Making Legal Aid More Affordable and Accessible

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The United States stands largely alone in advanced-market democracies in drastically restricting where and how people can get help with their legal problems. In all states, under rules created by bar associations and state supreme courts, only people with law degrees and who are admitted to the state bar can provide legal advice and services of any kind.

In England, Australia and the Netherlands, by contrast, a wide variety of professionals and experts can provide legal assistance. Nonprofit organizations as well as for-profit firms can develop specialized expertise in particular areas of legal need -- housing, immigration, debt-management, child custody and so on. Often, studies show, specialized non-lawyer providers ultimately offer better service than the solo and small-firm practitioners who do someone's taxes one day and provide criminal defense the next.

In other countries, consumer and community organizations can provide legal services, as can unions and other workplace groups. Starting next year in England, so too can large companies such as Tesco, the European equivalent of Wal-Mart. There are online subscriber services giving legal advice on employment or consumer problems. The legal equivalent of TurboTax is probably just around the corner, if not already on British computer screens.

Meanwhile, in the United States, the bar is filing class-action lawsuits against fledgling online legal providers such as LegalZoom and shutting down alternative providers who threaten local lawyers' markets and offend lawyerly sensibilities. Many American judges and lawyers continue to insist that the only model for legal services is one-on-one advice with an attorney. No corporations, no venture-capital-backed entrepreneurs, no intelligent software to complete legal documents, no community groups or nonprofits. Free legal aid clinics hardly fill the gap: Only 1 percent of the 1 million lawyers in the United State do either legal aid or public defender work; student-staffed law clinics can operate only under the supervision of a licensed attorney. Pro-bono hours at best amount to about 2 percent of total legal effort.

There's nothing wrong with ensuring quality of service, but attacks on innovative providers in the United States go well beyond what can be justified in a world that looks so much to law to organize everyday life. They also go much further than other wise countries go.

My research suggests that Americans have a much higher rate of simply giving up in the face of legal difficulties, with effectively nowhere to turn if they cannot afford a lawyer who comes at a minimum price of $150 an hour. This means giving up on seeing their children or saving their homes or credit ratings or jobs. Unlike people in Britain, those facing legal problems in the United States can't turn to local volunteer organizations, their unions or consumer organizations. They can't buy what they need from entrepreneurs or the full-service stores like Wal-Mart that now package low-cost eye exams, insurance, banking and more with...
their diapers and detergents.

This may explain why in U.S. surveys 30 to 40 percent of Americans with an identifiable legal problem say they do nothing to resolve it, compared with just 5 percent in Britain. Yes, Britain spends far more public funds on ensuring access to justice -- $76 in legal aid per capita compared with $13 in the States (including charitable contributions). But the critical difference is the widespread and diverse availability of help in Britain and other advanced-market democracies for people with legal troubles -- not just criminal arrest but issues such as foreclosure, divorce, child custody, employment and bankruptcy. The United States urgently needs to expand capacity for non-lawyers to meet the legal needs of ordinary Americans in innovative and less costly ways.

Harvard Law professor Laurence Tribe was appointed recently to spearhead a much-needed Justice Department initiative to help expand legal access for the poor. Tribe has taught generations of lawyers about the rights enshrined in the Constitution. He now has an opportunity to accomplish a fundamental transformation in how effective legal rights, and obligations, are in practice in the law-thick daily lives of ordinary Americans. As more learn about the much different approach to regulation of legal markets and the wider array of legal resources available in other democracies, I hope that his newest students, the very lawyers and judges who are blocking the road to a different way of doing law, will become his allies in increasing access to justice.

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