The Public's Unmet Need for Legal Services & What Law Schools Can Do about It

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Abstract: Civil legal services in the United States are increasingly unaffordable and inaccessible. Although the causes are complex, law schools can help in three ways beyond simply offering free legal clinics staffed by lawyers and students. Law schools can teach the next generation of lawyers more efficient and less expensive ways to deliver legal services, ensure that educational debt does not preclude lawyers from serving people of modest means, and conduct and disseminate research on alternative models for delivering legal services. These strategies will not solve all of the problems that exist, but they hold the promise of meaningfully improving the affordability and accessibility of civil legal services.

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Access to affordable legal services is increasingly out of reach in the United States.[1] More than 80 percent of people living below the poverty line and a majority of middle-income Americans receive no meaningful assistance when facing important civil legal issues, such as child custody, debt collection, eviction, and foreclosure. These and many related problems have numerous causes,[2] but the cumulative effect is a legal system that is among the most costly and inaccessible in the world.[3]

Law schools can help. They can teach the next generation of lawyers more efficient and less expensive ways to deliver legal services, ensure that educational debt does not preclude lawyers from helping people of modest means, and conduct and disseminate research on alternative models for delivering legal services. These strategies are not a panacea, but they can help to improve access and affordability.

Traditionally, law schools have not prepared students to deliver legal services as efficiently as pos-

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sible. Rather, they have trained students to engage in highly customized and expensive forms of lawyering, leaving them ill-equipped to keep costs low, reduce prices, and increase access to legal services.

For more than a century, law schools have relied on an educational model developed by Harvard Law School's Christopher Columbus Langdell. The model requires students to read court opinions, extract from those opinions basic legal doctrines and principles, and apply those doctrines and principles to new fact patterns. Through this process, students learn important legal reasoning and analytical skills, but they do not learn how to represent clients.

In recent decades, law schools have usefully supplemented the traditional method by teaching a wider range of skills. For example, most law schools now offer clinics where students learn important lawyering competencies while representing clients under the supervision of experienced clinical faculty. Students learn fact investigation, negotiation, oral and written advocacy, document drafting, client counseling, and other critical skills. Law schools have also introduced more legal research and writing instruction, various types of simulation courses, and other opportunities to gain practical experiences before graduating.

The expansion of experiential education has better prepared students to represent clients, but the curriculum contains a notable omission: it fails to teach students how to deliver services *efficiently*. Instead, most law schools and most clinical programs continue to teach a predominantly bespoke model of representation, in which each client receives highly tailored and time-consuming assistance that is necessarily expensive.

Law schools can teach their students how to drive down the cost and price of legal services by introducing a wider array of knowledge and skills into the curriculum. For example, law schools are starting to teach concepts long used in the business world to improve effectiveness and efficiency, such as project management, process improvement, design thinking, and data analytics. Other schools are teaching students how to use technologies that can reduce costs, such as automated legal document assembly, online law practice management tools, and the effective use of basic law office software, such as Microsoft Word and Excel.

This kind of training can lead to innovative methods of legal services delivery. For example, one law school – Chicago-Kent College of Law at the Illinois Institute of Technology – partnered with the Center for Computer Assisted Legal Instruction in the early 2000s to create a web-based platform called A2J Author (A2J refers to Access to Justice) that allows legal professionals to prepare online "guided interviews" for self-represented litigants.[4] The guided interviews consist of easy-to-understand questions that, once answered, produce automatically generated legal forms. By 2018, more than 3 million people had used an A2J-Author guided interview and generated more than 1.8 million court documents. This effort has helped people gain access to effective self-help legal services and enabled courts to spend less time and money assisting self-represented litigants.

Other law schools have engaged in conceptually similar work. For instance, at Suffolk University Law School, where I serve as dean, we created the Legal Innovation and Technology Lab (LIT Lab), a new kind of clinical program that helps organizational clients, such as courts and legal-aid offices, make more efficient use of limited resources.[5] Illustrative LIT Lab projects include the creation of an app that uses a TurboTax-like interface

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to generate letters for tenants to send to their landlords about a range of housing law–related issues and a tool that can help people identify public benefits to which they are legally entitled. We also established a first-of-its-kind three-year course of study that teaches students how to use technology and sound law-practice management to start or join law firms that can profitably represent underserved clients.[6]

These kinds of programs teach students skills that employers increasingly need yet often lack. In recent years, more clients have begun to demand alternative fee arrangements that are not tied to the amount of time lawyers spend on a matter. With this shift, some legal employers have begun to look for lawyers who understand how to deliver high-quality services more efficiently. The problem is that law firms, which have traditionally prized billable hours, do not have this native capacity and need to seek lawyers who have some of these competencies.[7] Law schools have an opportunity to meet this demand by giving their graduates a knowledge base and skill set that clients and employers increasingly expect while simultaneously helping to reduce the cost of legal services.

Law schools can have an even larger impact on the affordability and accessibility of legal services by teaching cutting-edge knowledge and expertise to more experienced legal professionals. Law schools have long helped the profession remain up-to-date on changes in the law, but law schools can also contribute to reducing the cost of legal services through continuing–legal education programs, certificates, and new degrees offered to those who want to deliver their services more efficiently.[8]

Teaching law students and existing lawyers to be more efficient will not solve the access-to-justice crisis. Because of deep structural problems identified elsewhere in this issue of *Dædalus*, there will be significant unmet legal needs even if all lawyers become much more cost effective. Nevertheless, by supplementing the standard law-school curriculum and encouraging (or even requiring) students to learn new knowledge and skills, law schools can equip the profession with the tools needed to make legal services more affordable and accessible.

Law schools can also improve access to justice by making legal education more affordable. By reducing graduates' educational debt, a larger number of lawyers should be able to afford to lower their fees, perform more pro bono and "low bono" work, and pursue less lucrative careers serving the public.[9]

Educational debt is significant for this reason (and many others), but the relationship between law school loans and access to justice should not be overstated. Consider what would happen if someone were to borrow $30,000 to attend law school instead of $130,000 (the average amount that students at private law schools borrow today).[10] Assuming a twenty-year payment plan and an interest rate of 6 percent, this large reduction in debt would save the average lawyer approximately $8,600 per year.[11]

This is a considerable reduction, yet it is unlikely that all, or even most, of this money would be passed along to the public in the form of lower prices or more low bono and pro bono work. For lawyers in larger law firms and corporate legal departments, their ability to perform pro bono work or to discount their fees has more to do with their employers' finances and policies than their own personal financial circumstances. As for lawyers in solo or small firm settings (whose personal finances are more directly related to the fees they collect), they may very

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well pass along some of the savings to the public. That said, lawyers in these firms often face significant financial pressures, so many of them are likely to use substantial portions of the savings to improve their financial bottom lines rather than lower their prices.

Another possible benefit of lower debt is that law school graduates who currently feel compelled to pursue higher paying jobs might decide to start firms serving people of modest means. The size of this possible effect is unclear, but given the difficulty of sustaining law firms of this sort regardless of educational debt, the impact is likely to be modest rather than transformative.

Making law school more affordable is also unlikely to increase significantly the number of public interest and legal-aid lawyers who are available to provide civil legal services to people of modest means. The staffing of legal-aid offices typically turns on outside (often government) funding, and that funding supports only a certain number of lawyers, even at modest salaries. Although a reduction in educational debt might increase the number of people who are willing and financially able to accept these typically lower-paying legal-aid jobs, the reduction in debt is unlikely to affect how many legal-aid positions exist or how many clients receive access to a legal-aid lawyer.

A substantial reduction in educational debt, in other words, should have some impact on access to justice, but the cumulative effect is likely to be more modest than the impact of teaching lawyers how to deliver their services more efficiently. Consider that, by reducing the median lawyer's educational debt by $100,000 and increasing that lawyer's take home pay by $8,600, law schools can improve the median junior lawyer's post-tax income by approximately 18 percent and the median post-tax income of all lawyers by about 11 percent.[12] Even if all of these savings were passed along to the public in the form of cheaper access to legal services or pro bono work (which is highly unlikely for the reasons described above), innovations in the delivery of legal services hold the promise of a much larger percentage improvement in prices and access.

The debt-reduction approach is also likely to be considerably more difficult to implement than incorporating new knowledge and skills into the law school curriculum. The latter can be achieved through relatively modest new costs, such as the use of adjunct faculty or reassigning existing faculty to teach new kinds of classes. In contrast, a reduction in educational debt by the amounts needed to have even a modest effect on the access-to-justice crisis is likely to be much more challenging. Options include shortening law school to two years, greatly enhancing and expanding income-based loan forgiveness programs (law school programs and government alternatives), liberalizing accreditation standards to allow for more flexibility in how legal education is delivered (such as permitting entirely online legal education), and making greater use of adjuncts and other part-time faculty. A combination of many or most of these changes would probably be necessary, but for a variety of political, pedagogical, and financial reasons, they are unlikely to be achieved in the near term.

This is not an argument for ignoring educational debt as one of many solutions to the access-to-justice problem. Law schools should work to make a legal education as affordable as possible, and schools have recently made progress toward this goal.[13] But while a massive reduction in the cost of legal education would certainly be helpful, such a reduction might not have the impact on access to justice that is sometimes assumed.

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The most effective ways to address the access-to-justice crisis might involve permitting professionals other than lawyers to participate more meaningfully in the delivery of legal services.[14] Just as health care providers other than doctors now deliver a wide range of services and help to minimize costs, there is growing evidence that an array of legal-service providers other than lawyers can have the same effect.[15] Additional benefits may come from permitting professionals other than lawyers to have an ownership stake in law firms.

Several developments are noteworthy. An increasing number of courts are authorizing and regulating new categories of legal-services providers, such as document preparers, courthouse navigators, and limited license legal technicians.[16] Entrepreneurs have started companies that provide legal services and information to the public, often drawing on the expertise of professionals other than lawyers to develop new cost-effective delivery models. In an increasing number of countries, legal services are delivered through "alternative business structures" that include owners and partners who are not lawyers, and those arrangements may help to reduce prices in some areas of law.[17]

Through research and scholarship, law professors can play an important role in uncovering the extent to which these innovations are improving access to legal services, affecting the quality of outcomes, and influencing client attitudes about the legal system. Such research can also explore procedural and regulatory reforms that are necessary to accelerate these changes and ensure that discussions about such reforms are grounded in evidence and reasoned discourse rather than speculation and self-interest. Through this scholarship, law schools can help to foster the replication of regulatory and market-based innovations that show great promise in helping to address the public's unmet legal needs.

The access-to-justice crisis has many causes, including the government's underfunding of civil legal aid, the limited right to counsel for people who need essential legal services, and the procedural complexity and expense of the American system of dispute resolution. Although law schools are relatively small players in a system with profound structural problems, they nevertheless have an important role to play beyond offering free legal services through clinics and encouraging more pro bono work. By reimagining the curriculum, helping minimize law school debt, and producing research on new models of legal-services delivery, law schools can better prepare students for professional success and make progress in addressing the public's legal needs.

ENDNOTES

[1] American Bar Association Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States* (Chicago: American Bar Association, 2016). For additional problems, see Rebecca L. Sandefur, "Civil Legal Needs and Public Legal Understanding" (Chicago and Champaign: American Bar Foundation and University of Illinois at Urbana-Champaign, 2014), http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_-_civil_legal_needs_and_public_legal_understanding_handout.pdf.

[2] Regularly cited contributing factors include the procedural complexity of the U.S. court system, the limited government support for civil legal services, the absence of a government-recognized right to legal assistance in most essential civil legal matters, the legal profession's monopoly over the delivery of legal services, the prohibition against lawyers partnering or sharing fees with other kinds of professionals, and the cost of legal education.

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[3] The World Justice Project ranks the United States 95th out of 113 countries with regard to the accessibility and affordability of civil legal services. World Justice Project, *World Justice Project Rule of Law Index 2017–2018* (Washington, D.C.: World Justice Project, 2018), https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf.

[4] Jessica Frank, "A2J Author, Legal Aid Organizations, and Courts: Bridging the Civil Justice Gap Using Document Assembly," *Western New England Law Review* 39 (2) (2017): 251–261.

[5] "Legal Innovation and Technology Lab," Suffolk University Law School, http://suffolklitlab.org/ (accessed July 11, 2018).

[6] "Accelerator-to-Practice Program," Suffolk University Law School, https://www.suffolk.edu/law/academics/31538.php (accessed July 11, 2018).

[7] Center for the Study of the Legal Profession at Georgetown University Law Center and Thomson Reuters Legal Executive Institute, *2018 Report on the State of the Legal Market* (Washington, D.C. and Eagan, Mn.: Center for the Study of the Legal Profession at Georgetown University Law Center and Thomson Reuters Legal Executive Institute, 2018), 18, http://www.legalexecutiveinstitute.com/2018-legal-market-report/.

[8] "Graduate Program in Legal Innovation and Technology," Illinois Institute of Technology Chicago-Kent College of Law, https://www.kentlaw.iit.edu/academics/llm-programs/legal-innovation-technology (accessed July 11, 2018); and "Suffolk University Law School's Legal Innovation & Technology Certificate Program," Suffolk University Law School, https://www.legaltechcertificate.com/ (accessed July 11, 2018).

[9] "Low bono" refers to services at below-market prices or below cost to those in need.

[10] "Law students who graduated in 2016 incurred an average debt of $90,217 by the time they completed their degree from a public school, compared with $130,349 for those who attended a private school, according to data reported by 181 ranked law schools to *U.S. News and World Report* in an annual survey." Farran Powell, "Infographic: Compare Different Types of Law School Loans," *U.S. News and World Report*, https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2017-03-30/infographic-compare-different-types-of-law-school-loans (last modified March 30, 2017); and Katie Lobosco, "Students are Graduating with $30,000 in Loans," CNN Money, October 18, 2016, http://money.cnn.com/2016/10/18/pf/college/average-student-loan-debt/index.html.

[11] The average monthly payment on the "high debt" graduate's loans ($30,000 in undergraduate debt and $130,000 in graduate school debt) would be approximately $1,150 (assuming 6 percent interest spread over twenty years). Now compare that lawyer with one who has borrowed the same amount to attend law school as to attend college (that is, $30,000). That graduate would have $60,000 in total educational debt, and the graduate's monthly loan payments would be approximately $430 (again, assuming 6 percent interest spread over twenty years). In short, the "low debt" lawyer's monthly loan payments would be approximately $720 lower than the "high debt" graduate's monthly loan payments, which works out to about $8,600 per year.

[12] The median starting salary among graduates in the class of 2017 with long-term full-time jobs was $70,000; National Association for Law Placement, "Overall Employment Rate Up Modestly, Employment in Legal Jobs Up More" (Washington, D.C.: National Association for Law Placement, 2018), http://www.nalp.org/uploads/SelectedFindingsClassof2017.pdf. Because this figure does not include information about unemployed and underemployed graduates, the median salary of all graduates is undoubtedly lower. This article assumes that the median salary of all graduates from the class of 2017 is $63,000 and that their take-home pay is approximately $48,000, after taxes; see Tax Form Calculator, "$63,000.00 Tax Calculation based on 2018 Tax Tables," https://www.taxformcalculator.com/tax/63000.html. The median salary for all lawyers is approximately $118,000, and their take-home pay is approximately $81,000, after taxes; "How Much Do Lawyers Make?" *U.S. News and World Report*, https://money.usnews.com/careers/best-jobs/lawyer/salary (accessed July 11, 2018);

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and Tax Form Calculator, "$118,000.00 Tax Calculation Based on 2018 Tax Tables," https://www.taxformcalculator.com/tax/118000.html.

[13] Derek T. Muller, "Most Law Schools Have Become More Affordable in the Last Three Years," Excess of Democracy, March 20, 2017, http://excessofdemocracy.com/blog/2017/3/most-law-schools-have-become-more-affordable-in-the-last-three-years.

[14] Andrew M. Perlman, "Towards the Law of Legal Services," *Cardozo Law Review* 37 (1) (2015): 49–112.

[15] Thomas Clarke and Rebecca L. Sandefur, "Preliminary Evaluation of the Washington State Limited License Legal Technician Program" (Chicago: American Bar Foundation, 2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2949042.

[16] American Bar Association Commission on the Future of Legal Services, "Issues Paper Concerning New Categories of Legal Services Providers" (Chicago: American Bar Foundation, 2015), https://www.americanbar.org/content/dam/aba/images/office_president/delivery_of_legal_services_completed_evaluation.pdf.

[17] Centre for Strategy and Evaluation Services, *Impact Evaluation of SRA's Regulatory Reform Programme: A Final Report for the Solicitors Regulation Authority* (Otford, United Kingdom: Centre for Strategy and Evaluation Services, 2018), https://www.sra.org.uk/documents/SRA/research/abs-evaluation.pdf; OMB Research, *Prices of Individual Consumer Legal Services* (East Malling, United Kingdom: OMB Research, 2016), https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf; and Perlman, "Towards the Law of Legal Services," 84.

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