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LEADING INSTITUTIONAL CHANGE: LAW SCHOOLS AND LEGAL EDUCATION IN A TIME OF CRISIS

Donald J. Polden

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LEADING INSTITUTIONAL CHANGE: LAW SCHOOLS AND LEGAL EDUCATION IN A TIME OF CRISIS

DONALD J. POLDEN*

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INTRODUCTION

In the last decade, American legal education has undergone a profound and existential crisis involving persistent and systemic challenges to its purposes, structure and leadership. The challenges have been well documented: job opportunities for new graduates began plummeting in 2007 due to economic recession; to date,

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applications and matriculation to schools have declined by 30–40% according to some sources; and the addition of newly accredited law schools has outstripped legal employers' capacity to hire new graduates.¹ In recent years, it is clear that the economic recovery from the recession has not included improved job prospects for law graduates; the jobs market remains "flat."² More significant, there has been a marked decrease in Law School Admission Test (LSAT) scores in recent matriculating classes even as those classes have shrunk, and not surprisingly, legal education is beginning to see an appreciable decrease in national bar examination pass rates, perhaps due to the changing academic capabilities of recent entering classes.³

1. See James G. Leipold, *The New Entry-Level Legal Employment Market*, THE BAR EXAMINER, June 2013, at 7–8, 16. On the steep decline in law school enrollment, see Erica Moeser, *President's Page*, THE BAR EXAMINER, Mar. 2016, at 11, 33, reporting that from 2010 to 2015 ABA approved law school enrollment dropped 28.89%. Recent reports from the Law School Admission Council show that for the fall 2008 entering class there were 83,400 applicants and 55,500 admitted applicants while, for the 2014 entering class there were only 55,500 applicants and 42,300 admitted applicants—a 35% decline in applicants to law schools and a 23.7% decline in the number of applicants who were admitted to approved law schools. LSAC, *End of the Year Summary 2003–Present*, <http://www.lsac.org/l sacresources/data/l sac-volume-summary> (last visited May 15, 2016).

2. According to the National Bureau of Economic Research, the recession ended June 2009, after 18 months. Catherine Rampell, *The Recession Has (Officially) Ended*, ECONOMIX (Sept. 20, 2010 10:45 AM), http://economix.blogs.nytimes.com/2010/09/20/the-recession-has-officially-ended/?_r=0. However, the employment market for new law graduates has lagged considerably behind the national economic recovery. The National Association of Law Placement reports that for the class graduating in 2014, the job placement rate increased slightly over the prior year but that was because there were not only fewer jobs, but also fewer graduates. See *Recent Graduates*, NALP, <http://www.nalp.org/recentgraduates> (last visited May 15, 2016). The longer term comparative data paints a picture of a failed recovery and a lack of thoughtful response by legal education: Compared to the graduating class of 2007, the class of 2014 had fewer graduates placed in jobs that required a law degree (66.3% in 2014 compared to 76.9% in 2007). See *id.* The class of 2007 reported 34,215 graduates in jobs requiring a Juris Doctor or for which a Juris Doctor is preferred, while in 2015 the number of such jobs reported was 34,215. See *id.* Each of the classes reported about the same number of graduates reporting—40,416 in 2007 and 42,139 in 2014. See *id.* The data indicates that the law schools did not respond to the economic recession notwithstanding the shrinkage of jobs requiring a law degree by decreasing class size.

3. See Sheri Qualters, *Bar Exam Pass Rates Drop Across the Country*, NAT'L L.J. (Nov. 23, 2015), <http://www.nationallawjournal.com/id=1202743222671/Bar-Exam-Pass-Rates-Drop-Across-the-Country?slreturn=20160212091900> ("As demand for law schools has dropped over the last few years, law schools, as a result, have been

The current decrease in applications experienced by American law schools is longer and more severe than previous down-cycles. Decreased job opportunities for graduates are, in large part, a reflection of severe challenges to the legal profession and, more specifically, the business of law practice. These challenges reflect a fundamental transformation in how law is practiced in the United States, given the tremendous trend toward globalization in the business of law and the increasing role of technology in law practice.⁴

While these trends in how law is practiced have surely been facilitated by the global recession, there are other factors that have accelerated this transformation of law practice. Law firm failures, mergers, and scandals in recent years have reflected fundamental changes in the legal profession and how lawyers interact with their clients.⁵ Clearly, the change in how law firms are compensated by clients and reappraisals by clients on the value that law firms can add to the clients' business plans have significant ramifications on law firm profitability and practices, notably hiring and talent retention.

The profound changes to law practice and to legal education in the past decade have demanded more effective leadership of the institutions and organizations that provide legal education and supply the talent to support the law and the legal services business model. The relationship between the two—providers of talent and consumers of that talent—is symbiotic and interwoven. However, the market for the business of law is highly fragmented and unregulated while the market for educating legal talent has institutional oversight and regulation of the providers.⁶

admitting and graduating less-qualified students," according to Pepperdine law professor, Derek Muller). See also Erica Moeser, *President's Page*, THE BAR EXAMINER, Mar. 2016, at 10, 11, 33, reporting that from 2010 to 2015, ABA approved law school enrollment dropped 28.89%, that the median of the 25th percentile LSAT scores dropped from 154 for the fall 2010 entering class to 151 for the fall 2015 entering class, and that the national first time bar pass rate has dropped from 79% in 2010 to 70% in 2015.

4. James G. Leipold, *The New Entry-Level Legal Employment Market*, THE BAR EXAMINER, June 2016, at 7–9.

5. See HILDEBRANDT BAKER ROBBINS & CITI PRIVATE BANK, CLIENT ADVISORY 3–9 (2010), available at http://www.amlawdaily.typepad.com/files/2010_client_advisory.pdf.

6. This is not to say that law firms and law services organizations do not have oversight of some functions. Most notably, lawyers and law firms have state regulation over ethical and legal conduct in their service to clients and in their duties to courts and governmental entities. They do not have institutional oversight or regulation of their business plans, including revenue generation, hiring of talent and

The purpose of this article is to examine how leaders of law schools and in legal education have responded to the dramatic difference in the landscape since 2007 and, in particular, how well leaders at some law schools have addressed the challenges presented by the recession and fundamental alteration of the existing model of American legal education. The first part of this article describes the impact that the global economic recession has had on legal education and the legal profession. In recent years, those impacts were in large part systemic—attacking the model for legal education—and persistent—lasting beyond the end of the recession.

The second part of this article reviews important literature and research on how corporate and business institutions respond to economic market crisis and challenges to their business plans by undertaking innovative process to create transformational change in their organizations. This research in innovative leadership provides a helpful lens through which to assess the sufficiency of creative change by American legal educators and the effectiveness of their response to the current crisis in legal education.

The third section illustrates how some law schools have identified thoughtful responses to the contemporary challenges and implemented innovative and well-led initiatives, programs and responsive changes in their operations. This article concludes by providing examples of effective leadership from the almost decade long period of crisis and offering the hope that it will provide a blueprint for other law schools to plan for and effectuate meaningful and innovative change.

I. AMERICAN LEGAL EDUCATION AND THE IMPACT OF THE ECONOMIC RECESSION

The economic challenges facing legal education began between 2007 and 2008 when several national law firms began to lay-off thousands of lawyers, many of whom were their newly hired associates, and canceling or dramatically reducing their prestigious summer programs.⁷ Unfortunately, it is now clear that law firms and

other expenditures, and managing costs and deficits.

7. See Jonathan D. Glater, *Law Firms Feel Strain of Layoffs and Cutbacks*, N.Y. TIMES (Nov. 11, 2008), <http://nytimes.com/2008/11/12/business/12law.html>.

The summer programs were a longstanding component in large law firms' annual hiring processes and were geared to identifying high-performing, second-year law students and beginning a hiring "courtship" endeavor. To join one of these firms as a new law school graduate, it was necessary for the law students to have participated in the firm's summer program and be recruited for an associate position. See also Noam Scheiber, *The Last Days of Big Law*, NEW REPUBLIC (July 21, 2013),

law schools should not have been surprised at the massive changes in law firm economics and talent acquisition practices.⁸ Moreover, the dramatic decrease in job prospects for law students should not have come as a surprise to any of the major participants in legal education—the American Bar Association, law schools and their deans and faculty, and various “allied” market players.⁹ There were ample warnings that legal education was “overbuilt” given the increasingly precarious employment market for new law school graduates.

Despite strong signals that the jobs market for new graduates was in a downward and continuing spiral, legal education continued along as if there were no indications that its participant schools were in jeopardy: more new law schools were accredited, no institutional action was taken concerning the increasingly dire employment data, and there was a failure to appreciate the potential severity of the fundamental changes to the markets for legal services. However, contrary to the accusations of “scam bloggers” who blamed the law schools for their greed and corruption,¹⁰ it appears that most of the oversights and miscalculations in the actions and inactions of legal

<https://newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries>.

8. William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, A.B.A. J. (July 1, 2011, 9:40 AM), http://www.abajournal.com/magazine/article/paradigm_shift.

9. Those “players” include the Association of American Law Schools (AALS), the Law School Admissions Council (LSAC), and the National Association of Law Placement (NALP). The AALS is a Washington, D.C. based non-profit that advances the interests and positions of law school faculty members and provides a “membership” function for law schools that meet its faculty-oriented goals. See ASSOCIATION OF AMERICAN LAW SCHOOLS, <http://www.aals.org> (last visited May 15, 2016). The LSAC is a non-profit that provides for legal education’s recruiting and admission of students through its development and offering of the LSAT and powerful software that permits prospective law students to apply to multiple law schools effortlessly. See LAW SCHOOL ADMISSION COUNCIL, www.lsac.org (last visited May 16, 2016). NALP is a Washington, D.C. based non-profit that serves as a clearinghouse for employment related information for law schools and law firms and serves an important intermediary function between schools and legal employers (mainly large national firms). THE NATIONAL ASSOCIATION FOR LAW PLACEMENT, www.nalp.org (last visited May 16, 2016).

10. See, e.g., Paul Campos, *The Law-School Scam Continues*, THE ATLANTIC (Oct. 23, 2015), <http://www.theatlantic.com/education/archive/2015/10/law-school-scam-getting-worse/412159/>; Steven J. Harper, *LSAT v. GRE—Rhetoric v. Reality*, post to *The Belly of the Beast* (Feb. 24, 2016), <http://www.thelawyerbubble.com> (“[T]he ABA’s central mission in legal education [is] protecting many law schools from scrutiny and meaningful accountability.”).

education institutions were due either to a lack of effective institutional leadership in implementing innovative responses to the crisis' impacts or to the institutions' inability to maneuver around the growing problems because of their resistance to change.¹¹ The next sections will briefly describe the mounting challenges facing law practice business and legal education in the early stages of the crisis. Some of these problems were not legal education institutions' doing or creations—indeed, many are correctly attributable to the effects of the recession. Instead, some of these problems were facilitated by the condition of these legal education institutions' leadership structure and resistance to change.

A. The Economic Downturn and Its Impact on Law Firms

Other commentators have recounted the impact of the economic recession on law firms in more detail.¹² The effects of the recession included significant associate lay-offs, law firm staff terminations, and other downsizing activities.¹³ It is generally thought that the economic impact on large American law firms reflected both the consequential decrease in corporate client work (when these corporate clients began experiencing the recession's effects) and the broader changes in the way that the legal services business was being done. Corporate clients were increasingly growing their in-house legal services departments, large law firms were outsourcing some of the more repetitive and mundane legal services, such as document reviews, and non-law firm legal services providers were substantially increasing their efforts to directly assist consumers needing legal assistance.¹⁴

Companies such as LegalZoom and Cybersettle began to provide clients with access to dispute settlement resources and basic legal

11. Katherine Mangan, *As They Ponder Reforms, Law Deans Find Schools 'Remarkably Resistant to Change'*, CHRON. HIGHER EDUC. (Feb. 27, 2011), <http://chronicle.com/article/As-They-Ponder-Reforms-Law/126536/> (reporting on conference of law school deans and legal education leaders at which discussions addressed accusations of "law schools . . . churning out too many ill-prepared lawyers and of misleading students about their job prospects with inflated placement statistics.")

12. 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, 27–39 (2011).

13. *Id.* at 27–39.

14. Rachel Zahorsky & William D. Henderson, *Who's Eating Law Firms' Lunch?*, A.B.A. J. (Oct. 1, 2013), http://www.abajournal.com/magazine/article/whos_eating_law_firms_lunch.

documents—such as business incorporation forms, divorce proceeding forms, and forms for wills and trusts—and the internet provided a reliable and relatively costless way to promote their products and to get those products to customers. Much of this activity was “bread and butter” work for lawyers across the spectrum of legal service providers. Commentators on this transformation of law practice identified two key trends that implicated the entire model of the existent legal profession and legal services industry: commodification of legal services and the tremendous growth in the number of lawyers practicing law.¹⁵ These trends in how legal services were being provided—for example, increasing outsourcing of routine legal tasks to specialized low-cost units or to overseas lawyers, resulting in an increase in the number of non-lawyer legal services providers attending to law firm work—as well as the significant number of lawyers practicing law and the annual addition of 40,000-plus new lawyers promised a legal employment market “crisis.”¹⁶ By 2007, the evidence was already mounting that the law firm-based legal services model was falling apart and that, as a result, those fundamental problems would wreak havoc on legal services’ symbiotic partner, legal education.

Additional aspects to the dramatic, but not unanticipated, collapse of the legal jobs market were the effects of the recession on state and local governments hiring lawyers as well as the dramatic decrease in real estate work traditionally done by lawyers, caused by the collapse of the national market for commercial and residential real estate after the beginning of the recession. However, during that time period, the growth in the number of lawyers remained unfettered: from 2000 to 2015, the ABA has reported that the number of lawyers increased from 1,022,462 to 1,300,705.¹⁷

15. See RICHARD SUSSKIND, *THE END OF LAWYERS?* 9–12 (Paperback ed. 2010); William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 479–83 (2013).

16. Henderson, *supra* 15, at 470–487.

17. ABA, NATIONAL LAWYER POPULATION SURVEY: HISTORICAL TREND IN TOTAL NATIONAL LAWYER POPULATION 1878–2015 (2015), http://www.americanbar.org/content/dam/aba/administrative/market_research/total-national-lawyer-population-1878-2015.authcheckdam.pdf. Obviously, during that period of time, the number of Americans increased along traditional population growth trajectories, but it is remarkable that the annual growth in new lawyers averaged a steady 2%, even as jobs and opportunities evaporated. *Id.*

B. Challenges to Legal Education's Institutional Leadership: Coping with the Growing Crisis

Throughout the economic recession, the American Bar Association's Section on Legal Education (the Section) continued to accredit new law schools and accepted the surge of law students coursing through the hallways of these schools.¹⁸ This was occurring even as evidence mounted that the legal education industry, like law practice, was overbuilt and that new graduates were increasingly unable to find employment after graduation. How did it happen that the appointed guardians of entry into the legal profession could miss the signals that were obvious to many others and that were attaining national visibility daily? The problems in legal education, which were highlighted and exacerbated by the recession, are threefold: the structure of the accreditation organization, the influence of interest groups intent on capturing the accreditation organization's agenda, and the leadership gaps that prevented more focused attention on the impacts of the recession on law schools and how to respond to the challenges of the recession.

The first problem within the legal education regulation process is structural. The Section's leadership group, the "Council," performs the accreditation function for American legal education under the auspices, and with the approval of, the United States Department of Education (the DOE).¹⁹ One of the problems facing the Section is the pluralistic leadership requirement imposed by the DOE. According to the DOE's regulation, the "Council", in performing its accreditation function, must include legal education members (such as law professors and deans), legal profession members (lawyers and judges), and "public members."²⁰ Ironically, the number of members knowledgeable about legal education has declined because of DOE decisions.

The Council is charged with an important gatekeeping function for legal education: articulating the standards and the process of review for the continuous approval of new law schools.²¹ The

18. *See id.*

19. *Nationally Recognized Accrediting Agencies and State Approval Agencies*, 64 FED. REG. 51, 529, 530-31 (Sept. 23, 1999); *see* Diane F. Bosse, *ABA Accreditation: A Symbol of Quality*, THE BAR EXAMINER, June 2013, at 28-33 (describing the ABA's accreditation process and goals); *see also* ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, THE LAW SCHOOL ACCREDITATION PROCESS (2013), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_revised_accreditation_brochure_web.authcheckdam.pdf.

20. 34 C.F.R. § 602.15 (2011).

21. ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ABA

accreditation standards focus on program quality, which is clearly an appropriate role for an accreditation agency.²² However, the policies underlying the standards and accreditation, while focusing on the quality of education at approved law schools, do not consider the overarching economic and societal aspects of legal education, including the optimum number of lawyers that are needed in the society, job opportunities for new graduates, and the effects of insufficient employment opportunities for lawyers.²³

This constraint on the Council's accreditation function should be contrasted with that of medical education accreditation where factors affecting the economics of the medical profession and medical education—including job and placement opportunities for medical school graduates—are an integral and acknowledged responsibility of the accreditation agency. Indeed, in response to findings of too many or too few medical practitioners, the medical education accreditation agency has called on medical schools to produce (through admission and graduation policies) more or less physicians.²⁴ In fairness to the leadership of the Section, the

STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015–2016, at v (2015), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.aut_hcheckdam.pdf [hereinafter ABA STANDARDS].

22. See *id.* at 15.

23. See Judith Areen, *Accreditation Reconsidered*, 96 IOWA L. REV. 1471, 1485–87 (2011). Some of this constrained view of the proper role of legal education accreditation is historic and demonstrated by the long time tension between legal educators and law practitioners, and part of it was shaped by an antitrust law suit brought by the United States Department of Justice's Antitrust Division in 1995. The law suit, which was quickly settled by the ABA's Board of Governors, claimed, in part, that the Section, through its accreditation function, was constraining state approved law schools and their students and fixing salaries and benefits of law school employees. *United States v. Am. Bar Ass'n*, 934 F. Supp. 435 (D.D.C. 1996). The settlement required detailed reporting by the ABA and Justice Department monitoring for five years (which was continued for several more). *Id.* at 437; see Press Release, Dep't of Justice, Justice Department and American Bar Association Resolve Charges that the ABA's Process for Accrediting Law Schools Was Misused (June 27, 1995), http://www.justice.gov/archive/atr/public/press_releases/1995/0257.pdf.

24. See Dennis Cauchon, *Medical Miscalculation Creates Doctor Shortage*, USA TODAY (Mar. 21, 2005), http://usatoday30.usatoday.com/news/health/2005-03-02-doctor-shortage_x.htm (pointing out that the United States stopped opening medical schools in the 1980s because a predicted surplus of doctors and, when this miscalculation was noticed in 2005, the Association of Medical Colleges recommended increasing the number of medical students by 15%); see also Mark J. Perry, *The Medical Cartel: Why Are MD Salaries So High?*, WALL STREET PIT (June 24, 2009, 2:47 PM) <http://wallstreetpit.com/5769-the-medical-cartel-why-are-md->

lingering impact of the U.S. Department of Justice Antitrust Division's lawsuit against the Section may have stymied more aggressive attempts to control the growth of law schools and of law schools graduates.²⁵ However, the consent decree expired in 2006 and, thereafter, the Section could have considered appropriate methods of encouraging a reduction in the annual production of new lawyers.²⁶

A second issue is the role the accreditation agency played in greatly expanding the number of law graduates during the decade encompassing the recession and job market collapse. In 1980, there were 171 accredited law schools in the United States and total enrollment for a basic law degree, a Juris Doctor, was 119,501.²⁷ In the 1980s, the ABA's Council approved four new law schools; in the 1990s, it approved seven new law schools; and since 2000, it has approved twenty new law schools.²⁸ The law school accreditation agency saw law school enrollment surge from 119,501 in 1980 to 147,525 in 2010.²⁹ The effects of the increased number of accredited law schools and the surge in enrollment are substantial.³⁰ In 2011, for example, the number of ABA approved schools hit 200 with the addition of two new law schools in North Carolina,³¹ and the Council has continued to add new law schools until today when the number of approved law schools is 206.³² In practice, therefore, the Council relies on an open-market approach to licensure of new and

salaries-so-high/ (contrasting the growth in approved law schools and approved medical schools, including a 22% decrease in the number of medical schools through 2009).

25. See Marina Loa, *Discrediting Accreditation?: Antitrust and Legal Education*, 79 WASH. U. L.Q. 1035 (2001) (reviewing antitrust complaint filed in 1995 and settled by consent decree in 1996).

26. According to ABA statistical records, there were 140,298 students at 191 approved programs in 2006. That number rose to 146,288 in 2011 to 2013 and then dipped slightly to 139,055 in 2012 to 2013. *Statistics*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited May 16, 2016).

27. ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ENROLLMENT AND DEGREES AWARDED 1963–2012 ACADEMIC YEARS, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf (last visited May 16, 2016).

28. *Id.*

29. *Id.*

30. *See id.*

31. Justin Pope, *Analysis: Law Schools Growing, But Jobs Aren't*, USA TODAY (June 17, 2008, 3:28 PM), http://usatoday30.usatoday.com/news/education/2008-06-17-law-schools_N.htm.

32. *See ABA-Approved Law Schools*, ABA, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited May 9, 2016).

continuing programs, focusing on approving the education quality of the schools' programs of instruction—and does not purport to act for the health of the industry or the health of the business of legal education. The Section oversaw a dramatic increase in the number of law schools and the growth in enrollment until 2010 when law school enrollment began to decrease slowly.³³ Today, the ABA-approved programs have a total Juris Doctor enrollment of 113,900 for the 2015 to 2016 academic year.³⁴ This is a substantial decrease in the number of enrolled students since 2010 and this may serve to reduce some pressures on law schools.³⁵ Ironically, however, several provisionally approved schools are awaiting formal approval by the Section so the number of approved law schools is expected to increase in the next few years.³⁶

Has the Council advanced the legal education market in this environment? Simply put, the Council has struggled to address some significant internal and external pressures on legal education as law schools have attempted to deal with the recession and other changes. The Council has struggled to deal with the pernicious effects of the *U.S. News* annual ranking of law schools which has affected legal education in multiple and negative ways.³⁷ *U.S. News*, at one time, was an important, policy-oriented magazine. However, its management decided in the 1980s to add a feature comparing and attempting to rank undergraduate programs, graduate programs, high schools, and other education providers.³⁸ Today, it is an online only provider of highly idiosyncratic college and graduate program ratings.³⁹ Its business plan is to force information out of colleges,

33. Erica Moeser, *President's Page*, THE BAR EXAMINER, Mar. 2016, at 6–10.

34. See Press Release, ABA Section of Legal Educ. and Admissions to the Bar, 2015 Standard 509 Information Report Data Now Available, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_fall_enrollment_announcement.pdf (last visited May 16, 2016).

35. See *supra* note 1 and accompanying text.

36. See Press Release, *supra* note 34.

37. Jeffrey Stake, *The Interplay Between Law School Rankings, Reputation, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 232–42 (2006).

38. For a general history of *U.S. News & World Report* and its transformation from an influential policy periodical to a provider of education institution information and ratings, see *U.S. News & World Report*, WIKIPEDIA, https://en.wikipedia.org/wiki/U.S._News_%26_World_Report (last visited May 16, 2016) (describing the accusations and claims of university and college educators on the veracity and utility of the *U.S. News* information and program ratings).

39. *2017 Best Law Schools*, U.S. NEWS & WORLD REPORT, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools> (last visited May 16, 2016).

universities, and graduate and professional programs, often while attempting to sell them advertising space, and then to generate “rankings” of the reporting programs.⁴⁰ In the legal education sector, *U.S. News* publishes a “top-to-bottom” ranking of all accredited schools—irrespective of each school’s mission, location or targeted student base—through a methodology comprised of two components: (1) detailed information on each school’s key “inputs” (such as median grade point averages and LSAT scores for recent entering class, bar pass information, etc.) and (2) internally generated ratings of each school’s “reputation.”⁴¹ Many commentators have noted the adverse effects on legal education and law schools by the schools’ efforts to improve their rankings, which are apparently persuasive to some groups of law school applicants.⁴² Since the *U.S. News* rankings were introduced, the Section has been unable to solve the persistent negative effects of the rankings on intelligent decision-making by prospective students, and of greater concern, the law schools’ efforts to “game” the rankings.⁴³ For example, efforts to limit the use of the LSAT by special admission programs that also use other entrance test scores (such as the Graduate Record Exam, or the “GRE”) have been considered to be due to *U.S. News* heavily weighting the LSAT median scores of students accepted to the schools in the overall ranking.⁴⁴ Similarly, there is legitimate

40. *See id.*

41. For example, the annual rankings of law schools provide information for all 200 plus schools on their median LSAT and grade point average scores, bar pass rates, and other data relevant to prospective law students’ need for comparative information bearing on the quality of the schools and the students’ likelihood of acceptance. However, 25% of each school’s ranking is based on wonky, non-transparent weightings based on surveys of faculty and deans at other schools and of “the legal profession.” John Tierney, *Your Annual Reminder to Ignore the U.S. News & World Report College Rankings*, THE ATLANTIC (Sept. 10, 2013), <http://www.theatlantic.com/education/archive/2013/09/your-annual-reminder-to-ignore-the-em-us-news-world-report-em-college-rankings/279103/>. The surveys assume respondents’ encyclopedic knowledge of more than 200 law schools, and *U.S. News* does not reveal how many (or how few) actual responses they receive to form the empirical basis for their weighting. *Id.* One year, the information on the number of responses did escape, and it appears that the 25% weighting was based on fewer than 400 surveys (out of hundreds of thousands of lawyers, judges, and other law school academics in the U.S.). The heavily weighted survey has legitimately been called a scam. *See id.*

42. Stake, *supra* note 37, at 244–55.

43. *See* BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 76–79 (2012).

44. Staci Zaretsky, *This Law School Will Pay You to Take the GRE to Save Its U.S. News Rank From the Dreaded LSAT*, ABOVE THE LAW (Jan. 28, 2016, 1:44 PM), <http://abovethelaw.com/2016/01/this-law-school-will-pay-you-to-take-the-gre-to-save-its-u-s-news-rank-from-the-dreaded-lsat/>.

concern about the appropriateness of law schools' increased use of discounted tuition dollars to fund merit-based scholarships—which has resulted in schools competing for applicants with higher LSAT scores, while lower LSAT score students pay full tuition—in order to improve their rankings.⁴⁵

A significant problem has been the use of debt financing by students to pay their tuition, which has resulted in debt loads of new graduates that they cannot repay because there are scarce jobs for them upon graduation.⁴⁶ Many commentators have identified the significant and growing levels of student debt as one of the greatest threats to the stability of legal education.⁴⁷ Law students have long needed to borrow funds for financing their legal education, but as tuition cost has increased, the amount of debt assumed before graduation has grown considerably. According to one source, average law school debt has grown from about \$16,000 in the mid-1980s, to \$47,000 in 1999, and to \$98,500 for the class graduating in 2010.⁴⁸ The doubling of law student debt in just ten years is cause for serious concern, study, and action. The ABA (not the Council) finally convened a task force on financing a legal education in May 2014, which issued a thoughtful report in June of 2015.⁴⁹ In all fairness, the problem of controlling the costs of providing a legal education and assisting prospective law students with appropriate levels of financial support for their education is a complicated task and one that should be shared by all law schools and not just the oversight agency. However, the gravity of this situation has been known for several years but the response to it by the accreditation agency was slow and largely ineffectual.

There is also the prospect that the federal loan system will be discontinued or dramatically curtailed by Congressional action.

45. See Michael I. Krauss, *The Ethics of Law School Merit Scholarships*, FORBES (Apr. 3, 2014), <http://www.forbes.com/sites/michaelkrauss/2014/04/03/the-ethics-of-law-school-merit-scholarships/#47f59efdc879>.

46. William Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last If Law Grads Can't Pay Bills?*, A.B.A. J., Jan. 2012, at 30 (reporting that in 2010, 85 percent of law graduates from ABA approved schools had an average debt load of \$98,500).

47. See Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 609–10 (2010).

48. TAMANAHA, *supra* note 43, at 109–10.

49. ABA TASK FORCE ON FINANCING LEGAL EDUC., REPORT OF THE ABA TASK FORCE ON FINANCING LEGAL EDUCATION 1 (2015), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf.

Clearly, the collapse of a major source of funding for law schools would be catastrophic in impact and scope, and it is still not clear that the law schools, through their accreditation agency, have either a coherent plan to address the problem of funding legal education in the 21st century or the leadership ability to create and implement such a plan.⁵⁰

A final area where the Council's leadership has been compromised is its standard-setting process.⁵¹ While the overall focus of ABA accreditation is on review and evaluation of quality indicators of approved programs, there have been situations where the standards could be revised so that schools' could lower their operating costs and achieve greater flexibility in their programs while improving (or at least not compromising) program quality. However, in several situations such proposals were thwarted due to poor leadership decisions that bowed to divisive internal conflicts within the Section or between the Section and other legal education interest groups.⁵² In 2009, the Standards Review Committee began a comprehensive review of the accreditation standards and procedures and evaluated all of the existing policies applicable to approval of law schools with a view toward lowering accreditation costs, giving law schools greater flexibility while enhancing their accountability to students and the legal profession and improving assessment of student learning. Three of the major topics for improving the process of review and accreditation standards proved controversial: (1) articulation and implementation of policies requiring schools to articulate and periodically measure student learning outcomes; (2) reappraisal and improvement of standards governing law faculty tenure rights and employment policies; and (3) the requirement that all admitted law students have a score on a valid and reliable admission test.⁵³

50. See William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?*, A.B.A. J. (Jan. 1, 2012, 11:20 AM), http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills.

51. For a comprehensive overview of the Section's standard-setting processes and the goals of the accreditation standards, see Donald J. Polden, *Comprehensive Review of the American Bar Association Law School Accreditation Policies and Procedures: A Summary*, THE BAR EXAMINER, Feb. 2010, at 42, 43–45.

52. See, e.g., Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, CHRON. HIGHER EDUC. (Jan. 10, 2010), <http://chronicle.com/article/Law-Schools-Resist-Proposal-to/63494/>; Karen Sloan, *AALS Urges Delay in Accreditation Review*, LEGAL INTELLIGENCER (Apr. 1, 2011).

53. Sloan, *supra* note 52.

After extensive discussion, public comment, and multiple drafts, the Committee prepared a set of policy changes to the standards that, when approved by the Committee, would be submitted to the Council for its action. One policy proposal—to require articulated learning outcomes and assessment programs at each school—would bring legal education into parity with other professional education programs, all of which require accredited programs to articulate student learning goals and then assess them periodically.⁵⁴ Another policy proposal—to examine policies that seemingly required member schools to have security of position or mandatory tenure for deans and full time faculty members—would either make it clear that tenure was mandated for all full-time faculty or, on the other hand, would leave it to each law school (or its university) to determine whether or not to provide tenure for faculty and the law dean.⁵⁵ A third policy proposal articulated a specific, numeric pass rate on state bar examinations and reflected concerns that some law schools were admitting applicants who were unqualified to pass a bar examination and gain admission to the bar.⁵⁶ A fourth policy

54. Mangan, *supra* note 52.

55. The accreditation standards on tenure and employment policies were unclear when the comprehensive review began in 2009 and the Committee was specifically asked to try to clear up the uncertainty and ambiguity with Standard 405. Unfortunately, due to the Council's inability to agree upon either of two clarifying proposals, see *infra* note 62 and accompanying text, the standard remains unclear. This is unfortunate for several reasons. Chief among those reasons is the importance that is placed on academic freedom by law professors; granting law teachers tenure is a longstanding method of ensuring their academic freedom. Given the significant and enduring importance of academic freedom to law professors, it deserves a more coherent formulation and enumerated importance than it has under the current standards. Standard 405, the key provision, states that approved law schools "shall have an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory." ABA STANDARDS, *supra* note 21, at 29. The Council has interpreted Standard 405 to require schools to have a policy on academic freedom and tenure even if the policy does not provide for tenure rights. But, the AALS and many legal educators have claimed that the standard does not mean what it says and that, in fact, it requires tenure. The irony is that the standard drafters know how to require tenure when they wish to. Standard 203(b) governs deans of law schools and it provides that "[e]xcept in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure." *Id.* at 10. Standard 405 also contains a number of provisions concerning clinic and writing faculty members who are accorded varying, and poorly articulated, rights (such as "a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members."). *Id.* at 29.

56. Mark Hanson, *ABA Recommends Tougher, Simpler Bar Passage Accreditation Standard*, A.B.A. J. (Feb. 16, 2016, 3:25 PM), <http://www.abajournal.co>

proposal was to relax the existing standard that required each admitted student to have taken a valid and reliable entrance exam prior to admission to an approved law school.⁵⁷ The concern about this proposal was that although the LSAT was demonstrated to be a valid predictor of first-year success, others contended that it had the effect of limited minority student admission to law school.

The Association of American Law Schools (AALS) attacked most of the draft proposals circulated by the Standards Review Committee,⁵⁸ claiming that expecting faculty members to articulate student learning goals and measuring the extent that students achieved those goals was oppressive to law faculties,⁵⁹ notwithstanding the fact that all other professional education disciplines requires such programs.⁶⁰ Moreover, the AALS argued that the ABA should continue to “require” tenure rights, even though all other professional education accrediting agencies do not require such employment policies.⁶¹ The AALS, which itself did not require tenure policies in its own membership policies, pushed the ABA to continue the existing policy of requiring tenure rights at all schools, even though neither the express policy—Standard 405—nor the Council’s actions indicated this was obligatory for law schools.⁶²

m/news/article/aba_committee_recommends_tougher_simpler_bar_passage_accreditation_requirem.

57. Brendan McKenna, *Will the ABA Make LSATs Voluntary?*, LAW.COM (Jan. 13, 2011, 2:26 PM), http://legalblogwatch.typepad.com/legal_blog_watch/2011/01/will-the-aba-make-lsats-voluntary.html.

58. The author served as chair of the Standards Review Committee during the first three years of the comprehensive review, from 2009 to 2011.

59. Letter from Michael A. Olivas, President of the Ass’n of Am. Law Schs., to Hulett H. Askew, Consultant on Legal Education (Mar. 28, 2011) (concerning the proposals for student learning outcomes and learning assessments, Olivas reiterates the AALS encouragement that the ABA “Do No Harm”) available at <http://taxprof.typepad.com/files/aals-submission-for-april-2-2011-src-open-forum.pdf>; see also Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, CHRON. HIGHER EDUC. (Jan. 10, 2010), <http://chronicle.com/article/Law-Schools-Resist-Proposal-to/63494/>.

60. See Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning By Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 483 (2011) (stating that the ABA’s proposed standards are aligned “with a model based on assessment of student learning outcomes that has long been employed in other educational programs and is justified in legal education.”).

61. Letter from Michael A. Olivas, *supra* note 59, at 5.

62. The then President of AALS explained that “[l]ifetime tenure for all faculty may not be the only way to protect freedom of inquiry, but preserving the principle of academic freedom in ways that have proved to be effective is not only an AALS core

The AALS's attack on the proposed standards gained traction when a group of Council members—including its chair, a law school dean—became upset about a draft policy that would permit individual law schools and their universities to determine whether or not to grant tenure to their deans.⁶³ At that time, at its July 2011 meeting, the Committee had approved nearly all of the proposals to revise and improve the standards, and thereafter the approved revised standards were to be transmitted to the Council for its review and action.⁶⁴ The new Chair, instead of submitting the standards that had been approved by the Committee, instructed the Committee's new Chair to initiate a new and complete review of all of the approved and the still pending standards.⁶⁵ The purpose of the "slow down" order to the new Committee Chair was to "slow down" the approval process to appease the AALS and other groups.⁶⁶

value; it is an essential public value." Letter from Michael A. Olivas, *supra* note 59, at 6. Obviously, however, this exhortation fails to explain what AALS's membership policy does not compel member schools to offer lifetime tenure to all their full time faculty. Moreover, Olivas, like others in legal education, fail to read Standard 405 in its plain text: (1) it no where requires approved schools to tenure full time faculty; (2) no where does it define "tenure" or what is required in "an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory." Moreover, the Council has approved law schools that did not have faculty employment contracts providing lifetime tenure.

63. ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, SECURITY OF POSITION, ACADEMIC FREEDOM AND ATTRACT AND RETAIN FACULTY (2011), http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committee/standards_review_documents/april_2011_meeting/report_of_subcommittee_on_academic_freedom_and_status_of_position.authcheckdam.pdf.

64. The minutes of the Standards Review Committee for the July 9 through July 10, 2011 meeting chronicle the Committee discussion of proposed changes to most the Standards and the Committee's approval of those Standards, notably all or almost all of chapters 1, 2, 3 (including new standards requiring schools to articulate student learning outcomes and provide ongoing assessment of the attainment of those goals), 4 (but not standards concerning security of position), 5 and 7. See ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, STANDARDS REVIEW COMMITTEE, JULY 9–10, 2011 MINUTES, http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/minutes/20111102_src_july11_meeting_minutes.authcheckdam.pdf. Three years of serious, capable discussion and drafting culminated in the Committee's votes to approve substantial improvements in the accreditation policies.

65. Memorandum from John F. O'Brien, Chair of the Council on Legal Educ., to Standards Review Comm. (Sept. 16, 2011) (on file with author).

66. Email from Jeffrey Lewis, Chair of Standards Review Comm., to Donald J. Polden (August 8, 2010) (copy on file with author) ("We will slow down. . . . John O'Brien has made it quite clear that he wants us to make amends with our many friends in legal education.").

The “restarting” of the entire accreditation review and recommendation process resulted in another three years of committee discussions before the standards were ultimately approved by the Council in August of 2014. So, effectively, the comprehensive review process took six years, rather than three years, to complete.⁶⁷ The Council failed in its leadership role when it slow-walked the standards for an additional three years to appease other legal education constituencies and thereby risked erosion of the legal community’s trust in the Section to ethically move legal education forward at a time when law schools were in crisis and seeking effective leadership.

Three years later, when the comprehensive review ended, the Council ultimately followed the mainstream trend of professional and graduate education by approving standards that called for articulated student learning outcomes and assessment plans, a critical step in enhancing the credibility of the Section in leading legal education because it demonstrated that law student learning and preparation for law practice were important goals of the Section and its law schools.⁶⁸ However, the Council was unable to reach a decision on the existing standards that called for faculty employment policies, even though those proposals were premised on law schools’ gain of fiscal flexibility in administration of their budgets and their independence in establishing hiring and retention policies.⁶⁹ On the third issue—the standard requiring a score on a valid and reliable entrance examination—the Council vacillated, first by retaining the policy that all applicants have a score on an admission test but permitting schools to submit for approval any variances from the policy and to take a small, defined cohort of entering students who

67. The Standards that were approved by the Council and House of Delegates in 2014 were substantially similar to—and in many areas, identical—to the Standards that the Standards Review Committee approved in summer of 2011.

68. See ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, EXPLANATION OF CHANGES, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/july2015councilopensessionmaterials/2015_august_notice_of_revisions_to_standards.authcheckdam.pdf (last visited May 16, 2016).

69. *Id.* The Council considered two proposals from the Standards Review Committee (essentially the same proposals drafted by the Committee in 2011), one requiring employment contracts with tenure and the other leaving the decision on tenure as a part of employment up to the individual law school or university, and neither proposal was able to generate a majority of Councilmember votes. According to the Council, it had received a lot of angry communications from law school faculty concerning both proposals, so the current standard, 405, stands as is. *Id.* at 14.

did not have LSAT scores.⁷⁰ Subsequently, the Council retracted the variance loophole but then opened it up again in 2015.⁷¹

The foregoing discussion reflects the great challenges to the accreditation process and the administration of legal education as it undergoes a crisis of significant dimensions and duration. The policy decisions about whether requiring tenure rights at law schools, permitting approved law schools to admit their students without an entrance test score, and the requirement that schools inform prospective students what they teach and then hold themselves accountable for the delivery of that education are all important to the administration of law schools. However, overarching questions are: Did the Council pass a test for effective, value-driven leadership to legal education? Did the Council demonstrate the kind of integrity and commitment to the success of legal education that we expect from the leaders of legal education in the United States? Some of the decisions made suggest that the structure and operation of the chief accrediting body for legal education may indeed advance the interests of legal education through increasingly challenging times. Other decisions made since 2007—when the first tidings of seismic challenges to legal education arose—suggest that the Council, and perhaps the Section, may not be capable of leading law schools through this continuing crisis. Given the myriad problems being experienced by the Section, will it be a source of assistance and steady leadership to law schools as they face those challenges?⁷²

This may present an appropriate time for the Section to examine its leadership abilities, including its structure and past performance, to determine its fitness to lead law schools. Through the Council, the Section may want to reassess its leadership selection and development procedures and processes, consider longer terms of leaders, incorporate learning and best practices from other professional education accreditation organizations, and consistent with the DOE requirements, reconsider the composition of its leadership group.⁷³ An excellent start to the development of stronger

70. *See id.* at 16–18.

71. *See* Mike Stetz, *ABA Reverses Experimental LSAT Waiver*, NAT'L JURIST (Sept. 9, 2015), <http://www.nationaljurist.com/content/aba-reverses-experimental-lsat-waiver>.

72. *See* Thies, *supra* note 47, at 614–22 (articulating several areas of action and leadership by the Council to assist law schools and their students in the recession).

73. Conducting such a comprehensive review of its leadership abilities and needs, the Council may find more appropriate policies for selection and oversight of its leadership group, so that a one year president cannot derail three years of work required by the DOE by an accreditation policy committee and may create effective leadership grooming practices so it has an ongoing stream of capable and dedicated

and more sustained leadership capabilities in the Section is to engage in the “innovation process,” described in the next section of this article, with a purpose of enhancing the abilities of the Council and its members to effectively lead the law schools out of the crisis that has impacted them in the past decade.

II. LEADING INSTITUTIONAL CHANGE: THE PERSPECTIVES OF LEADERSHIP THEORY AND PRACTICE

The great leadership and management thinker Peter Drucker once stated: “Only three things happen naturally in organizations: friction, confusion and under-performance. Everything else requires leadership.”⁷⁴ Leading institutional change is one of the most important types of guidance and leadership that a leader can give to his or her organization. As the foregoing discussion describes, the challenges to legal education and law schools are many and significant; therefore, the need for inspired leadership is great. Scholarship advocating effective institutional leadership through times of great change, challenge and crisis will be discussed in this section, and it provides useful approaches to thinking about innovation and needed change for legal education institutions seeking to navigate the difficult times facing law schools. However, law school and legal education leaders, like lawyers, often have no formal education or personal development in addressing or managing crisis, and they must develop the leadership skills and attitudes to lead their organizations forward.⁷⁵

The following section briefly discusses the important role of leadership abilities for lawyers, including academic lawyers (such as deans and faculty). The following section also broadly describes some of the salient theories and approaches to leadership that are applicable to those academic lawyers and leaders in the current environment. It describes an approach to creative leadership to effectuate change and lead teams through crisis and difficulty. These are the approaches, knowledge, and direction that legal education’s leaders need at this time.

leaders in key roles in legal education. Moreover, such an effort may provide thoughtful and helpful approaches in inspiring better, sustained leadership within the ranks of the approved law schools.

74. *Leadership Institute*, THE INST. OF APPLIED HUM. EXCELLENCE, <http://www.theiahe.com/services/seminars/leadership-institute/> (last visited May 16, 2016).

75. Donald J. Polden, *Leadership Matters: Lawyers’ Leadership Skills and Competencies*, 52 SANTA CLARA L. REV. 899, 901 (2012).

A. *Lawyers and Leadership*

Lawyers have often not had the benefit of leadership education during their law school education, and—whether they are deans, faculty members, or members of the Council—they need to possess and demonstrate leadership abilities.⁷⁶ The lack of leadership education for lawyers stands in marked contrast to their positions of influence and leadership, such as the Presidency of the United States, legislative and key administrative government roles, and in national and state and local bar groups.⁷⁷ Ben Heineman, Jr., former general counsel of General Electric, has argued that the nation needs great leadership by lawyers in managing transactions and global arrangements that involve important and legitimate private interests:

Someone will have to provide the vision, wisdom, and energy to lead. Such leadership will require many skills and multiple perspectives. No one is totally suited for such tasks, but no one is better suited than a lawyer with broad training and experience. Properly defined, the lawyer's core skill of understanding how values, rules, and institutions interrelate with social, economic, and political conditions is central to the demands of contemporary leadership.⁷⁸

There have been some changes in regard to leadership education in law schools and law firms, and those changes auger well for the future of the legal professional and for the practice of law.⁷⁹ As more men and women are prepared for leadership roles—whether by legal education, initiatives of individual law schools or of particular law firms—the ability to meet and overcome challenges is increased. The next section addresses the ways that lawyers can lead by considering several key theories of leadership development.

B. *Theories of Leadership Applicable to Legal Education*

There are several theories and perspectives on leadership that concern lawyers who are called upon to provide meaningful leadership to their law firms, business entities, and other

76. DEBORAH L. RHODE, *LAWYERS AS LEADERS* 1 (2013).

77. *Id.* at 2–3.

78. Ben W. Heineman, Jr., *Law and Leadership*, 56 J. LEGAL EDUC. 596, 607 (2006).

79. See, e.g., Donald J. Polden, *Symposium on Leadership Education for Lawyers and Law Students*, 52 SANTA CLARA L. REV. 685, 688 (2012).

institutions and within their communities.⁸⁰ Effective leadership is often assessed in terms of its application of behaviors to effectuate change or create a relationship between the leader and his or her constituents.⁸¹ All theories of leadership stress that leadership is a function of the relationship between leader and followers, such as when a leader inspires his or her followers to take on difficult, challenging tasks. Important research on leadership has focused on critical abilities and practices of effective leaders and has found the source of their effectiveness is rooted in one key aspect of their leadership—that followers, or constituents, trust these leaders because they are trustworthy, credible, competent, and possess relevant subject-matter expertise, while also envisioning and implementing a path or a course of action that will result in meaningful, needed change.⁸²

One theory of leadership—transformational leadership—is particularly applicable to this article. It is built upon an organization or group's need for a significant, transformative change in direction, energy, and success. The leader is able to conceive of, and articulate a vision for, organizational or institutional change and to inspire his or her followers to move in the direction of the change or innovative approach. Institutions that do not need to change or innovation for their futures do not need leaders, but rather they often need effective managers to maintain the status quo. Transformational leaders themselves undergo a transformation as they lead. The goals and aspirations they share with their followers during the process of innovation and change often transform them as leaders.⁸³

Transformative leadership is a type of leadership often demonstrated by lawyers who lead law firms, general counsel offices, and non-profit organizations through difficult and challenging times. It is the kind of leadership that organizations, such as the Council and the American Bar Association, need in order to advance change in legal education and the legal profession. Two other relevant types of leadership often demonstrated by lawyers, including academic lawyers and bar association leaders, are adaptive leadership and servant leadership. Adaptive leadership focuses on the activities of a person or persons to mobilize people around them to make progress

80. See generally ROBERT W. CULLEN, *THE LEADING LAWYER: A GUIDE TO PRACTICING LAW AND LEADERSHIP* (Thomson West 2009).

81. JAMES M. KOUZES & BARRY Z. POSNER, *A LEADER'S LEGACY* 52, 53 (2006); RHODE, *supra* note 76, at 7–8.

82. JAMES M. KOUZES & BARRY Z. POSNER, *THE LEADERSHIP CHALLENGE* 14–25 (4th ed. 2007).

83. Polden, *supra* note 75, at 904; see also JAMES MACGREGOR BURNS, *LEADERSHIP* 4 (1978).

on important goals, issues, and challenges.⁸⁴ These leaders mobilize through motivation, persuasion, organizing, orienting, and focusing attention on the issues and challenges.⁸⁵ In addition, they seek to bring the constituent group together for their common good.⁸⁶ According to Ronald Heifetz:

Adaptive work consists of the learning required to address conflicts in the values people hold, or to diminish the gap between the values people stand for and the reality they face. Adaptive work requires a change in values, beliefs, or behavior. The exposure and orchestration of conflict—internal contradictions—within the individuals and constituencies provide the leverage for mobilizing people to learn new ways.⁸⁷

Adaptive leadership requires that leaders utilize a number of skills that seek to mobilize their group or constituents, but within the context of the challenge or situation, which may require considerations about the culture of the group or organization and its members' strengths, weaknesses, and abilities.⁸⁸ Some of the relevant skills applied by an adaptive leader include the ability to clarify the situation and the contradictions in the situation, the ability to help others to understand the group's situation, the ability to manage the contradictions evident in the situation, and the ability to address the group's distress.⁸⁹ An important contribution to the literature on leadership made by this perspective is that adaptive leadership does not require a leader with formal directing authority, but rather can be successfully implemented by a member of the group for the benefit of the entire group. Thus, leadership in these contexts is often provided by people who do not have formal power or authority over the followers. These informal leaders provide persuasive influence that motivates the group to move in the desired direction.

84. RONALD A. HEIFETZ, ANCHORING LEADERSHIP IN THE WORK OF ADAPTIVE PROGRESS, IN *THE LEADER OF THE FUTURE 2: VISIONS, STRATEGIES, AND PRACTICES FOR THE NEW ERA* 78–80 (Francis Hesselbein & Marshall Goldsmith eds., 2006).

85. *Id.*

86. *Id.*

87. Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L.J. 358, 380–81 (2009) (citing RONALD A. HEIFETZ, *LEADERSHIP WITHOUT EASY ANSWERS* 22 (1994)).

88. *Id.* at 381–82.

89. RONALD A. HEIFETZ & MARTIN LINSKY, *LEADERSHIP ON THE LINE* 128 (2002); HEIFETZ, *supra* note 84, at 20–25, 252–53, 271–72.

Servant leadership is focused on the growth and well-being of people and their communities and not, as in other types of leadership, on the power at the top of the organization.⁹⁰ The servant leader shares the power of the organization (such as decision-making, planning, and managing) with others by putting the needs of others first.⁹¹ The leader helps others to develop professionally, grow personally, and perform as well as possible.⁹² Like adaptive leadership, servant leadership can be practiced or implemented by someone who does not have formal authority to lead.⁹³ The servant leader builds their leadership on a moral foundation through "self-knowledge and the growth of personal conscience."⁹⁴ This foundation permits them to inspire others to ethical, necessary action or activity.⁹⁵ The fully-formed servant leader focuses on several key virtues or attitudes—including stewardship for the benefit of others, empathy, commitment to others' growth and personal development—and on several key skills and abilities—including listening, reflection, the ability to provide feedback, persuasive skills, and others.⁹⁶

Leadership roles during times of significant industry or institution transformation, crisis, and challenge may call upon a variety of leadership styles and approaches. These roles may depend on whether the leader is leading from within an organization or at the top of an organization, such as in the role of dean or president. Irrespective of the setting, institutional leaders must identify the challenges facing the organization or group and then have the ability and the courage to provide effective leadership.

The next section considers the roles that leaders must play in effecting change through their leadership, whether that leadership is considered adaptive, servant, or transformational. More importantly, it provides a framework—a process—for a leader's ability to move the institution or organization forward by innovating through or around a challenge or an impasse. This process is critical for institutions to understand and implement if they want to confront the economic, marketing, or other challenges that are holding them back.

90. Hamilton, *supra* note 87, at 383–85.

91. *Id.*

92. Robert K. Greenleaf, *Essentials of Servant-Leadership*, in FOCUS ON LEADERSHIP: SERVANT-LEADERSHIP FOR THE TWENTY-FIRST CENTURY 23–24 (Lamy C. Spears & Michele Lawrence eds., 2002).

93. Hamilton, *supra* note 87, at 383.

94. *Id.*

95. *Id.* at 383–84.

96. *Id.* at 385.

C. Leadership and the Innovation Process

This article, in large part, is about leadership of legal education institutions during extremely challenging times and times, without precedent in recent history, of great potential harm to those institutions. The challenge of leadership during such times is the fear that leaders will permanently damage their institutions, not through inadvertence or laziness, but rather because they have no (or few) guideposts to steer them through unprecedented and high-risk circumstances. At such times, there is a premium on leadership skills that permit the leader to focus on innovation around—or, if needed, through—the difficulties and uncertainty that paralyze the rest of the organization, market, or industry. Nathan Furr and Jeffrey H. Dyer of the Marriott School of Management at Brigham Young University identify “the innovator’s method,” which requires “discipline, perseverance, and dedicated effective leadership” in those circumstances.⁹⁷ They argue that the innovator’s method of leadership is “a different kind of leadership, calling for skills and tactics that many of us have yet to master.”⁹⁸ Similarly, John P. Kotter of Harvard Business School has studied how organizations manage change—some successfully and some not—in order to cope with a new and more challenging market environment.⁹⁹ A leader’s ability to move his or her organization or institution towards meaningful change depends upon a number of factors, but the most important is the leader’s understanding of the need for a method or process for change and a commitment to lead the process.¹⁰⁰

The common ingredients in a process of creative change are the leader:

- establishing a sense of urgency about a problem or crisis facing the organization;¹⁰¹
- selecting an appropriate group or “guiding coalition” to identify and evaluate the problem and to generate insights about the unsolved problem;¹⁰²
- creating a vision for change;
- identifying actions that will address the problem by concerted action of the group;¹⁰³

97. Nathan Furr & Jeffrey H. Dyer, *Leading Your Team into the Unknown*, HARV. BUS. REV., Dec. 2014, at 80, 82.

98. *Id.*

99. John P. Kotter, *Leading Change: Why Transformation Efforts Fail*, HARV. BUS. REV., Mar.–Apr. 1995, at 59.

100. *Id.*

101. *Id.* at 61.

102. *Id.*

- communicating the vision and encouraging “buy in” of key constituencies and generating support of institutional stakeholders;¹⁰⁴
- experimenting with the key components and “break-through” actions, programs or activities and field-testing, if possible, the core attributes or aspects of the new proposal, project or activity;¹⁰⁵
- creating improvements to the plan so that the team has “wins” (improvements and the resulting performance wins help build the confidence of the team);¹⁰⁶ and
- institutionalizing the new program or activities within the culture of the organization by publicizing its success and thanking the team for their actions.¹⁰⁷

The innovation process requires the commitment of the organization’s leader and his or her delegation of responsibility and authority to the core group, guiding team, or coalition. It is simply not possible (nor desirable) for the leader to perform all of the steps in the process; it is vital that the core group or team take the lead on several aspects. This is true in nearly all organizations, and it may be especially true in organizations, such as academic departments of higher education institutions, where the leaders do not have formal directing authority and must lead by example, influence, and moral authority.

However, the implementation of a process to incubate and produce change within an organization is fraught with difficulties and dangers. One danger is the leader’s obvious desire to move the process along quickly. According to Stefan Thomke and Jim Manzi:

When it comes to innovation . . . most managers must operate in a world where they lack sufficient data to inform their decisions. Consequently, they often rely on their experience or intuition. But ideas that are truly innovative—that is, those that can reshape industries—typically go against the grain of executive experience and conventional wisdom.¹⁰⁸

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 61; Furr & Dyer, *supra* note 97, at 85.

108. Stefan Thomke & Jim Manzi, *The Discipline of Business Experimentation*, HARV. BUS. REV., Dec. 2014, at 70, 71–72.

The second problem concerns the effectiveness of the team's efforts to produce thoughtful, creative, and appropriate decisions regarding how the organization needs to move forward. Without the support of the team, making significant and very different changes in organizational direction is difficult, but the leader needs to understand the common, some have argued, innate, pitfalls of "groupthink." Cass Sunstein and Reid Hastie have conducted experiments on group decision-making and have expressed concerns about the amplification of errors caused by group deliberation.¹⁰⁹ Their research, which builds on the pioneering work of Daniel Kahneman and Amos Tversky, concludes that groups err in arriving at collective decision-making (or recommended action) in four main ways:

- Groups do not merely fail to correct the errors of their members; they *amplify* them.
- They fall victim to *cascade effects*, as group members follow the statements and actions of those who spoke or acted first.
- They become *polarized*, taking up positions more extreme than those they held before deliberations.
- They focus on *what everybody knows already*—and thus don't take into account critical information that only one or a few people have.¹¹⁰

These pitfalls and errors can be addressed, indeed must be addressed, by innovative leaders if meaningful change is to be accomplished. In the following part of the article, paths of leadership that were changed by several law schools through innovation and institutional re-direction are discussed. These examples may provide meaningful guidance to other law schools that have been floundering through institutional paralysis or strategic misdirection.

A third problem with the processes of law schools leading change, and one that is closely associated with the findings of Sunstein and Hastie, is an exogenous one (rather than a problem with the innovation movers or their methods) that concerns the receptiveness of the targets or objects of the innovation. It often happens that legal employers—largely, law firms—do not reward or recognize the value of innovative efforts by law schools.¹¹¹ Instead,

109. Cass R. Sunstein & Reid Hastie, *Making Dumb Groups Smarter: The New Science of Group Decision Making*, HARV. BUS. REV., Dec. 2014, at 90–92.

110. *Id.* at 92.

111. William D. Henderson & Rachel M. Zahorsky, *The Pedigree Problem: Are Law School Ties Choking the Profession?*, 2012 A.B.A. J. 36, 39 (2012) (comment of Dean David Yellen, of Loyola University Chicago School of Law, arguing that, unfortunately, law firm hiring partners often make hiring decisions, including at which schools to interview, based on where the partner went to law school or by

innovation and creativity in curriculum, pedagogy, and student preparation for the practice of law and demands of the legal profession get subordinated to group “self-perceptions” by the firms’ hiring partners or professional development consultants.¹¹² For example, these perceptions may lead to decisions to hire only from law schools that hiring partners attended or to hire only associates who have backgrounds similar to the hiring partners’ backgrounds rather than to hire law graduates who possess the relevant skills, knowledge, and abilities that the firm needs.¹¹³ In these environments, participation by graduates in practice-specific programs tends to be undervalued and merit-hiring decision-making may be skewed.

Some of these constraints on the effectiveness of novel and innovative changes to law schools’ curricula and programs (e.g. to prepare more graduates who know how to handle clients’ needs and expectations) existed before the recession and even then presented challenges to law schools interested in job opportunities for their graduates.¹¹⁴ To the extent they are experienced by schools interested in innovation and meaningful change, those schools must innovate around these challenges. The next section describes some significant changes made by law schools using processes to gain the collective support of key constituencies, create the leadership structures to implement those changes, and confront some of the most harmful impacts of the recession on law school programs.

III. LAW SCHOOL RESPONSES TO THE RECESSION: CONFRONTING CHALLENGES THROUGH INNOVATION

Unfortunately, it appears that most law schools have not engaged in effective efforts to confront the challenges and problems presented by the recession, but instead have attempted to “ride out” the storm, maintain the status quo within their individual school programs, and hope to survive. These are the schools that have lost market share (in number of students, submitted applications, etc.) or have seen a dramatic decrease in quality of their entering classes (by LSAT and/or grade point average measures) but have not taken meaningful steps to combat the erosion of their programs. There are many reasons for the lack of response on the part of these schools to the crises that they face. But the result of their lack of effective

slavish adherence to *U.S. News* rankings).

112. *Id.* at 39–41.

113. *Id.* at 39–40.

114. See Patricia Mell, *Law Schools and Their Disciples*, 79 MICH. B.J. 1392, 1392–95 (2000) (discussing pre-recession ABA analysis of the law school curriculum).

response is that many of them face an uncertain future because they are not attempting to innovate around their challenges and constraints (such as budget impacts from declining enrollment and high overhead costs). However, other law schools—led by creative deans and faculty and key staff members—have engaged in their own versions of the “innovation’s process” by developing new programs, initiatives and activities that appeal to prospective students and supporters, reduce their costs and/or generate greater revenues, or reposition the school to move in another positive direction.

There are several categories of break-through leadership by law schools during the economic recession. This section of the article will briefly identify a few key initiatives that address the crisis facing legal education by targeting programs to address each schools’ challenges in light of the national crisis, focusing on “customers” by responding to the interests of prospective students, and attempting to rebuild market share by developing new and innovative “products” that involve legal employers in law school initiatives.

A. Fundamental Reorganizations of Legal Education Programs

There have been some truly noteworthy examples of schools that have pierced through political hierarchies and internal inertia to implement fundamental reorganizations of the program, such as by mergers or alignments with other law schools. These examples include the merger of Rutgers University’s two law schools, the acquisition of Texas Wesleyan’s law school by Texas A&M University, and the merger of William Mitchell and Hamline’s law schools.¹¹⁵ These significant changes permit program consolidation, strengthen market positions in regions or areas of program recognition and strength, permit re-branding of the programs, and help position the schools to save funds as faculty members retire and the schools can realign the faculty with the curriculum. According to Dean Emeritus and Professor Rayman Solomon from Rutgers-Camden, the process of consolidation within the Rutgers’s system was

115. See Press Release, Rutgers University, American Bar Association Approves Merger Creating Rutgers Law School (July 31, 2015), *available at* <http://news.rutgers.edu/news-release/american-bar-association-approves-merger-creating-rutgers-law-school/20150727#.Vu6-bI-cHIU>; Press Release, Texas A&M University School of Law, ABA Grants Texas Wesleyan, Texas A&M University Acquiescence (Aug. 9, 2013), *available at* <https://law.tamu.edu/media/news-media-resources/story/aba-grants-texas-wesleyan-texas-a-m-university-acquiescence>; Press Release, Hamline University, Hamline School of Law and William Mitchell College of Law to Combine, *available at* <http://www.hamline.edu/news/2015/hamline-law-william-mitchell-combine/>.

driven by perceived efficiencies generated by combining the strengths of each school (e.g., location, well-regarded clinical programs, etc.) rather than efforts to overcome the effects of the recession.¹¹⁶ However, the merger is expected to result in cost savings for the schools and generate resources and expertise to become a stronger law school through their combined efforts.¹¹⁷ Most important, according to Dean Solomon, the merger was preceded by significant and collaborative discussion between the leadership teams and deans at each law school.¹¹⁸

B. Significant Curricular Development as a Path Forward

While many law schools announced changes to their curricula during the recession, such as adding clinics or lawyering-skills courses, a few schools were able to plan and implement significant and fundamental changes in their curricula that respond to students' educational and employment needs and interests. One notable example is the substantial renovation of the law program at Elon University Law School, a faculty-led process that resulted in the replacement of a well-working, but traditional, curriculum with curriculum emphasizing greater faculty involvement in developing students' lawyering capabilities and competencies; a dramatic reduction in tuition (\$14,000 in savings during students' law school stay); a reduction of the time needed to graduate to two and a half years (from the current three year residence of most law schools); and a freeze on tuition growth.¹¹⁹ The curricular renovation (which was undertaken in large part during a search for a new dean) was approved by the key stakeholders, including the university, following strong faculty leadership and energy.¹²⁰ In the two years since the implementation of the new curriculum, the law school has experienced significant increases in student applications (roughly 15% in the first year and 26% in the second year) with progress to be

116. Interview with Rayman Solomon, Dean Emeritus, University of Rutgers-Camden (July 31, 2015).

117. *Id.*

118. *Id.*

119. John Newson, *Applications, Enrollment Up at Elon's New-Look Law School*, GREENSBORO NEWS & RECORD (Aug. 9, 2015), http://www.greensboro.com/news/schools/applications-enrollment-up-at-elon-s-new-look-law-school/article_568e6dd0-a4eb-5c8d-a709-044a2821b91e.html.

120. Interview with Dean Luke Bierman, Dean, Elon University School of Law on (Feb. 19, 2016).

assessed through a longitudinal study process on how students and graduates benefit from the revised the curriculum.¹²¹

There are other influential academic thinkers who are providing leadership to their law schools and to legal education through their thoughtful proposals for substantial enhancements to the contemporary model of legal education.¹²² Many of these proposals go to the heart of the challenges facing legal education and its law schools, which include student debt loads, renovating the curricula at most law schools to emphasize critical skills lawyers today need, and repositioning legal education so that it serves the evolving needs of the legal profession and the business of law. Often, these academic thinkers' proposals fill the gap created by the legal education institutions' failure to skip the mundane and often unimportant details of accreditation and to really address the major challenges.

C. Significant Programmatic Development

Since the recession's impact on legal education beginning in 2008, many law schools announced the development and implementation of significant programs undertaken, in whole or part, to combat the effects of the recession. Some of the programs are intended to respond to student employment needs by teaching students employer-desired skills and knowledge while others seek to expand the diversity of their community of students by offering alternative degree-earning and certificate programs. One of the most successful expansion programs occurred at Loyola University-Chicago. Just as the recession was beginning to affect enrollment in law schools, the dean and a few key faculty members decided to expand the school's master's degree program in health and children's rights compliance areas.¹²³ The program leverages core faculty strengths and is geared for professionals working in those areas.¹²⁴ The faculty and decanal leadership group partnered with an online

121. *Id.*

122. See, e.g., Daniel Martin Katz, *The MIT School of Law? A Perspective on Legal Education in the 21st Century*, 2014 U. ILL. L. REV. 1431, 1457–64 (2014) (arguing for innovative curricular changes emphasizing entrepreneurial and technological approaches to educating law students); Larry E. Ribstein, *Practicing Theory: Legal Education for the Twenty-First Century*, 96 IOWA L. REV. 1649, 1672–75 (2011) (emphasizing how market-oriented changes to law school curricula will best prepare today's lawyers for the practice settings they will inhabit); Henderson, *supra* note 15, at 479–83.

123. Interview with Dean David Yellen, Dean, Loyola University Chicago School of Law (Feb. 16, 2016).

124. *Id.*

legal education provider to obtain distance education expertise and capacity and began offering many of the courses for the master's degree students online.¹²⁵ The program development timeline was about two years and resulted in a highly successful program that included approximately 325 degree-earning students.¹²⁶ The addition of those students' tuition, coupled with the low-cost method of presenting the curriculum, proved to be extremely helpful to Loyola's law school when enrollment of Juris Doctor students began declining in recent years.¹²⁷ Loyola's innovative spirit continued after the successful launching of the master's degree program, and the school's leadership devised a new program for part-time education that is presented on weekends and partially through distance education platforms.¹²⁸

There are several other recent examples of leadership through change and innovation at law schools, and those schools and legal education as a whole will be better off in the future. However, most schools have resisted change or do not have a leadership team committed to instituting and leading an innovation process toward change.¹²⁹ In the current environment where the effects of the recession are expected to continue into the future, legal education institutions cannot afford to resist change or fail to forcefully address the current crisis. The process for creating and implementing truly innovative programs and initiatives at law schools is readily available to school's leadership team, and as the forgoing schools demonstrate, the institutional gains can be substantial and sustain the school through the remainder of the recession in the legal services field.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Loyola Chicago to offer weekend part-time program*, NAT'L JURIST (Jan. 15, 2016), <http://www.nationaljurist.com/content/loyola-chicago-offer-weekend-part-time-program>. Several other law schools are also experimenting with this new concept for attracting law students to their programs.

129. Mangan, *supra* note 11. One former dean cites the experiences of some law schools whose faculty have been unable to collaborate address the operational challenges they face with pre-2007 budgets but post-2011 enrollments and have instead put their hopes in finding a "unicorn" dean who will raise all the money necessary to close the gap. Interview with Frank Wu, former dean and professor, Hastings College of Law (Feb. 17, 2016). For nearly all law schools, fundraising and endowment earnings are not enough to close this significant and, for many schools, growing gap, so the hope of attracting such a leader is remote and the better approach is to face the challenges and innovate for improvement.

CONCLUSION

The challenges facing legal education and its law schools continue today largely unabated,¹³⁰ and they portend more significant challenges into the future. The future challenges include ballooning debt of young lawyers and law students, the continuing underemployment of law school graduates by legal employers, the potential failure of some approved law schools because of weak financials, and the continuing direction of bright and talented university graduates away from law school and careers in law.

Legal education needs creative, inspired leadership from top to bottom—from the Section and Council to the deans to the faculty and to the student leaders at law schools. That leadership needs to be positive and sustained in taking on the challenges facing schools, their faculties, and their students. It takes courage and commitment to educate the next generation of lawyers to lead the legal profession. The hope of coming generations attaining legal education, and arguably higher education, is creating more leaders and better leaders who have the vision, skills, and courage to consider creative approaches to how we educate lawyers for the future. While there are notable examples of leadership failures and inadequacies in recent years—both by law schools and legal education's institutions—there are also examples of exemplary leadership that promise hope for that future.

130. See Matt Leichter, *The Government's Dismal Job Outlook for Lawyers*, AM. LAW. (Jan. 27, 2016), reporting on the December 2015 job outlook by Bureau of Labor Statistics ("every edition of the [Bureau biennial report] going back to at least the 1990s has cited law graduate overproduction as an obstacle for would-be lawyers") and concluding that legal education should anticipate further contractions of the legal services sector and a weak demand for legal workers.

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