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THE UBERIZATION OF LAW

FIRM CULTURE: OBSTACLE OR CATALYST FOR STRATEGIC CHANGE?
So Many Lawyers, So Many UNMET Legal Needs
By Malcolm M. Mercer

The regulation of legal services leaves large numbers of people without access to the justice system.

The legal profession faces a terrible paradox. The number of U.S. licensed lawyers has steadily climbed from 2.53 lawyers per thousand residents in 1980 to 3.85 in 2010, a 52 percent increase in 30 years. Partly due to this increase, jobs have become scarce for new law school graduates.

At the same time, people with civil justice issues—including problems with employment, money, insurance and housing—do not go to lawyers for help. Two recent studies, one conducted by the Legal Services Corporation and one by the American Bar Foundation, each separately found that only approximately one-fifth of people with civil justice issues sought assistance from a third party such as a lawyer.

It seems very odd that there could be so many lawyers looking for work and still so many unmet legal needs. Why is there such a mismatch between supply and demand? While there’s unlikely to be just one answer, the way that legal services are regulated is at least part of the problem. Currently, lawyers act as professional consultants. This model leaves large numbers of people with unserved legal needs.

THE CONSULTANCY MODEL

Private practice lawyers tend to serve either individuals and small businesses or large organizations. There is a bimodal income distribution among lawyers. Lawyers serving big clients in big firms charge more and earn more. Lawyers serving single persons and small businesses charge less, earn less and tend to practice in small firms. According to the National Association for Law Placement, just over one-half
of lawyers in private practice are in small firms while just over 10 percent are in firms of 100 or more lawyers. For the most part, lawyers serving individuals practice in small firms.

Lawyers function as professional consultants. They spend time understanding their clients’ needs, proposing solutions and taking and implementing instructions. In economic terms the means of production is almost entirely labor: the labor of the lawyer and the firm.

Lawyers only have so many hours to spend on client work. Some of those hours are spent keeping up to date, developing new business and running the practice. While lawyers will be willing to work different amounts, 1,500 hours per year dedicated to client work is a reasonable average.

Assume a lawyer with no overhead just starting in practice wants to make $60,000 and work 1,500 hours on client work. The lawyer must bill at least $40 per hour. But this is a rather marginal practice. Instead, assume a more typical practice generating an income of $90,000 and requiring overhead of $90,000. Generating this income after covering overhead requires recovering $120 per hour for time spent on client work. Lawyers charge hundreds of dollars per hour, and this is why. It is inherent in the professional consultancy model.

WHERE THE CONSULTANCY MODEL FAILS

Why is there a mismatch? Lawyers cannot address most legal problems economically acting as a professional consultant. Of course, there are exceptions. For individuals transferring property to a buyer or from one generation to another, the cost of lawyer time is relatively modest compared to the value of the asset.

On the other hand, the professional consultancy model does not work so well for family law disputes. When hundreds of hours of professional time are required, real people cannot afford lawyers. The result is large numbers of litigants acting for themselves. In personal injury cases the effect is muted because the lawyer’s fee is generally deferred and paid out of compensatory recovery.

But what about legal problems lawyers don’t see? As Rebecca Sandefur of the University of Illinois has recently noted: “How Americans handle their civil justice situations is clearly not just about money. Often, they believe there is no need to seek assistance or that there is nothing to be done about their situation. But, Americans do not take most of their justice situations to lawyers or courts for another very important reason: They do not understand these situations to be legal.”

Certainly, many problems can be solved without a lawyer’s assistance, and some problems may not be worth addressing at all. Yet it would be very surprising if most of this 80 percent of civil justice situations fell into these categories. Some suggest that the problem is a lack of information; people just do not realize that lawyers could help. In reality, when paying for a “solution” would be more emotionally and financially draining than the problem itself, it doesn’t make sense to pursue such a remedy.

SEARCHING FOR A SOLUTION

Can costs be reduced so that solutions are cost-effective? Simply producing more lawyers causes more price competition and doesn’t solve the problem because lawyers will leave the profession and students will stop going to law school when incomes drop too low.

So how do we reduce cost? There are two general answers. The first answer is by applying technology. The cost structure of modern technology is very different than that of professional consultancy. Technology is very expensive to develop and implement. But once a technological solution is put in place, there is little additional cost to offering that same solution to more people. This contrasts sharply with the professional consultancy model in which the marginal cost does not reduce the legal fee.

The second answer is specialization and business process engineering. Law is one of the few modern businesses that does not emphasize the value of dividing up work between people and processes in order to achieve cost-effectiveness.

Neota Logic provides a good example of a technological solution to the challenge of providing lower-cost legal services. As claimed on the Neota website, its software “automates expertise by combining rules and complex reasoning, documents, and processes.” One expert application provides “customized guidance on an employee’s right to job-protected time-off from work” under federal and state laws. The application “contains more than 350 rules and covers more than 12 million fact patterns.” Neota Logic lists law firms and law departments as its customers, making the following interesting comment: “Many elements of a large company do not benefit from, or even seek, legal advice because obtaining advice is costly and time-consuming. Neota Logic applications meet this latent demand for legal advice by delivering interactive applications on the company intranet that can be consulted by managers and other business people to get situation-specific guidance around the clock and across the globe.”

This is exactly the point. In business and in everyday life, many legal issues are not addressed because getting legal advice is costly and time-consuming. Technological solutions that cost next to nothing can address some of these problems.

Not all innovation is so high-tech. Winn Solicitors in England started because Jeff Winn was frustrated trying to collect a small amount after a traffic accident. Traditional lawyering was simply
too expensive. So Winn established a firm to process small claims cost-effectively with hundreds of employees, computers and a handful of lawyers.

So why doesn’t the practice of law evolve to deliver services differently? The answer may be regulation. Lawyers are not permitted to share fees or practice in partnership with business or technological experts. Regulation, in the name of professionalism, limits available capital and expertise. There are legitimate reasons for this restriction, but it would not be wrong to see self-interest and protectionism at work as well. Technological innovation exists outside of the “practice of law.” These unregulated legal services are not as precise or relevant as they could be because technological services are designed to operate just outside of the regulated space to avoid prosecution for the unlicensed practice of law. Additionally, practicing lawyers are not involved in these innovations because the regulation of legal services impedes such innovation.

For example, Neota Logic delivers legal services to its corporate clients through in-house and external counsel likely because direct delivery would be an unauthorized practice of law.

Wevorce, as its website says, “is a mediation-enabling technology company. Nothing on this website should be construed in any way as legal advice or the initiation of an attorney-client . . . relationship.” By 2013 Wevorce had raised the $2 million in investor capital required to develop sophisticated divorce software. Because Wevorce is not a law firm and is not regulated like the practice of law, it raised the required capital and expertise with nonlawyer investor money.

Nolo provides another example. It has 50 different websites that provide “general information related to the law,” including Quicken WillMaker. Nolo must stay on the safe side of the “legal information” line, which limits the degree of assistance it can provide.

New ways of providing services are developing without regulatory oversight. These workarounds are limited in the quality and extent of legal services that they can offer ordinary people.

There is a real need for legal services in family law and personal injury law. While the usual response by lawyers is that clients should not be deprived of a direct relationship with a trusted lawyer, the problem is that many people in family disputes simply cannot afford that relationship, and the result in personal injury cases is that many people are not as fully compensated for their injuries as they could be.

Of course, resistance by lawyers to changes to the professional consultancy model is easy to understand. Many lawyers like being their own bosses and are not much interested in being employees in a larger enterprise. A professional consultant has great incentive to act professionally as his or her professional future is at stake. Hardworking lawyers look fearfully at new ways of providing legal services at lower cost, whether by paralegals or by technological or business processes.

Nevertheless, large unserved and underserved civil legal needs remain. This is, at least in part, because the only permitted way to provide legal services is by small labor-intensive professional consultancies. Unless economic and social capital is available to develop new means of production, there are significant limits to cost-effective service delivery.

There is much that is good about our existing system. Therefore, the challenge is providing innovative legal services that do not unduly and unnecessarily undermine existing legal services. Liberalization of legal regulation is not required to make lawyers’ lives or incomes better. It is required to provide services not currently available and to decrease the costs for existing services. True professionalism requires that we seriously attempt to address unmet legal needs. While there are clearly other aspects to the solution, liberalizing the permitted means of production of legal services is an important one. LP

Many legal issues are not addressed because getting legal advice is costly and time-consuming. Technological solutions that cost much less can address some of these problems.

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