

# Comment

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## Closing Thoughts: Fear and Loathing of Lost Wages—Experiences as a Law Student and Disruptive Legal Technologist

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### INTRODUCTION

**D**uring this time of year, most third-year law students are busy working away at their externships, clamoring to find post-graduation jobs and clerkships, and nervously counting down the days until the bar exam. But a hardy few are pursuing alternative paths in the face of terrifying uncertainty and, occasionally, staunch

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opposition. I am proud to say that I am one of the people on the fringe exploring and developing solutions at the nexus of law and technology—pushing the law to work better, smarter, and more efficiently for everyone.

From the *Duodecim Tabulae* of the Roman Empire to the United States Constitution, the practice of law is a tradition that spans many millennia and, at its best, outshines every other profession in terms of impact on our culture. It is a craft that can never be truly mastered because the law is really only a momentary consensus—people change, ideas change, needs change. But while lawyers are completely used to changing our laws through adjudication and statutes, changing the way we *practice* law is something much more complicated.

Lawyers are now at a junction in which it is necessary to change how they practice law in order to stay relevant and effective. Changing how legal services are provided often frightens lawyers because any potential change could potentially change their livelihoods. But although lawyers' income streams may restructure and diversify in the near future, it does not necessarily follow that these changes mean *someone else will be eating your lunch*. Quite to the contrary, the impetus for this change is the ninety billion dollars worth of lunches that are going to waste inside the legal access gap each year.<sup>1</sup> I built Lawger as a tool to increase the efficiency of the legal services market so that clients trapped without legal representation could connect with lawyers who are willing and able to help them.

## I

### PRINTING PRESSES IN A WORLD GONE PAPERLESS

It is clear now that legal practice is due for a truly disruptive shift. Maintaining the status quo, despite our knowledge of the staggering legal access gap<sup>2</sup> and the existing technological possibilities at our fingertips is nothing less than culpable behavior. And yet, we

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<sup>1</sup> Joshua Kubicki, *Make That \$400 billion for US Legal Market Size*, LEGAL TRANSFORMATION INST. (Feb. 24, 2014), <http://legaltransformationinstitute.com/blog/2014/2/22/make-that-400-billion-for-us>.

<sup>2</sup> At least eighty percent of the civil legal needs of low-income Americans are not being met. Ninety-nine percent of housing eviction defendants are unrepresented in jurisdictions measured by a Legal Services Corporation report. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA, at Preface (2005), available at <http://www.lsc.gov/sites/default/files/LSC/images/justicegap.pdf>.

continue to defend, or at least fail to mobilize, changes necessary to resolve these issues for systemic, and largely self-interested, reasons.<sup>3</sup>

### A. How We Got Here

Until 1975, lawyers were ethically *required* by their state bars to charge above-market prices.<sup>4</sup> And despite the changes that ended price collusion, legal practice went on largely unchanged, and lawyers continued to enjoy long periods of undisturbed prosperity. In fact, throughout the 1980s, 1990s, and early 2000s, the demand for top-talent attorneys was so high that Big Law firms likened hiring new associates working billable legal matters to “owning a printing press.”<sup>5</sup> Following the Great Recession, however, clients and law firms started tightening their belts, and thousands of attorneys were left un- and underemployed.<sup>6</sup> To make matters worse, a seemingly endless stream of bad news clouded over America’s legal institutions; law school applications plummeted, and lawyer unemployment continued to soar.<sup>7</sup> A *punctuated equilibrium* occurred—lawyers

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<sup>3</sup> See EVERETT M. ROGERS, *DIFFUSION OF INNOVATIONS* 11 (5th ed. 2003) (discussing the process by which an innovation is adopted by individuals in a social system over time). There is no reliable data on technology adoption rates in the legal industry, but commentators note the risk of being an “early adopter” of new technology. Adoption rates in areas such as e-discovery show the unwillingness of the legal industry to utilize new technology early on. Marty Smith, *Malpractice, Bell Curves and Innovation*. . . , LEGALREFRESH (Apr. 15, 2014), <http://legalrefresh.com/legal-malpractice-bell-curves-and-innovation/>.

<sup>4</sup> See *Goldfarb v. Va. State Bar*, 421 U.S. 773, 791–93 (1975) (holding that “minimum prices” for legal services set by the state bar constituted illegal price-fixing under the Sherman Act).

<sup>5</sup> Robert E. Hirshon, *The Billable Hour Is Dead. Long Live . . . ?*, ABA (Jan./Feb. 2013), [http://www.americanbar.org/publications/gp\\_solo/2013/january\\_february/billable\\_hour\\_dead\\_long\\_live.html](http://www.americanbar.org/publications/gp_solo/2013/january_february/billable_hour_dead_long_live.html).

<sup>6</sup> Steven J. Harper, Op-Ed., *Big Law’s Troubling Trajectory*, N.Y. TIMES (June 24, 2013), <http://www.nytimes.com/2013/06/25/opinion/big-laws-troubling-trajectory.html> (discussing the mass layoffs during and after the Great Recession).

<sup>7</sup> See, e.g., Jennifer Smith, *Law 2014: Paring Back at U.S. Law Schools Continues*, WALL ST. J. (Jan. 2, 2014, 5:57 PM), <http://blogs.wsj.com/law/2014/01/02/law-2014-paring-back-at-u-s-law-schools-continues/>; *Law School Enrollment Plummetts to 27-Year Low*, BLOOMBERG (Dec. 18, 2014), available at <http://www.chicagobusiness.com/article/20141218/NEWS04/141219809/law-school-enrollment-plummetts-to-27-year-low>; Ethan Bronner, *Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES (Jan. 30, 2013), [http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?pagewanted=all&_r=0); Joe Patrice, *ABA Job Numbers Are Out—Market Still Sucks*, ABOVE THE LAW (Apr. 9, 2014, 2:02 PM), <http://abovethelaw.com/2014/04/aba-job-numbers-are-out-market-still-sucks/>.

would either have to adapt in the face of change or go extinct,<sup>8</sup> or at least find a new job.

The positive outcome for the legal industry is that when the Great Recession turned the microscope on traditional legal practice, some lawyers and law students started prodding at the weak points by building tools to make legal research and case management more efficient.<sup>9</sup> Others began rethinking the pricing schemes and structures in law firms.<sup>10</sup> Others realized that the problems in the legal market are not only caused by high prices but also by inherent failures in the current methods of legal services delivery.<sup>11</sup> I founded Lawger with this notion in mind—thinking outside the law firm model completely and imagining vertical marketplaces in which legal help can be bought, sold, and completely performed remotely in a setting that is focused on client empowerment.

### *B. The Struggle Is Real*

There is nothing more difficult to plan, more doubtful of success, nor more dangerous to manage than the creation of a new order of things. . . . Whenever [] enemies have the ability to attack the innovator, they do so with the passion of partisans, while others defend him sluggishly, so that the innovator and his party alike are vulnerable.

— Niccolò Machiavelli<sup>12</sup>

The bad news for legal innovators is that the legal industry is structured to curb innovation. Similar to Galileo Galilei—who was convicted of heresy for challenging Pope Urban VIII and the Bible

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<sup>8</sup> *More on Punctuated Equilibrium*, UNDERSTANDING EVOLUTION, <http://evolution.berkeley.edu/evosite/evo101/VIIA1bPunctuated.shtml> (last visited Mar. 22, 2015). Punctuated equilibrium is a theory in evolutionary biology that describes a period of rapid evolutionary changes in response to a dire change of circumstances; a series of events forces adaptations. *Id.*

<sup>9</sup> See generally CLIO, <http://www.goclio.com/> (last visited Mar. 22, 2015) (a time management and billing software solution); FILEVINE, <http://www.filevine.com/> (last visited Mar. 22, 2015) (a cloud-based case management software solution).

<sup>10</sup> See generally AXIOM LAW, <http://www.axiomlaw.com> (last visited Mar. 22, 2015) (a “non-law firm” comprised of independent former Big Law attorneys that help general counsel offices in large corporations on special assignment).

<sup>11</sup> James Podgers, *Part of Access to Justice Gap Is That Americans Don’t Know When to Seek Legal Help, Says Study*, ABA J. (Aug. 8, 2014, 6:28 PM), [http://www.abajournal.com/news/article/part\\_of\\_access\\_to\\_justice\\_gap\\_is\\_that\\_americans\\_dont\\_know\\_when\\_to\\_seek\\_lega](http://www.abajournal.com/news/article/part_of_access_to_justice_gap_is_that_americans_dont_know_when_to_seek_lega) (explaining that prices are only a single factor in the legal access gap, and that a larger problem is the lack of understanding of legal issues and the unavailability of legal guidance).

<sup>12</sup> ROGERS, *supra* note 3, at 1 (citing NICCOLÒ MACHIAVELLI, *THE PRINCE* (1513)).

with his theory of heliocentrism<sup>13</sup>—legal innovators are accused of violating the Model Rules of Professional Conduct for challenging some of its more antiquated and unclear rules. Rule 5.4(a), which bars “fee-splitting,”<sup>14</sup> and Rule 5.5, which bars the unauthorized practice of law,<sup>15</sup> are particularly outdated in many respects. Because of the lack of clarity in the rules, a lawyer could ostensibly be disciplined for accepting credit cards and using automated client intake forms.<sup>16</sup> Unfortunately, the only way to clear up the confusion in the rules is for lawyers to be accused of breaking them, or for individuals and businesses to face criminal sanctions for venturing into unknown territory. Some jurisdictions allow lawyers, but not nonlawyers, to request a committee opinion from the state bar; however, these are based on hypothetical fact patterns and are often not challengeable.<sup>17</sup> Because the regulatory scheme is so difficult to navigate, especially for nonlawyer entities, innovation in the legal space has lagged noticeably behind. But now that the need for legal innovation has reached a boiling point, innovators are pushing the boundaries of the antiquated rules. The ethics laws are intentionally designed to curb innovators from challenging the status quo of legal practice. “And yet,” as Galileo said, “it moves.”<sup>18</sup>

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<sup>13</sup> See generally *Galileo Galilei*, HISTORY.COM, <http://www.history.com/topics/galileo-galilei> (last visited Mar. 22, 2015).

<sup>14</sup> MODEL RULES OF PROF'L CONDUCT R. 5.4(a).

<sup>15</sup> MODEL RULES OF PROF'L CONDUCT R. 5.5.

<sup>16</sup> To accept credit cards, lawyers must have a merchant account or a similar solution. Both the merchant service and the credit card company collect a percentage fee of the transaction, which could be construed as unauthorized fee-splitting under Rule 5.4(a). The ABA issued a formal opinion authorizing the use of credit cards in the 1970s under some circumstances, but it is unclear whether other common transaction fees—such as service fees, which are common for online businesses—would violate Rule 5.4(a). See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. No. 00-419 (2000) (reiterating that credit cards may be used to pay for legal services); South Carolina Bar Ethics Advisory Comm., Ethics Advisory Op. 11-05, 2011 WL 7657361 (2011) (allowing fee payments for daily-deal websites like Groupon).

<sup>17</sup> See, e.g., OREGON STATE BAR BYLAWS, art. 19, §§ 19.102, 19.300 (2014), available at [https://www.osbar.org/\\_docs/rulesregs/bylaws.pdf](https://www.osbar.org/_docs/rulesregs/bylaws.pdf) (describing that communications with general counsel's office are not confidential, and opinions from the legal ethics committee are final).

<sup>18</sup> *Eppur Si Muove*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/eppur%20si%20muove> (last visited Mar. 28, 2015). Galileo is credited with uttering the phrase “*eppur si muove*” after being forced to recant his claims that the earth moved around the sun.

## II OLD SOLUTIONS FOR NEW PROBLEMS

### *A. Inefficiencies and Externalities*

My start-up, Lawger, is crafted around the same market-based system that has been used to sell grain and tulips for hundreds of years and has been proven many times over in modern industries like software and design. The model is the standard taught in economics courses worldwide as the ideal manner of allocating resources, yet it fundamentally changes the way people will solicit and render legal services.<sup>19</sup>

Lawger recognizes that the legal services market is awash with market failures that are remnants of a period when alternative market structures were both unneeded and infeasible. But as our society and economy have evolved, the shortcomings of the traditional model have become more obvious. The widening legal access gap in the middle class is the most serious externality of the traditional legal model,<sup>20</sup> and it was the impetus for me to build Lawger. It is a tragically unrecognized human rights crisis that effectively awards those rich enough to afford an attorney the power to shape the law. If only certain people can have their day in court, only certain interpretations of the law become precedent. It is startling to think that today, more than half of middle-class Americans have one or more legal issues in their lives, but cannot find a lawyer to help them.<sup>21</sup> And the problem is even more perplexing considering the loud accusations by the media and cynics that there is an oversupply of lawyers in America.<sup>22</sup>

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<sup>19</sup> See Murray N. Rothbard, *Free Market*, CONCISE ENCYCLOPEDIA OF ECON., <http://www.econlib.org/library/Enc/FreeMarket.html> (last visited Apr. 1, 2015) (describing how market systems allocate resources efficiently through arms-length transactions).

<sup>20</sup> See generally George C. Harris & Derek F. Foran, *The Ethics of Middle-Class Access to Legal Services and What We Can Learn from the Medical Profession's Shift to a Corporate Paradigm*, 70 FORDHAM L. REV. 775 (2001).

<sup>21</sup> Deborah L. Rhode, *Pro Bono in Principle and Practice* (Stanford Law Sch., Working Paper No. 66 2003).

<sup>22</sup> Steven J. Harper, *America Has Way Too Many Lawyers, and the Bubble is Growing*, BUS. INSIDER (July 30, 2013, 9:55 AM), <http://www.businessinsider.com/america-has-way-too-many-lawyers-and-the-bubble-is-growing-2013-7> ("If law schools as a group reduced enrollments by 20 percent from last year's graduating class, they would still produce almost 37,000 new lawyers annually—370,000 for a decade requiring only 235,000—not to mention the current backlog that began accumulating even before the Great Recession began.").

### B. Putting It All Together

From an economic perspective, this phenomenon—a massive pool of underserved clients on one hand, and swaths of unemployed lawyers who are willing and able to help those clients on the other—can be explained by the enormous transaction costs necessary for these parties to find one another. It is simply too costly in terms of time, effort, and expense for middle-class Americans to find the right lawyer at the right price. To draw the current lawyer-hiring situation to an absurd analogy, imagine if calling a cab was like hiring a lawyer: you have to call drivers one-by-one, and each driver has wildly different prices, quality, and professional experience. Some drive pedicabs, and others drive charter buses, and it is difficult to tell which is which. From that perspective, it is easy to see why consumers are befuddled by hiring a lawyer and are unable or *unwilling* to get legal help.<sup>23</sup> It should be revealing that even the minimally inconvenient process of hailing a cab has been completely disrupted by start-ups like Uber and Lyft.<sup>24</sup>

In the spirit of the “on-demand economy”—accentuated by start-ups that aggregate, organize, and connect independent participants in vertical market sectors to increase efficiency and user experience—Lawger is operating at the nexus of law and technology to make legal help a convenient and pleasant experience for modern consumers. I started Lawger with the uncompromising belief that lawyering should, at its heart, be designed to serve clients in the best way possible. There is no good reason why lawyers could not—or should not—adopt more efficient processes to match clients to lawyers wherever possible. I designed Lawger to achieve this goal by putting clients in the driver’s seat: turning the client origination process into a reverse auction in which cases are the prize, and the client chooses the winner. We help clients build a brief of their issue, and they set a price range they are willing and able to pay. Qualified lawyers are then invited to bid on the cases, and as the bids roll in, the clients can

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<sup>23</sup> See Nathan Koppel, *More Strapped Litigants Skip Lawyers in Court*, WALL ST. J. (July 22, 2010, 12:01 AM), <http://www.wsj.com/articles/SB10001424052748704229004575371341507943822> (describing how ordinary people are forced to represent themselves pro se because lawyers are too expensive, and litigants lack awareness about hiring lawyers, seeking legal aid, and representing themselves competently).

<sup>24</sup> Uber and Lyft users request a ride based on a smartphone app. See generally LYFT, <https://www.lyft.com> (last visited Mar. 22, 2015); UBER, <https://www.uber.com> (last visited Mar. 22, 2015).

objectively consider each candidate based on their price and experience. Essentially, Lawger aggregates pools of common legal issues and acts as an escrow account so that the lawyer is assured that the client is able to pay, and the client is assured the job will be completed sufficiently prior to payment.

This bidding process preserves client autonomy and makes it easy for them to find the right attorney at competitive market rates. It also allows lawyers to find prepaid clients easier than ever. It cuts down marketing costs, it enables attorneys to work as much or as little as they choose, and it unlocks a market segment worth at least \$2.2 billion per year for Lawger and many more billions for lawyers everywhere. It is an idea that could truly revolutionize the industry—if it works, that is.

### *C. Pushing Forward into the Unknown*

The risk of failure, of course, is the sine qua non of entrepreneurship. Everyone's heart flutters at the prospect of being wildly successful, but few are willing to take the jump and assume a big risk. Lawyers are particularly deterred from innovating because attorneys rely so heavily on their reputations—no one wants to be “that person” who crashes and burns in the public eye. It is arguably even riskier as a law student, because you are placing your credibility at risk even before your career has started. But for me, building a super efficient, super productive legal system is worth every risk. Even if Lawger fails, the experience alone is worth the price of admission.

Precisely describing the experience of founding a disruptive legal start-up in law school is a challenging task. On one hand, it is all the things you would expect: the late nights, the bloodshot eyes, the frantic briefing of cases before class, and the near-toxic level of caffeine in your bloodstream. On the other hand, the feeling is entirely unexpected. It is the transformative, empowering, and frightening experience of creating something for an important purpose and holding your future in your own hands. It stirs emotions that you never could have anticipated. It is the absolute highest-highs and the lowest-lows.

I built the prototype for Lawger during the fall semester of my third year at the University of Oregon School of Law for less than one thousand dollars, but now it is so much more than that. It is an extension of me, and it is a reflection of my thoughts and actions, albeit an imperfect one. If you have been truly engulfed in your work,



you know the exact feeling—you are utterly obsessed with it, but nothing is ever quite good enough; nothing is ever going as well as you would like it to. You love it, and sometimes you hate it.

The stress can only be described as incredible. Maybe the best way to describe what it feels like to be taking on law school and founding a start-up is to imagine you are drowning—and then someone hands you a *baby*.<sup>25</sup> Surprises come in the most unexpected places and at the most inopportune times. Papers are due, files are lost, components break, coffee is spilled, people abuse you, and yet, you inch closer.

Legal start-ups may have it worse because, at the end of the day, there are cynical lawyers at every turn. Unlike regular start-ups, legal start-up founders—in addition to having to muster up the courage to bare their intellectual fiber before the public—also need the wherewithal to do it in front of *attorneys*. Needless to say, it is a mixed blessing. On one hand, you often get articulate and constructive feedback from intelligent people with specialized expertise; on the other hand, you endure attorneys saying things like “what a joke,” “this will never work,” “do yourself a favor and do something else,” and “people much smarter than you have tried to change these things for one hundred years and failed miserably.”<sup>26</sup> I have to remind myself to take everything with a grain of salt, especially when dealing with systems that may affect lawyers’ wages. Perhaps not so coincidentally, all of those comments came from successful attorneys who are equity partners in successful firms or have exited into lucrative alternative careers and have no interest in changing. I have to remind myself that I am not building a product for them—I am building it for the millions of people who can’t find lawyers and the many qualified lawyers who are underemployed.

#### CONCLUSION

Ultimately, it is important for entrepreneurs in the legal space to never lose sight of what it is all about: making the legal system work better. No matter if an attorney is hanging his or her own shingle, writing software, or drafting legislation, the purpose of innovating is to better serve people, to make the law more equitable, and to make

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<sup>25</sup> See generally Jim Gaffigan: *Mr. Universe—4 KIDS*, YOUTUBE (Oct. 9, 2012), <https://www.youtube.com/watch?v=GEBzrY0G9PI>.

<sup>26</sup> Each of these comments has been said to me in meetings with lawyers and lawyer-investors.

our society a better functioning body. If you are driven by these purposes, there is no risk of failure—every bit of effort expended to accomplish these goals amounts to something, if only sparking one thought in a single person’s mind, for only a moment. If we are all collectively working toward these goals in the face of failure, abuse, and embarrassment, the law—and legal practice as a profession—can only stand to gain.