyer specialists, such as paralegals, claims adjusters, and information technologists. Thus, the traditional divide between corporate and individual legal services is becoming outdated, and soon may be overshadowed by the divide between bespoke and commodity work.

Finally, even if we imagine a return of pre-recession conditions, or at least some significant measure of large firm associate hiring, further segmentation of law schools according to the size and starting salaries of private law firms is not a sustainable strategy for most law schools at the current price point for the J.D. degree. Reducing investment in faculty scholarship might save on tenured faculty salaries, and lower the personnel costs associated with lecture courses, but would do little to lower the costs of skills training. On the contrary, skills programs are more faculty-intensive. Unless law schools rely extensively on adjunct faculty or

216. See Joel Stashenko, Lawyers Face New Challenges from Global Competition, N.Y. L.J. (Feb. 4, 2011), http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202480255104 (reporting the findings of a New York State Bar Association committee on challenges facing the New York legal profession).

217. See Furlong, supra note 36 (discussing increasing industry competition for what used to be large firm work).


219. See Paul Lippe, Welcome to the Future: Are Law Schools “Beached”?; AMLAW DAILY (Apr. 15, 2010, 6:16 PM), http://amlawdaily.typepad.com/amlawdaily/2010/04/welcome.html (reporting the remarks of Paul Beach, Associate General Counsel of United Technologies, who stated “that his company refused to pay for first- and second-year associate time because it was ‘worthless’”).


221. See A.B.A. COMMISSION ON NONLAWYER PRACTICE, NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS: A REPORT WITH RECOMMENDATIONS 10 (1995), available at http://www.paralegals.org/displaycommon.cfm?an=1&subarticlebr=338 (discussing the increasing role of paralegals and nonlawyer specialists in assisting self-represented persons as well as representing persons in state and federal agency proceedings); Ribstein, supra note 104, at 1667–69 (discussing the increasing importance of legal information technology); Steinberg, supra note 103, at 454 (discussing the expansion of limited and “unbundled” services to increase access to justice for ordinary litigants).
volunteers, a move from scholarly to “practical” training will only drive up tuition. Moreover, students with no hope of immediate entry into high-paying large law firm jobs will be less willing to take on debt to finance their legal educations.

Thus the effect, if not the goal, of further segmentation between “corporate” and “individual” markets would be to channel all the best-credentialed law school applicants into corporate practice and make more explicit elite law schools’ identification with, and dependence on, corporate clients. This approach fails to address the cost pressures facing all but a few elite law schools or to provide a sustainable strategy for legal training in other markets.

To be sustainable, law school specialization by initial employer depends on cross-subsidies within (versus across) client markets; subsidized J.D. tuition; or new, lower-cost forms of legal training. Some markets are likely more viable than others as a basis for specialization—for instance, health care, intellectual property, real estate, and tax (just to name a few), in which a variety of entry-level legal jobs at decent salaries likely will be available. But in the absence of new corporate employers for personal services lawyers (such as legal software providers and other types of legal information engineers), or subsidies from other sources (such as government or private foundations), it is unlikely that law schools can sustain specialized J.D. programs focused on the needs of ordinary consumers, much less vulnerable and low-income clients.

B. Accelerated Degrees

Acceleration is currently the dominant strategy for reducing the costs of legal training among both elite and non-elite schools and, as Part I suggests, downward pressure on legal training requirements will likely increase. One possible outcome is increased movement toward, and industry consolidation around, a two-year or other short form of the J.D. degree. While not new, such proposals appear to be gaining momentum, and offer a means for retaining a unified approach to basic J.D. education, while at the same time continuing to develop specialized pre- and post-J.D. training. To the extent that elite law schools move to legitimate a two-year J.D. or other accelerated entry-level credentials, other law schools and law school regulators will be more likely to develop and support them.

Another likely development is the emergence of a variety of paraprofessional and law-related non-J.D. positions and credentials in specially

223. See U.S. GOV’T ACCOUNTABILITY OFFICE, supra note 100.
224. See supra note 104 and accompanying text (discussing the increasing importance of legal expert systems and lawyers’ potential role as “information engineers”).
225. See supra note 172 and accompanying text.
226. See generally Chambliss, supra note 20 (arguing that U.S. law schools should shrink the boundaries of the unified J.D. degree while continuing to develop specialized pre- and post-J.D. training).
regulated areas. Such positions already exist in areas such as workers’
compensation, immigration, patent, and tax, and are being modeled and
tested in health care settings and family courts. Specialized training for
para-professional and limited assistance positions represents a significant
opportunity for market expansion by law schools, as well as an
increasingly important regulatory arena.

Enterprising law schools could also develop specialized pre- and non-J.D. programs aimed at emerging markets for legal information technology,
such as legal process outsourcing, knowledge management, and the
development of legal expert systems. Indeed, to the extent that law
schools fail to stake a claim to this market, the legal profession will be ill-equipped to stave off competition from technology companies and other
 corporate competitors and, for better or worse, will lose its capacity to
regulate the quality of legal information technology.

C. Centralization of Law School Management

Of course, any explicit departure from the unified, three-year J.D. degree
likely will be met with resistance by incumbents, such as tenured faculty
and university administrators, who may be in a position to block proposals
for acceleration and/or market specialization. One consequence will be
blocked proposals and, potentially, law school failure on an individual or
broader basis. Another likely development, however, is the increasing
centralization and “professionalization” of law school management—
similar to what has occurred in large law firms beginning roughly in the late
1990s. Traditional law schools already exhibit movement to stronger

227. A.B.A. COMMISSION ON NONLAWYER PRACTICE, supra note 221 (noting that “an
extensive array of federal and state administrative agencies allow nonlawyers to provide
advice to self-representing persons and even to represent parties in agency proceedings”).

228. See supra notes 187–94 and accompanying text.

229. See supra note 176 and accompanying text.

230. See Chambliss, supra note 20, at 25 (calling for increased attention by law schools to
the professional responsibilities of lawyers acting outside of the traditional lawyer-client
relationship); Laurel S. Terry, Steve Mark, & Tahlia Gordon, Trends and Challenges in
Lawyer Regulation: The Impact of Globalization and Technology, 80 FORDHAM L. REV.
2661, 2664–67 (2012) (discussing the implications of regulating “lawyers” versus “legal
work”).

231. See Christine Garg & Kara Romagnino, Legal Process Outsourcing Masters of Legal
Studies (Spring 2011) (unpublished student project) (on file with author) (proposing the
development of a one-year, non-J.D. program for students interested in employment in the
legal process outsourcing industry).

232. See Tanina Rostain, David Johnson, & Paul Lippe, Proposal, Knowledge
Management in Legal Practice—Virtual Externship (2011), available at
http://dotank.nyls.edu/futureed/2011proposals/09km.pdf (discussing the development of
specialized training initiatives for knowledge management in corporate legal departments).

233. See Lippe, supra note 104 (predicting an expanding market for legal expert system
design).

234. See Chambliss, supra note 20, at 25 (arguing that “law schools have done little to
prepare” for the increasing role of information technology in the delivery of law and law
related services).

235. See Elizabeth Chambliss, The Professionalization of Law Firm In-House Counsel,
84 N.C. L. REV. 1515, 1517–20 (2006) (discussing law firms’ increasing reliance on full-
centralized management and a decreased reliance on faculty governance in many matters. Moreover, as Part I describes, new for-profit law schools have emerged and are likely to grow in number. Schools with strong centralized management will be more capable of fending off strategic interference from faculty and central university administrators and therefore will have a competitive advantage in staking out new market positions.

CONCLUSION: A CALL FOR TRANSPARENCY AND REPORTING

There is nothing new about most of the law school strategies and initiatives described above; for the most part, they have long been present, at least implicitly, in legal education. Individual law schools and law school faculty have always sought at least informal and small-scale alliances with employers, academic partners, and other sources of jobs, funding, and economic and institutional status.

What is new, however, is the increasing formalization of alliances at the institutional level. Specialization is no longer simply a requirement for individual legal scholars and teachers but, increasingly, a requirement for law schools themselves. Law schools can no longer convincingly claim to have the right program for every student; instead, they are under increasing pressure to stake out a more limited, credible mission. Organizational alliances serve as a means for staking such claims and, in the process, also formalize and consolidate differentiation between schools—both symbolically, as a form of branding, and materially, by reducing cross-subsidies between training for different markets.

Law school regulators should pay close attention to the formal alliances that U.S. law schools pursue. Some likely developments, such as increasing segmentation according to the size and wealth of private clients, will only exacerbate existing inequalities in access to legal training and services and put an end to any credible claim that the U.S. profession serves ordinary consumers. In the absence of other regulatory developments, making such patterns transparent may be one means for combatting this outcome.


237. See supra note 128 and accompanying text.

238. See Barnhizer, supra note 105, at 253 (discussing the strategic limitations of faculty governance); Shepherd & Shepherd, supra note 106, at 2112 (stating that “[g]iven complete control of a law school, the faculty will tend to exercise their authority in ways that benefit them”).
The two axes of law school specialization and differentiation described above—horizontal by initial employer, and vertical through accelerated non-J.D., J.D., and post-J.D. training—suggest a potential framework for tracking the development of law schools’ organizational alliances and their effect on the distribution and quality of legal training. Of course, many combinations are possible: U.S. law schools, despite unified standards and competition around a unified ranking, nevertheless vary significantly in their particular strengths and weaknesses as well as the markets in which they operate, and most schools employ a range of strategies for alliances with important constituents. But despite their variety, U.S. J.D. programs face a common and pressing challenge in a competitive market for legal education and training, and would benefit from collective assessment and strategic exchange. Closer attention to the effects of law schools’ institutional strategies, and alliances with external providers, is an important first step in this project.