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Closing the Invention Gap: Reinventing the practice of law at the edge of chaos

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by Baker McKenzie

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Contents

Introduction	1
The law industry in context	3
Possible futures for the legal industry	5
Conclusion	10

Introduction

A truth understood by many visionary and strategic law firm leaders, general counsel, legal operations directors, a nascent legal chief innovation class, “New Law” evangelists and a new generation of talent is that the world is complex, uncertain and racing toward the “edge of chaos.” Many foundational assumptions about the world order — and the markets in which our respective organizations operate — are in question. To thrive, even survive, in the legal industry involves a challenge: get up to speed and better anticipate the changes that might come in the legal market and the wider world before it is too late to adapt.

However, the innovation conversation in the legal industry — particularly in the global corporate legal sector — moves slowly. For years, there has been furious agreement amongst commentators that the current structure of the legal industry is unsustainable in the medium- to long-term and that it is ripe for disruption. Legal innovation pioneers see endless opportunities for reinvention. Yet — if we are honest — little of real substance happens. The innovation predicted five years ago simply has not eventuated, at least not at any scale. The continuing increase in the size of in-house teams and the financial performance of the corporate legal market directly challenges the “burning platform” thesis. Despite growing dissatisfaction amongst clients and a self-defeating war for talent, demand is up, prices rise and students still sign up in droves for elite law schools.

Why? The answer lies in what [The Oracle Partnership](#) calls “The Invention Gap”: a pervasive, inter-systemic gap that must be filled if you want to hedge against possible extreme future scenarios. The gap is systemic and strategic, cutting across all industry sectors and spanning global governance, policy, regulation, economics and corporate stewardship. In the law, the gap is an industry-wide failure to envision and plan for the range of possible futures that the industry may face, inevitably resulting in short-term decision-making, which will lead, as the room for maneuver shrinks, to irreversible crises and “too little, too late” outcomes. Unless and until we close The Invention Gap in the legal industry, we will struggle to deliver true innovation.

The cost of failure in closing the gap will not be limited to a single in-house team, law firm or New Law contender. It will limit our collective progress and the value that the legal profession can deliver to clients and the communities it serves. Above all, it exposes the profession to existential risk at a time when the rules-based order it has evolved to serve faces multiple systemic threats, including geostrategic security risk, runaway climate change and potentially cascading, inter-systemic failures rooted in overreliance on global supply chains, fragile technology platforms and weak governance. These edge-of-chaos conditions make the need for radical invention in the legal industry critical and more urgent than ever, even if the short-term market dynamics do not drive that change.

These challenges cannot be solved viewed through a single lens. Tackling them requires a wider field of vision. There are gaps everywhere between what policy-makers, corporate leaders and their advisers:



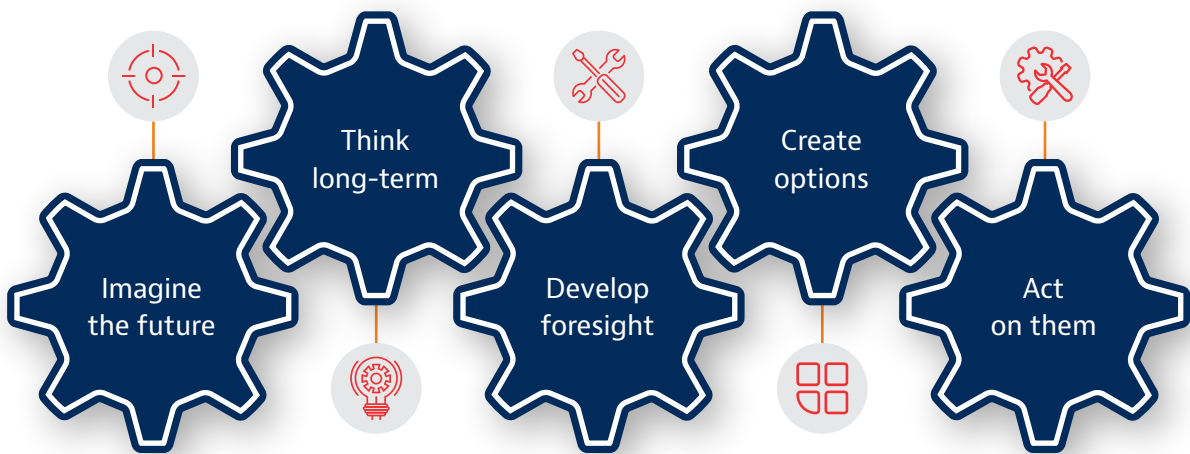
The challenge for policy-makers and corporate strategists alike is to close those gaps and deliver both radical invention and novel applications, and evolutions of existing and emerging technologies, business models and policies.

An edge-of-chaos world is very different for leaders, investors, inventors and policy-makers used to operating in a steady-state environment. Entire sectors — including the legal industry — are going to need to reinvent themselves. The structural transformations afoot demand cross-sector, multidisciplinary change. To achieve that, leaders must develop foresight and predictive models of multiple possible futures, and anticipate long-term societal and industry needs. The grand challenge is to develop innovation-based hedging strategies that create resilience in even the most extreme of possible futures, while, at the same time, keeping the lights on with business as usual in the short-term.

In this paper, we first examine what is driving the edge-of-chaos conditions that create the need to close The Invention Gap. We then situate the legal industry within that wider context, imagining some of the possible futures for which we say leaders in the legal industry should be planning. These futures are not predicted, but they are possible. Unless and until we imagine them and plan for them, the pace of change in the legal industry will remain slow — too slow.

The law industry in context

The legal industry does not sit in a vacuum. Wider policy, regulatory and commercial systems will face urgent, potentially existential, challenges over the next decade, during which the global order, institutional integrity and business models of many sectors will come under increasing pressure. We see The Invention Gap all around us — at its root, the product of leaders' repeated failures to do the following:



In a world already dominated by climate crises, geostrategic instability, threats to democracy and exponential rates of technological innovation, many political and business leaders already show signs of becoming overwhelmed. Having failed to anticipate the extremes through foresight, they now risk finding themselves confronted by continuous storms, relying on short-term crisis management and tactical positioning rather than long-term stewardship and strategy.

This is not new: Most catastrophic events, such as the current COVID-19 pandemic, climate change, 9/11, Hurricane Katrina, the global financial crisis and the war in Ukraine, are rooted in failures of the imagination. Failures to imagine the event, failures to imagine the cascading inter-systemic failures that might follow the event and failures to develop preventative measures and resilience strategies until it is too late and crisis response is the only option. On the evidence, few governments or business leaders learn from mistakes, or anticipate and develop systems to prevent (or mitigate) worst-case outcomes — the defining feature of resilience. We need look no further than European overdependence on Russian energy, cross-industry reliance on small numbers of chip manufacturers or the concentration in food supply chains that is now starting to impact what is on our supermarket shelves. In an edge-of-chaos landscape, the leadership focus needs to shift from understanding individual, siloed risks to understanding vulnerable systems.

In its work, The Oracle Partnership has simulated multiple future scenarios and monitors emerging systemic crises. In many scenarios, the future admittedly looks bleak. “Dark Ages” is one of The Oracle Partnerships’ modelled scenarios (looking to 2050). If it eventuated, this scenario sees political leaders over the next decade turning from prevarication to panic when it comes to climate and other primary threats to global order, turning inwards to protect national security and sending shockwaves through the global financial system. Ideas of sovereignty, independence and self-reliance may fracture the digital environment, transforming trade and everything from communications protocols to data and privacy. Nationalism and isolationism may undermine institutional independence and authority. In this scenario, we would see inter-systemic failures. Some parts of the world would face climate chaos, tipping regions into perpetual “hybrid wars” between major powers on water and land, in the air, in space and in cyberspace. Mass migration, violent activism and divisive culture wars would bring down democratic systems, undermining the rules-based order, the rule of law and democracy. A Dark Ages scenario argues in favor of an urgent, interventionist response.

At the same time, inventive breakthroughs are emerging that offer hope. Examples include policies to accelerate the adoption of renewable energy, the machine-aided reinvention of invention itself and continued breakthroughs in medical science. An example is The Oracle Partnership’s modelled “Renaissance” scenario. One of the lessons of COVID-19 vaccine development is that invention, system-wide innovation and mass-scale transformation is now possible. While many political leaders fell short and cross-border collaboration had its limits, few imagined that the early signs of hope in March 2020 would gather momentum and save millions of lives in such a short time, as a new vaccine was developed in record time and distributed on an unheard-of scale. Given a shared sense of purpose, focused inventive talent and the right system conditions, breakthroughs happen. Leaders emerge.

On the horizon, we face a world of possible extremes — of both runaway crises and exponential rates of radical, systemic innovation leading to fundamental change. This future requires a “we have the solutions” approach in both politics and business. The primary challenge is to focus on breakthrough inventions and wider systemic innovation, in all industry sectors. The policy imperative is to give markets and teams confidence, redirect finance, and scale existing technologies to create the environment for innovation and exponential growth.

The right answer sometimes lies at the extremes, but seldom does. However, exploring the extremes can help identify solutions and define hedging strategies. For example, in the climate context, emissions targets set by governments, investors and corporate leaders risk doing little more than setting the direction of travel. They will not in themselves bring about the breakthrough inventions and systemic innovation needed to drive the fundamental changes in the world’s infrastructure, technologies and economic order needed to deliver net-zero, let alone the overarching strategic objective: negative emissions. They will not change their behavior and spending patterns rapidly enough to cut energy demand. Put simply, abstract targets like net-zero 2050 do little to meet the need for urgent, uncompromising, short-term action that will have a material impact on long-term emissions and biosphere regeneration. You need both.

Possible futures for the legal industry

Over the next decade, both the risk and innovation landscapes will be transformed by the edge-of-chaos world in which they find themselves. The threat is not so much from individual events or competition, but from the systemic, second- and third-order synchronized events that may follow. At the core of The Invention Gap in legal practice is a thesis that in edge-of-chaos environments, there are major opportunities for legal teams (in-house and private practice) to help clients think long-term, to focus on strategic risk and to play a central role in creating exponential rates of systemic innovation. These opportunities are currently being missed. The same opportunities exist for reinvention of their own businesses. Legal teams have traditionally understood risk to their businesses (in which we include the captive in-house model and private practice) in terms of relatively narrow efficiency and capability silos. Do we have the right expertise in the right places to meet demand and can we meet that demand at the right price?

This traditional, specialist-centric approach is the core reason we do not see true disruptive innovation in the law. It is an approach that simply does not work in an increasingly interdependent, complex and chaotic world. Diversity and innovation, not efficiency, is critical to system resilience. The legal industry will not thrive in the world it faces by focusing on becoming more efficient and fine-tuning the business model that has got us to where we are today. It will simply expose itself to system failures by failing to hedge against possible future shocks.

So, what are the futures in which the legal industry might need to evolve and what can it learn from modelled responses to them? The key is that there should be no surprises. Adaptive capacity and agility are rooted in foresight, rehearsal and preparation. When it comes to anticipating client demand, too much of legal system innovation is focused on after-the-event opportunities. To meet edge-of-chaos needs, the industry needs to evolve to look ahead. There is now a premium on anticipation, predictive systems, early warning and on radical innovation that helps prevent crises. Any truly impactful legal innovation strategy needs to have this at its core.

More importantly, the cultural values of the “activist generation” will transform the cultural landscape, in both law firms and in-house teams, and in turn, transform the talent landscape. Policy, regulatory and legal systems are deeply intertwined — the product of politics, history, convention and, to date, relatively stable, if diverse, cultural values. Yet, even in an era of relative stability, legal services operate in a system that was slow to anticipate the impacts of climate change, technology and systemic economic change. One of the defining characteristics of policy, regulation and law is that they lag in both technology and popular opinion. Nothing could be truer about the legal industry. We are laggards in digital transformation, and the values and aspirations of the top end of the talent pool are changing faster than our industry is adapting.

Over the next decade, as zoomers join the workforce, we can expect cascading culture shocks as young people, driven by very different imagined futures, precipitate fundamental shocks to the legal business. The current war for talent is but the start. Contrary to conventional wisdom, culture can change quickly, particularly in times of chaos. When the prevailing narrative is that the legal industry is not fit for purpose, the predicted future of our talent pool can no longer be reconciled with established models and strategies upon which the industry is currently based.

The talent shocks to the legal industry will emerge not when we are overwhelmed but when the commonly imagined future for our industry begins to look bleak in the eyes of the talent pool in which we all fish. If the most recent research on culture shocks is accurate, minority groups can transform the dominant narrative in organizations and systems. There is no need for a majority. This shift in sentiment may reach a critical mass, creating exponential rates of change. This is not about having trouble finding a qualified lawyer or two to join a team. What happens if it becomes so hard to find lawyers that the business model itself starts to break?

Consider the following possible futures that a large law firm like Baker McKenzie (or any other) is facing:

Scenario 1: Law firms and clients fight to the death

- Continued price pressure and cost inflation on the traditional law firm business model.
- Severe margin squeeze on law firms and budget pressures on general counsel (GC).
- War for legal talent continues and intensifies.
- No breakout innovator in the legal market.
- Pipeline of private practice trained lawyers for in-house teams dries up.

Scenario 2: New Law goes mainstream

- A "good" margin for legal services drops to circa 20%.
- Severe margin squeeze on law firms and budget pressures on GCs.
- War for legal talent continues and intensifies.
- Pipeline of private practice trained lawyers for in-house teams dries up.
- Big Four becomes true competitors for top tier legal work in all global markets, including the US.
- Merger between a global top 20 law firm and one of the Big Four or a major alternative legal service provider.

Scenario 3: Law finally grows up

- A "good" margin for legal services drops to circa 10%.
- Severe margin squeeze on law firms and budget pressures on GCs.
- War for legal talent continues and intensifies.
- Pipeline of private practice trained lawyers for in-house teams dries up.
- A major global law firm changes structure to a corporate structure and raises material private equity investment to invest in high-end digitized legal services.

Scenario 4: The great reset

- Budget pressures on GCs and increasing unpredictability of markets and governance causes a material “devaluation” of legal services.
- Legal salaries and the social desirability of a career as a lawyer materially drop.
- Client willingness to accept automated and standardized legal services materially increases.
- Machine learning and automation technologies reach “good enough” maturity to service major revenue lines.

These scenarios are not predicted futures, but they are all **possible** futures that all legal industry leaders should be thinking about because those futures (if they occur) would impact everyone in the industry. Each embodies both risk and opportunity throughout the legal supply chain. Take for example EY’s recent announcement that it is considering splitting its audit and consulting businesses. This potentially argues in favor of scenario 2 being more likely as a predicted outcome, but the other scenarios remain possible.

We asked two leading legal industry thinkers, Mary O’Carroll and Jae Um, to comment on these possible futures and to provide us with their own alternative possibilities. Jae foresees an alternative possible future, with strategic sorting and stratification across provider groups within the legal industry:

Scenario 5: The sorting hat

- Structural re-segmentation of the service provider market, starting with a rough 10/90 split.
- Some degree of consolidation in higher-end market to land at margins circa 40% — not to exceed 10% of global market size (~ USD 100 billion).
- Followed by a period of more intense margin squeeze for the rest of the provider market — the 90% — to land somewhere in the 15-25% range, depending on means of production, service line bundling and market choices.
- Followed by further stratification and strategic consolidation of legal talent to different service provider platforms — not via huge mergers.
- Next phase of buy-side evolution is to reward specialization at the high-end and scalability at the lower-end, accompanied by intense focus on business proximity rather than cost for in-house teams.
- Widespread adoption of tech-enabled automation, expert systems and for business-as-usual legal work.
- Steady adoption of artificial intelligence/machine learning-powered tooling for legal teams to process and analyze information in high-complexity legal work.

Jae's scenario 5 adopts features of some of scenarios 1-4. Preparing a strategy to be ready for a scenario 5 future is something we already see in many in-house teams, triaging client demands based on volume, audience and value to the business, and servicing those demands through different "legal" solutions, e.g., self-serving portals, templates and light-touch legal hand-holding, specialist internal functions, alternative vendor sourcing, etc.

However, one of the gaps we repeatedly see in in-house planning, which shines through in scenario 5, as indeed it does in the other scenarios, is sourcing and training talent. If the work below the high-end starts to favor scalability and business-as-usual work becomes more automated, where will in-house teams get the training resources they need to service the high-end work as law firm leverage models start to change? High-end law firms, earning 40% margins still, will be able to invest in and retain specialist legal talent, but business proximity plus training in-house is still primarily built on a model where the core legal training foundations for their talent are laid by law firms, after which lawyers move in-house to develop that business proximity.

Mary also identifies that risk, seeing a version of scenarios 2 and 3 as the most likely of the possible futures:

Scenario 6: Old Law evolves into New Law

- A "good" margin for legal services drops to circa 20%.
- Severe margin squeeze on law firms and budget pressures on GCs.
- War for legal talent continues and intensifies.
- Pipeline of private practice trained lawyers for in-house teams dries up.
- US states like Utah and Arizona approve major changes to the regulation of the practice of law, with major influx of outside capital into law firms that evolve their product offering into legal services as opposed to legal advice.

Jae proposes a scenario 7:

Scenario 7: Supply-side makeover

- Sustained decline in law school enrollment forces a structural redesign of legal education.
- Credentialing/qualification schemes evolve in the following three distinct ways:
 - Stratify into multiple levels via formal training of paraprofessionals.
 - Diversify into practice specializations to shorten qualification periods, reducing cost and time to increase value for degree seekers.
 - Combine into interdisciplinary qualifications in fourth industrial revolution frontiers across technology and life sciences (e.g., machine intelligence, robotics, gene editing).
- Cross-disciplinary degree programs that combine law and technology proliferate (e.g., legal informatics, computational law, etc.).
- Law schools supplement legacy curricula with practical skill building by specialization.
- Private practice firms regain and redouble monopoly on clinical training at high-end of the market.

Because so many of the possible scenarios imply a structural and fundamental change in the talent-facing value proposition, one of the most critical gaps we see emerging in the legal industry is the unsustainable cost of legal education as against increasing uncertainty as to the returns on a largely frontloaded investment by law firms to educate and train new lawyers. While legal industry watchers have long decried the scarcity of “practice-ready” lawyers among the ranks of the newly qualified, the legal academy’s struggles have worsened considerably in the past decade amidst acceleration in the pace of change and the aggregate complexity in the regulatory framework around global business. Particularly in scenarios where legacy progression of private practice training is disrupted and the social desirability of a career as a lawyer materially declines, we see the possibility of structural changes in how we define education standards and credentialing pathways for fully qualified legal practitioners.

In most jurisdictions, we are failing to address the fast-evolving and expanding needs of the profession through existing infrastructure to update and enforce continuing legal education for fully qualified lawyers. Despite the legal industry’s inconsistent track record in successful modernization, we see real threats to the current economics that impose a steep cost of entry for generalist practitioners to enter the legal profession, and very few viable pathways to augment or supplement existing education with the necessary extension into complex domains that are poised to redefine life and work in an era of revolutionary change. If there is one challenge that we believe leaders in the legal industry need to tackle to deliver true innovation, it is this.

Conclusion

The recurring theme throughout this paper is that policy, regulatory and legal systems (and their leaders) should continuously watch for the earliest possible signs of structural shocks, whether they emerge from geostrategic rivalry, runaway climate change, technology breakthroughs or policy failures. The key is to anticipate inter-systemic risks and take steps to accelerate breakthrough innovation to be prepared for and resilient in multiple possible futures. For legal teams to play a more strategic role in a world on the edge of chaos and be resilient to the shocks that the world delivers to them, they must combine foresight, predictive models and their traditional strengths to foresee and hedge against multiple parallel possible futures. This is only the start of a conversation. How the industry might respond to the scenarios set out above (or any others!) is something where diversity of perspective is crucial.

The reader will note that this paper did not start with technology, the usual poster child for what is driving legal innovation, or even with design thinking, something Baker McKenzie has been (and continues to be) a big advocate of as a driver of change in the legal industry. This is because the strategic risks to the legal sector of edge-of-chaos conditions and the multiple, interconnected breakthrough inventions in machine intelligence and technology are often opaque and poorly understood. To our knowledge, no one in the legal industry is truly planning for them. The dominant approach to technology and service innovation in the law is to apply technology and design thinking to existing business models, primarily in search of efficiency, without seeking to imagine what possible futures might be created using that technology or what future role in the economy legal teams might play. The legal sector was one of the slowest to adopt email; are we going to see history repeat itself this time round, only with many more existential consequences for those who do not plan for the future?

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