The Indie Lawyer of the Future: How New Technology, Cultural Trends, and Market Forces Can Transform the Solo Practice of Law

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The Indie Lawyer of the Future: How New Technology, Cultural Trends, and Market Forces Can Transform the Solo Practice of Law

Lucille A. Jewel*

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INTRODUCTION

This article is about individual lawyers innovating in the practice of law. It theorizes that technology, cultural trends, and market forces have the potential to awaken latent markets for one-to-one legal services grounded in the sharing economy, the commons, do-it-yourself (DIY) businesses, and similar endeavors. These forces might reshape the solo practice of law, which in turn might help bring about structural change in the legal system. Despite the mass commoditization of many law products, there is potentially a new market for craft-oriented lawyers who directly connect with clients.

When we connect the sharing economy and the cultural values that support it, with the ability to connect with clients over the Internet, new practice style opportunities emerge for solo practitioners (and lawyers practicing in small firms). The lawyers operating in this new market space are "indie" lawyers. Generally speaking, the term indie connotes independence from corporate sponsorship. Indie also refers to a market approach that combines economic and non-economic motives. "Unlike a majority of global firms, many [indie] producers are not solely motivated by economic profit, but rather a combination of emotional and monetary rewards." For instance, indie producers may find motivation in earning a sustainable living, cultivating creativity, earning the respect of their peers, or making the world a better place.

As applied to lawyering, indie emphasizes the independent and autonomous characteristics of the lawyer's work, as well as his or her focus on the community and the collective good. Indie also works as a rhetorical response to the negative view that legal culture projects onto solo and small-firm prac-

1. See Indie, WIKIPEDIA, http://en.wikipedia.org/wiki/Indie (last visited June 25, 2014) (Indie is a short form of the word "independent" and may refer to a wide variety of cultural products such as design, computer games, music, and film.).
3. Hracs et al., supra note 2, at 1145.
4. Id.
tioners. Solo practitioners are perceived as occupying the lowest rung on the legal profession’s ladder and statistically have received the most professional discipline for ethics violations. The general view is that solo practitioners are the most unethical segment of the legal profession. As the legal community continues to confront the severe scarcity of legal jobs in relation to legal jobseekers, it is time to re-imagine solo practice.

However, for the indie lawyer to thrive, the legal community must revamp several key ethical regulations that obstruct these new professional pathways. These ethical rules include bars on direct solicitation, multi-jurisdictional practice, layperson participation in law firm structure, multi-disciplinary practice, and undue restrictions on lawyer speech.

The ideas and examples in this article, however, are in no way offered as a panacea for the ailments that so deeply afflict the legal profession and legal education. This is not an article arguing for the versatility and value of the JD. To fully capitalize on the transformative possibilities of solo practice, other structural changes must take place, particularly in legal education. The cost of legal education must fall. Somehow the “wicked” problem of high tuition that afflicts all of higher education must be solved; it is not possible to be independent and innovative when burdened with over $100,000 in student loan debt.

Part One of this article will briefly review current scholarship on economics and innovation in the legal profession and then offer an alternative framework for thinking about innovation in the law. Part Two will explore

5. Although the author refers to solo practitioners throughout this article, these thoughts equally apply to lawyers practicing in a small firm setting.


8. CARLIN, LAWYERS ON THEIR OWN, supra note 6, at xv; JEROME CARLIN, LAWYERS’ ETHICS: A SURVEY OF THE NEW YORK CITY BAR 66–68 (1966) [hereinafter CARLIN, LAWYERS’ ETHICS].


10. See Judith Wegner, Reframing Legal Education’s “Wicked Problems”, 61 RUTGERS L. REV. 867, 870–71 (2009) (Horst Rittel and Melvin Webber define a “wicked problem” as one that “cannot be definitively described or understood (since it is differently seen by differing stakeholders, has numerous causes, and is often a symptom of other problems).”).
the political and social theories along with cultural and market forces that are driving new sustainable ways of doing business. These concepts include: theories that emphasize autonomy, limited growth, and shared resources; participatory and community-centered cultural trends; DIY practices; long-tail markets enabled by technology; consumer demand for customized products; and the sharing economy. These interconnected forces have the capacity to impact the way professional legal services are consumed and delivered.

Part Three will sketch the contours of the indie lawyer of the future and provides current examples and future possibilities. Part Four will address the different ways legal ethics rules should be remodeled to enable this new style of lawyering to flourish. Suggestions include: modifying the ban on lawyer solicitation; enabling multi-jurisdictional law practice; allowing non-lawyers to hold ownership interests in law firms; allowing law firms to combine legal and non-legal services; and relaxing restrictions on lawyer speech related to judicial officials.

I. OFF-THE-RACK LAW AND LAWBOTS—IS THIS THE FUTURE OF LAW?

Much of the scholarship on the future of law advances an economic and corporate angle and emphasizes innovation, market disruption, technology, and the inevitable destruction of the human counselor at law who imparts practical wisdom11 to his or her clients. Technology is displacing lawyers who provide individualized one-to-one legal services to individual clients.12 A major theme is the death of “bespoke” legal services. In a new, fluid, and swift-moving business landscape, the traditional, individualized model of law practice is too slow, too cumbersome, and requires too much human capital.13 “Traditional, hand-crafted, one-to-one, consultative professional service[s], highly tailored for the specific needs of particular clients” are falling by the wayside in favor of off-the-rack legal products.14 These one-size-fits-all legal products are made possible by unbundling different legal tasks and packag-

11. See Anthony Kronman, The Lost Lawyer, Failing Ideals of the Legal Profession 223–25 (1993) (Lawyers should strive for the ancient Aristotelian virtue of practical wisdom, the ability of the lawyer to see beyond abstract legal rules and reach conclusions based on the law and its context).


ing legal services as a systematized and commoditized product.\textsuperscript{15} Outsourcing and computerization presume that legal work can be broken into constituent parts and that not everything needs to be done by a highly paid human in the United States.\textsuperscript{16} “Any work that can be routinized and rationalized will be swallowed up.”\textsuperscript{17}

Society may no longer need the cognitive power of human lawyers when computers can harness massive channels of data to effectively solve legal problems. In comparison with human experts, computers, with access to years of coded data on Supreme Court voting patterns, make better predictions for how the Court will rule on particular cases.\textsuperscript{18} “Big data” is part of the future of law.\textsuperscript{19} Big data encompasses everything from e-discovery, to legal informatics designed to evaluate litigation risks, to quantitative predictive software that can evaluate the quality of attorneys.\textsuperscript{20}

Widely heralded as disruptive products that garner significant venture capital, interactive software products like LegalZoom allow individuals to create wills, trademark names, and incorporate businesses, eliminating the human lawyer from the transaction.\textsuperscript{21} Computers use artificial intelligence to make quantitative legal predictions, evaluate the quality of attorneys, and predict a particular attorney’s chances of success in any endeavor.\textsuperscript{22} With computer “lawbots” predicting an attorney’s likelihood of winning a case, performing complex legal analysis by analyzing massive amounts of data, and generating customized legal documents, the demand for human lawyers withers away.

Undoubtedly, mass commoditization and systemization have dramatically reshaped the legal services landscape. This author is not sure that individualized lawyering can be replaced entirely by computers and interactive forms. Interactive forms can only go so far. Software is bound to follow strictly encoded algorithms and routines.\textsuperscript{23} Generally, artificial intelligence works “only by tricking us into using a very small part of who we are when

\begin{itemize}
\item \textsuperscript{15} SUSSKIND, THE END OF LAWYERS, supra note 12, at 29–32, 237, 247.
\item \textsuperscript{16} BARTON, supra note 12, at 108.
\item \textsuperscript{17} Id. at 152.
\item \textsuperscript{18} Daniel Martin Katz, Quantitative Legal Prediction—Or—How I Learned to Stop Worrying and Start Preparing For the Data-Driven Future of the Legal Services Industry, 62 EMORY L. J. 909, 938 (2012–2013).
\item \textsuperscript{19} Id.; SUSSKIND, TOMORROW’S LAWYERS, supra note 14, at 48.
\item \textsuperscript{20} Katz, supra note 18, at 911, 912, 934–36.
\item \textsuperscript{21} BARTON, supra note 12, at 129.
\item \textsuperscript{22} Katz, supra note 18, at 934–36.
\item \textsuperscript{23} See generally Ian Bogost & Gonzalo Frasca, Videogames Go to Washington: The Story Behind the Howard Dean for Iowa Game, ELECTRONIC BOOK REVIEW, Apr. 9, 2008, available at http://www.electronicbookreview.com/thread/firstperson/elective.
we communicate with [the computer]." Software such as LegalZoom generates a variety of different choices for the user, but in the end, does not allow people to construct completely unique legal outcomes; it produces only one of several pre-established outcomes.\(^{25}\)

Software-based legal services also raise questions about professional norms for the delivery of legal services. Authoritarian lawyering, where the lawyer "exercises 'predominant control and responsibility for the problem-solving [that the client passively] delegate[s] to him,'" is a poor model for lawyering.\(^{26}\) The authoritarian model does not work well because it denies the client's autonomy and can lead to problems with client buy-in for solutions.\(^{27}\) An authoritarian approach also conflicts with the lawyer’s ethical obligation to allow the client to decide "the objectives of the representation" and "consult with the client as to the means by which those objectives are to be pursued."\(^{28}\)

The ideal form of lawyering is the collaborative model of lawyering, where the lawyer and client work together to solve legal problems because it promotes the best relationship between lawyer and client.\(^{29}\) The collaborative model enables client autonomy while also encouraging reliance upon the attorney's practical wisdom. Because it limits client choice and does not allow for expansive explanations, algorithmic lawyering is essentially a kind of authoritarian lawyering.

There is still a need for legal counseling that incorporates emotional intelligence (e.g.). What are the legal and non-legal consequences of any proposed course of action? What are the long-term consequences for making this legal decision? What will the impact be on the community, my social network, my family?\(^{30}\) Computers cannot effectively answer these kinds of questions. People caught up in legal situations with heavy emotional and so-

25. *Id.* at 129; see also Frank Pasquale, A More Nuanced View of Legal Automation, CONCURRING OPINIONS, June 27, 2014, available at http://www.concurringopinions.com/archives/2014/06/a-more-nuanced-view-of-legal-automation.html (arguments promoting legal automation connect up with libertarian arguments advocating for less law, which arguably entails a more simple, more formalist approach to legal decision-making).
27. *Id.* at 5.
28. *Id.* at 5–6 (quoting *MODEL RULES OF PROF'L RESPONSIBILITY* § 1.2 and *MODEL RULES OF PROF'L RESPONSIBILITY* § 1.4).
29. *Id.* at 6–7.
30. See generally *id.* (Effective client counseling requires lawyers to establish a rapport by actively listening to their clients and collaborating with their clients
cial consequences often want to be able to tell their story to their lawyer, and eventually, in court. Because computers do not have good listening skills, they cannot accommodate this deep-seated human need to have one's story heard.

But something else is missing from the literature on the future of law. As set forth in the next section, consumption has become much more of a participatory process. People are turning away from large-scale, globalized production. Consumers are demanding alternatives to mass corporate commoditization, and they are seeking more information about where their products are coming from in the supply chain. There has been an uptick in demand for highly tailored, customized products, made possible by Internet commerce and new technology like 3D printing. There has been a rise in individuals participating in DIY culture, which stresses individual resilience and independence from mass manufacturing. Individuals concerned about the increasing inequality and corporate dominance in American society are opting into the sharing economy, a form of exchange that relies on community relations, trading, and sharing rather than an individualized conception of property ownership. The sharing economy has generated alternative approaches to legal concepts such as property and work.

The thesis here is that these interlocking trends support the concept of a latent market for bespoke (but inexpensive) legal services that indie lawyers provide. These services would be specifically tailored to enable individuals to re-order their everyday life experiences. For instance, these services might include helping individuals create secure real property arrangements that do not rely on big bank mortgages, co-housing arrangements, personal property arrangements that support car sharing, or employment agreements that reflect a cooperative structure. In addition to transactional services, lawyers might use technology to deliver one-to-one advice on everything from special edu-

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31. See generally Clark D. Cunningham, The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse, 77 CORNELL L. REV. 1298 (1992) (describing a client’s anger at the legal system, perception that he was being listened to by his lawyers, and frustration at not being able to tell his side of the story in court).

32. See infra notes 194–206 and surrounding text.

33. See infra notes 121–133 and surrounding text.

34. See infra notes 129–130 and surrounding text.

35. See infra notes 188–218 and surrounding text.

36. See infra notes 148–158 and surrounding text.

37. See infra notes 219–230 and surrounding text.

38. See infra Part III (B).

39. See infra Part III (B).
cation law to social security and disability benefits. There could even be a latent market for helping clients resolve their disputes online.

These anticipated services encompass something different than criminal defense and family law litigation, longtime staples of solo and small firm practitioners. These are new services aimed at a new market. There are already a few lawyers operating who are capitalizing on these forces. There are also law students who are imagining ways to tap into the community-centric sharing economy. This author predicts that society will soon see more of this type of lawyering in the future. However, for individual lawyers to tap into this market, some of the professional regulatory structures must come down. Lawyers must be able to capture the “long-tail” of the market and capture latent demand by, among other things, being able to directly sell these services. The next section details the theoretical, cultural, and market forces that are converging to support this new style of indie lawyering.

II. THEORETICAL, CULTURAL, AND MARKET FORCES GIVING RISE TO THE INDIE LAWYER OF THE FUTURE

A. Theoretical Forces: Political and Social

Current trends that eschew mass, globalized production models in favor of local, sustainable, and community-oriented, consumptive practices find their theoretical roots in three thinkers: Ivan Illich, who wrote about radical monopolies and conviviality; Herman Daly, who championed the sustainability concept; and Elinor Ostrom, an economist who showed that common ownership models can effectively manage shared resources.

1. Ivan Illich: Radical Monopolies and Conviviality

Ivan Illich was a Roman Catholic priest and philosopher who found his largest audience in the 1970s. The appeal of Illich’s theories derives, in part, from his iconoclasm. Distrustful of modern medicine, he refused med-

40. Barton, supra note 12, at 152.
41. See infra notes 296–308 and surrounding text.
42. See infra notes 309–311 and surrounding text.
44. Herman E. Daly, Beyond Growth 1 (1997) [hereinafter Daly, Beyond Growth].
47. See id.
ical treatment for a tumor on his head. When the tumor metastasized, he began to smoke raw opium, believing opium was a more effective remedy than pills. It is unclear whether Illich’s politics most align with libertarian conservatives or progressive anarchists. His distrust of large-scale, governmental intervention in domestic and foreign settings enamored him with libertarian-leaning conservatives in both domestic and foreign settings, but progressive leftists also found ground in his zealous criticism of mass commodification and excessive corporate power.

Illich argued that mass production and mass commodification destroy society by “render[ing] the milieu hostile [because] it extinguishes the free use of the natural abilities of society’s members . . . isolates people from each other and locks them into a [manmade] shell . . . [and] undermines the texture of community by promoting extreme social polarization and splintering specialization.” Illich believed that mass society would deny individual autonomy and snuff out meaningful social intercourse.

Illich raised concerns about overdependence on “radical monopolies.” A product of both states and markets, radical monopolies are pieces of infrastructure that become embedded in society. Things like multi-lane highways and an industrialized model for public education are examples of radical monopolies. Radical monopolies occur “when people give up on their native ability to do what they can do for themselves and for each other, in exchange for something better that can be done for them only by a major tool.” Once embedded in society, individuals become overly dependent on radical monopolies. A “[r]adical monopoly imposes compulsory consumption and thereby restricts personal autonomy. It constitutes a special kind of social control because it is enforced by means of the imposed consumption of a standard product that only large institutions can provide.” For Illich, radical monopolies were a powerful dehumanizing force, an “industrial institu-

48. Id.
49. Id.
50. See id.
51. See id.
52. See Madar, supra note 46.
53. ILICH, supra note 43, xxiii (alterations in original).
54. See id. at 10.
55. Id. at 51 (introducing the concept of radical monopolies).
56. See id. at 52.
57. Id. at 36–37, 52.
58. Id. at 54.
59. ILICH, supra note 43, at 54.
60. Id. at 53.
tionalization of values” that deprived people of the ability to “satisfy personal needs in a personal manner.”  

Illich theorized that there had to be something better, something between the market and the state that could encourage individual autonomy and community. For Illich, that something was “conviviality.” Conviviality, as opposed to mass society, refers to “autonomous and creative intercourse among persons, and the intercourse of persons with their environment.” Illich advocated for convivial reconstruction of society to “fully embrace the contributions of autonomous individuals in a production system expressly designed to satisfy the same human needs that it also determines.” Illich encouraged his readers to reject mass production and commoditized industry, and to enable individuals and communities to choose their own lifestyles through “effective, small-scale renewal.”

Today, Illich’s influence is discernible in movements that seek to lessen dependence on mass globalized production, turning instead toward alternative endeavors that emphasize community, sharing, and independence. The question this paper explores is what role, if any, individual lawyers might play in fostering an Illich-inspired convivial reconstruction of society.

61. Id. at 54.
62. See id. at 11.
63. Id.
64. Id.
66. Id. at 73.
2. Herman Daly: Ecological Economics

Herman Daly teaches economics at the University of Maryland and formerly served as senior economist in the World Bank’s environmental department.68 In the 1970s, Daly revitalized John Stuart Mill’s concept of the stationary economic state, and pioneered the term “sustainability” in policy analysis.69 Daly argued that continuous economic growth was not a workable goal for the economy or the planet.70

Daly situated the economy within the earth’s ecosystem, and referred to the general laws of thermodynamics to illustrate the unsustainability of unlimited economic growth.71 When humans and their material things become so large that natural resource inputs and waste outputs move beyond nature’s ability to replenish its resources and absorb the waste, the throughput flow, and thus the human population, becomes unsustainable.72

For the past fifty years, growth has been the sine qua non of economic thinking.73 While continuous growth is a physical impossibility, Daly recognized that limiting growth, in many instances is a political impossibility.74 Nonetheless, Daly warned that the consequences of inaction would be deleterious.75

Humankind must take the transition to a sustainable economy—one that takes heed of the inherent biophysical limits of the global ecosystem so that it can continue to operate long into the future. If we do not make that transition, we maybe cursed not just with uneconomic growth but with an ecological catastrophe that would sharply lower living standards.76

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70. See generally id.; HERMAN E. DALY, LIMITS TO GROWTH, IN ECOLOGICAL ECONOMICS AND SUSTAINABLE DEVELOPMENT, SELECTED ESSAYS OF HERMAN DALY 9–11 (2007) [hereinafter DALY, LIMITS TO GROWTH].

71. DALY, LIMITS TO GROWTH, supra note 70, at 9.

72. Id.

73. DALY, BEYOND GROWTH, supra note 69, at 27.

74. DALY, LIMITS TO GROWTH, supra note 70, at 10.

75. HERMAN E. DALY, ECONOMICS IN A FULL WORLD, IN ECOLOGICAL ECONOMICS AND SUSTAINABLE DEVELOPMENT, SELECTED ESSAYS OF HERMAN DALY 12 (2007) [hereinafter DALY, ECONOMICS IN A FULL WORLD].

76. Id.
Although continuous growth in the economy is not viable, there can be continuous development.\(^7\) Development, as opposed to growth, means that production rates should match depreciation rates.\(^8\) In terms of production, development requires more durable and long-lasting products.\(^9\) Maintenance and repair become more important when development is emphasized, and these tasks may produce more jobs because they are not easily outsourced.\(^10\) Daly argued that economies can no longer resort to the traditional solution for fighting poverty and joblessness; society cannot continue to ameliorate poverty and joblessness by stimulating more economic growth.\(^11\) Rather, Daly suggests that people might have to share.\(^12\) Daly has influenced contemporary quests for sustainability, qualitative development, and eco-conscious approaches to sharing resources. His concepts of sustainability and a steady state clearly apply to the legal profession and legal education. This is beyond the scope of this article, but Daly would likely argue that the legal community has relied too heavily on a growth model for legal education and needs to pull back the reins and align law school seats with available jobs for lawyers. As Daly notes, limits on this type of growth require an interventionist approach to trade regulation.\(^13\) The relevance of Daly to this article, explored more fully below, is what role lawyers can play when individuals, communities, and governments seek to make the transition from growth to development.

3. Elinor Ostrom: The Commons

In 2009, Elinor Ostrom won the Nobel Prize in Economics for her work on collective governance of shared resources, known as "the commons."\(^14\) "Commons is a general term that refers to a resource shared by a group of people."\(^15\) Ostrom's research questions the validity of Hardin's Tragedy of the Commons, which posited that if all persons pursue their best interest in the use of a shared resource, that resource will be ruined through overuse.\(^16\) Ostrom and other commons scholars concluded that "many groups can effec-

\(^{7}\) Id. at 15.
\(^{8}\) Id. at 19.
\(^{9}\) Id. at 19–20.
\(^{10}\) Id. at 22–23.
\(^{11}\) Daly, Economics in a Full World, supra note 75, at 12.
\(^{12}\) Id.
\(^{13}\) Id.
\(^{15}\) Charlotte Hess & Elinor Ostrom, Understanding Knowledge as Commons 4 (2006).
\(^{16}\) Id. at 10–11.
tively manage and sustain common resources if they have suitable conditions, such as appropriate rules, good conflict resolution mechanisms, and well-defined group boundaries.”87

Although critics of the commons indicate that these arrangements are insignificant and unlikely to survive, Ostrom points out that common property arrangements are not rare. The corporation is actually a kind of common property in that no one person holds all the rights.88 Condominiums are a combination of private and common property.89 Vacation shares are another example of common property.90

One of the largest problems with the management of the commons is freeriding, where one extracts more from a resource than one has put in.91 While exclusion or privatization may be remedies for freeriding, Ostrom notes the power of community and social capital for commons management. “Users who trust each other are more likely to restrain their use of the common-pool resource and comply with agreed upon limits of resource use.”92

The commons has been applied to everything from collaborative, open-source production,93 to copyright arrangements,94 to the Occupy Wall Street movement.95 In the emergent sharing economy, Ostrom’s theories support the idea that individual and exclusive property ownership may not always be the best model for managing a resource, and that joint ownership of property may carry more benefits than an exclusive ownership model. Ostrom’s work becomes relevant to lawyers who might help individuals reorder their everyday relationships with real and personal property from individual ownership to sharing models. This article will next look at three intersecting cultural forces that point to an emerging new market for individual lawyering.

87. Id.
89. Id.
90. Id.
91. Id. at 7–9.
92. Id. at 17.
95. See MAKING WORLDS: A COMMONS COALITION, http://makingworlds.wikispaces.com/ (last visited Jan. 3, 2015) (“Occupy itself is a form of commoning, a process in which everyone can participate, every voice can contribute, an open movement that belongs to no one and to everyone.”).
B. Cultural Forces

The increased visibility of participatory, community-focused, and DIY cultures supports the idea that individuals are following Ivan Illich’s advice and taking more control over their lives. Accordingly, they could be interested in entering into different legal arrangements in which lawyers would play a central role.

1. Participatory Culture

The Internet has engendered a new kind of culture that emphasizes participation; for online social interactions, society has a norm of participation. As developed below, participatory culture closely aligns with the collaborative model of law practice in which the client and lawyer interact to solve legal problems.

“The term, participatory culture, contrasts with older notions of passive media spectatorship.” Consumers and media producers no longer operate in separate roles. Instead, they interact under a new paradigm. “For example, a person purchasing a product on Amazon.com might function as a traditional passive consumer buying a product in the marketplace.” But “technology also opens up the potential for the consumer to actively produce information about the product by writing an online review.” On the Internet, “[t]he producers are the audience, the act of making is the act of watching, and every link [on the web] is both a point of departure and a destination.”

Sharing and collaborating are the hallmarks of participatory culture. New technology has created a marked “increase in our ability to share, to cooperate with one another, and to take collective action, all outside the framework of traditional institutions and organizations.” People are also


99. Id. at 3.

100. Jewel, I Can Has Lawyer?, supra note 96, at 345.

101. Id.


demonstrating a remarkable eagerness to contribute to online social projects, even though they do not receive direct economic compensation from these activities. Clay Shirky offers Wikipedia and Linux as examples of successful projects that have capitalized on people's desire to collectively participate and contribute to reach an end goal. In the case of open-source software Linux, companies such as IBM have demonstrated that it is possible to profit from a product that is not owned in the traditional sense.

The Internet's capacity to connect large numbers of individuals also enables a new kind of collective wisdom to flourish online. "If you ask a large enough group of diverse, independent people to make a prediction or estimate a probability, and then average those estimates, the errors each of them makes in coming up with an answer will cancel themselves out." The Internet is able to capture this "wisdom of crowds" in the form of many humans generating answers to a single question, collectively improving software code, or generating new search results through algorithmic marshaling of massive data on past search queries.

The final hallmark of participatory culture is its immediacy—events can be commented upon in real-time as they are unfolding. This immediacy, enabled by new media communication forms such as Twitter and blogs, represents a substantial change from the slower-paced and highly-filtered, mass-media, information-dissemination model. Citizens around the world are now using real-time communication devices to stage spontaneous political protests and publicize governmental abuses as they occur.

There is a connection here between the participatory culture of the Internet and the collaborative lawyering model, discussed above. The norm


106. Id. at 258–59; Benkler, The Wealth of Networks, supra note 104, at 124.


108. See generally id.


111. See Cochrane, Jr. et al., supra note 26 and surrounding text.
of active participation aligns with a lawyering model that embraces direct client input in the resolution of legal issues. If society is going to connect technology with lawyering, the norm of participation and the collaborative model suggest that the best approach may be a hybrid approach that uses technology along with human, legal counseling.

Technology increases clients’ access to information and control over the process. When the process is aligned with the Internet’s participation norm, this synergy engenders client autonomy and also guarantees that the lawyer remains actively involved. Clients’ participation, however, presupposes a live lawyer’s involvement. This is because clients cannot effectively participate in their representation if they do not have access to specific and individualized legal information that is crafted in response to their situations.

With technology, lawyers can excise expensive office and overhead costs, grow through the Internet’s ability to capture hundreds of clients who do not need to drive to a law office, and further reduce costs through automation and systemization of some tasks. However, to achieve cost-effectiveness and to comply with the Internet’s culture of immediacy, some adjustments must be made to the traditional craft-model of lawyer counseling. For instance, the legal marketplace may have to accept a limited time in which a lawyer can interface with a client, answer questions, and impart wisdom.

Richard Granat’s mdfamilylaw.com business model is one example of a successful hybrid model that combines Internet-driven forms with human legal counseling. Granat is a solo practitioner who conducts his Maryland business remotely from Florida by enabling clients to use his forms and then spending a little time on each client’s matter daily. At the time the ABA profiled Granat, he was making $100,000 a day from this business. Now Granat also operates directlaw.com, a business aimed at helping other lawyers start Internet-based practices. Granat’s business model has successfully seized on the Internet’s participatory culture and represents the future of solo practice. While Granat’s business has been a great success, this author advocates for a bit more face time between the lawyer and client, both

112. Shirky, supra note 103, at 196.
113. Castells, supra note 109, at 266.
116. Id.
118. Ward, supra note 115 (According to the ABA journal profile, Granat only spends thirty minutes a day interfacing with mdfamily clients).
before and after the client interacts with the forms. A competing business model might do well to offer more lawyer face time at a slightly greater cost.

2. Community Centered Culture

Community is the second cultural force relevant to indie lawyering. Community is a “set of people who share a special kind of identity and culture and regular, patterned social interaction.” In a community, there is a sense of neighborliness, warmth, support, and belonging. There are two types of community-related trends that are relevant to this article: (1) a general social emphasis on local communities and community values; and (2) new Internet communities.

a. The Community Values Trend

The first trend relates to Ivan Illich’s concept of convivial reconstruction. Discussed above, Illich urges people to actively form bonds within their local communities so that they become less dependent on large-scale institutional structures like multi-national corporations and government bureaucracies. This direction is seen in the newfound consumer interest in buying local products, which ensures that money goes back to the local community rather than the coffers of distant corporations. A concern for community manifests in rising consumer demand for fair trade products and for manufacturers like American Apparel that touts its sweatshop-free credentials.


120. Id.

121. See supra notes 65–66 and surrounding text.


for eating locally produced food, and for mechanisms like carbon offsetting, which allow people to offset the harmful externalities of their consumption. New “social enterprise” corporate forms for doing business, which combine a profit-motive with an altruistic motive, also substantiate the community centered cultural trend. Social enterprise companies include businesses like Toms shoes, which gives a pair of shoes to someone in need for every pair that a consumer purchases, and Warby Parker, which does the same for eyeglasses.

A concern for community also connects to rising concern about the environmental costs of consumption. Consumers are rejecting industrialized agriculture, which relies heavily on trucking food from far away locales to consumers, at a great cost to the environment. The trend of buying local not only directs spending back into the local community, but it also ensures that food consumption does not cost too much in carbon emissions. After recent food-related health scares (such as listeria within cantaloupes), consumers want to know their food’s origin.

Although there is a touchy-feely temptation to hold up community-based consumption as a model for positive social change, it will not solve all of society’s problems. Much of the consumer interest generated by the community and local marketing rhetoric comes from upper-class consumers. Buying local organic food, referred to as “yuppie chow,” may not carry any

125. Theresa Selfa & Joan Qazi, *Place, Taste, or Face-to Face? Understanding Producer-Consumer Networks in “Local” Foods Systems in Washington State*, 22 *AGRICULTURE & HUMAN VALUES* 431, 432 (2005) (By rejecting the dominant corporate food system, consumers are “disengaging from the power of distant actors to shape their local food system.”) (internal citation omitted).


128. *Id.* at 681.

129. *HALWEIL*, supra note 122, at 6–7; Selfa & Qazi, supra note 125, at 432.

130. *See, e.g.*, Jonathan Lukens, *Server to Farm Table: If We Know Where Our Fresh Food Comes From, Will We Believe That It’s Really Fresh?*, THE ATLANTIC (May 23, 2014, 8:00 AM), http://www.theatlantic.com/technology/archive/2014/05/traceable-food-fresh/370903/.

131. Sefla & Qazi, supra note 125, at 432.
actual benefit toward the food producers and lower income groups. Indeed, there are serious limitations to marketing that links consumption with altruistic, community-based values. This is consumption that pats the consumer on the back, but does not actually do anything substantive to change the structural conditions that give rise to poverty and inequality.

Despite its flaws, community-centered culture for lawyers is important. It may reveal a latent consumer demand for legal services aimed at helping individuals to organize around the community and restructure their lives to become less dependent on large-scale corporate and institutional forces. According to futurists like Robert Kunstler, society will move toward the end of global trade and a greater dependence on local communities, which is how life will soon be lived anyway, when the oil runs out. The practice of law in this apocalyptic "peak-oil" scenario might actually be quite idyllic. The theory behind big-law (law for a globalized age) disappears and instead, "[s]mall law firms and sole practitioners representing local businesses and individuals would continue to serve a need, assuming that we avoid the total breakdown of law and order." Rather than big salary draws and bonuses, lawyers may find themselves bartering their services for other goods. The prestige of lawyers as leaders in their communities may return, as many of the excesses leading to lawyer jokes vanish.

The trend that directs energy toward local communities could be viewed as an attempt to head off what is inevitable, if and when our resources run out. The community-centered culture supports the notion of a new market for lawyer services that could help people become more autonomous and less dependent on institutions that do not send value back to the community or local economies. For instance, there could be a demand for new private law arrangements that would enable people to own real estate without the participation of the banking conglomerates that played a role in the recent foreclosure crisis.

132. Id.


136. Id.
b. Internet Communities

The second community-related trend involves creating new Internet communities.\(^{137}\) The Internet has given rise to different kinds of social communities, defined by common interests rather than by geography, which make valuable contributions to a society.\(^{138}\) People can now customize their social relations to fit them better. Instead of relying on pre-existing institutions (such as schools, religious institutions, churches, the Rotary Club, etc.) to meet one’s need for social connectivity, individuals can seek out new community relationships based on subjects that interest them.\(^{139}\) In online communities, members develop a shared repertoire and shared language,\(^{140}\) and often develop “in-jokes” and specialized jargon that apply to the group’s identity.\(^{141}\) While some critics argue that technology has made life more alienating and lonely,\(^{142}\) others argue that the Internet enables people to “form real, consequential bonds with people [they] have never met face-to-face—and in this world of wireless computers and mobile devices [they] can do it nearly all the time, everywhere [they] go, we go.”\(^{143}\)

Online communities are necessary for the indie lawyer of the future to thrive. As this author has written previously, online outlets offer a form of community for lawyers.\(^{144}\) For solo practitioners, online communities are par-

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137. Some of the text in this section previously appeared in two of the author’s earlier articles: Jewel, I Can Has Lawyer?, supra note 96; and Jewel, You’re Doing It Wrong, supra note 96.


139. BENKLER, THE WEALTH OF NETWORKS, supra note 104, at 367. One example of a robust online community would be the some 10 million persons who play the online game World of Warcraft. See CASTELLS, supra note 109, at xxix.


141. One example of a shared jargon would be the term “hacker,” which originated at MIT’s Tech model railroad club, but came to mean a computer “enthusiast, . . . artist, tinkerer, [and] problem solver, [and] an expert.” ERIC S. RAYMOND, THE CATHEDRAL AND THE BAZAAR xii, 4 (1999). Computer acronyms, such lol (laugh out loud), imho (in my humble opinion), and rofl (roll on the floor laughing) also originated as a shared vocabulary within the hacker community but have now entered mainstream culture. See “Lol,” WIKIPEDIA, http://en.wikipedia.org/wiki/LOL (last modified Sept. 7, 2014).

142. CASTELLS, supra note 109, at 387.

143. CHAYKO, supra note 119, at 3.

particularly important because historically, solo practitioners and small-firm lawyers have not had access to a peer safety net from which large-firm lawyers benefit. As Leslie Levin points out, online lawyer communities for solo practitioners provide emotional support and a sense of belonging, foster mentoring relationships between new attorneys and more seasoned practitioners, and enable a discussion of ethical issues. Online lawyer communities offer a digital safety net that did not previously exist, like crowdsourcing problems (such as needing someone to cover a court appearance). As explained in Part Four, infra, and as this author has written before, the legal community needs to value these community spaces. The legal community should not impose broad speech restrictions on online attorney speech, even if that speech negatively characterizes the qualifications of a judge.

3. DIY Culture

DIY culture is the third zeitgeist trend that supports indie lawyering. DIY culture is not new; it has its roots in 1930s automotive tinkering, ham radio, and even 1970s computer hacking. Both technology and a current cultural emphasis on individual autonomy are fueling a major resurgence of DIY culture. DIY culture reflects the “anti-consumerism, rebelliousness, and creativity of earlier DIY initiatives, supporting the ideology that people can create rather than buy the things they want.” Similar to the community-centered trend, DIY culture represents a shift from mass, industrial production back to the small and skilled producer.


151. Kuznetsov & Paulos, supra note 149, at 1.

152. Stangler & Maxwell, supra note 148, at 8.
interacts with DIY culture in that DIY reflects “people’s need to engage passionately with objects in ways that make them more than just consumers.”153

As traditional American manufacturing has been displaced abroad, DIY movements have the “potential to transform how we think and talk about American manufacturing—as well as its role in the U.S. economy.”154 People are turning to the Internet to sell their DIY wares. Etsy now has 875 active online shops, representing over $400 million dollars in goods.155 For DIY producers seeking to sell their products, technology enables them to reach thousands of consumers or customers.156 Greater access to technology, like 3D printing and biological devices, means that people do not need access to laboratories or factories; technology has severed dependence on heavy capital as a requirement to enter the market.157

DIY’s cultural resurgence is another cultural trend that has people taking direct control of their lives. The ethos and energy of DIY can certainly be harnessed by lawyers, and applied in a services context, as individual lawyers set out to market their own hand-crafted services. The DIY movement also demonstrates that the old rules of commerce no longer apply. Technology provides individual producers with the capacity to capture wide swaths of potential consumers, and they may no longer be burdened by heavy capital outlays.

For lawyers, the DIY trend points to a latent consumer demand for legal services to form and operate new DIY businesses. Additionally, there could be a latent demand for legal services that would allow people to realize the full potential of living their own DIY lifestyle. For instance, if a client has constructed her own “off-the-grid”158 DIY home, a lawyer could be instrumental for a client to maneuver around a regulatory landscape originally crafted for traditionally constructed homes.

C. Market Forces

1. The Old vs. The New

Yesterday’s business model, the “Coasean” firm, relied on permanent relationships and vertical integration as a supply and production model.159 To

153. Dougherty, supra note 149, at 12.
156. Stangler & Maxwell, supra note 148, at 8.
build and sell products, a company owned all the factories and materials necessary, managed the marketing, and controlled the transportation and logistics of distribution. Depending on their role, permanent employees were slotted into a rigid hierarchical bureaucracy. In a command and control environment, managers made and implemented decisions in top-down fashion, largely insulated from the workers below.

Modern business has moved away from the static Coasean firm model, and is now much more fluid and bottom-up. Instead of heavy vertical integration, today's businesses employ a horizontal model for supply and production that relies on highly adaptable network connections. New information technology has led this change—using rapid information technologies, businesses can now outsource their production across geographical lines, which creates new forms of supply chains based on flexible networks. To make their products now, companies outsource manufacturing and production, taking advantage of cheaper labor outside of the United States. Additionally, companies might not even control the means of production at all. They may simply form a relationship with a supplier who will then use the company's platform to sell the goods.

As the Coasean firm fades, new forms of innovation have arisen. Technology makes it easier to complete tasks without rigid management structures. Consequently, society has seen the rise of collaborative, open production models, such as open-source computer coding. Although most open-source projects fail, technology facilitates the failure that allows other projects to succeed. In traditional Coasean firms, many projects would never get off the ground because the risks would outweigh any potential benefits.

As mentioned above, technology also allows individuals to make things that previously were only made under the direction of a large corporation. Inexpensive tools like 3D printers have rendered factories and significant

160. Shirky, supra note 103, at 42.
161. Id.
165. Shirky, supra note 103, at 21.
166. Id. at 240; Raymond, supra note 141, at 51.
167. Shirky, supra note 103, at 240; Raymond, supra note 141, at 245, 248–49.
capital outlays unnecessary. Moreover, Internet selling platforms make top-
down distribution unnecessary.\textsuperscript{168}

The way society does business has changed with technology, but so has
the way that markets organize themselves. As detailed in the next section,
long tail markets, the “heartbeat” economy, and the sharing economy support
a latent demand for new legal products that future lawyers might offer.

2. Long Tail Markets

In 2004, when technology journalist Chris Anderson wrote about long
tail markets for Wired magazine, the article became the most cited article the
magazine had ever printed. Anderson then turned the article into a New York
Times best-selling book.\textsuperscript{169} As Anderson explains, a long tail market is essen-
tially a market for niche products. The long tail market emerged because,
unlike a brick-and-mortar retail environment, the Internet provides busi-
nesses with unlimited shelf space and allows them to stock items that may
sell only once or twice a year.\textsuperscript{170} Moreover, information technology makes it
easier for people from all around the world to access these niche products.\textsuperscript{171}

In the past, only “hits” dominated the blockbuster media culture. This is
because “[t]he economics of the broadcast era required hit shows—big buck-
et— to catch huge audiences.”\textsuperscript{172} For music in the 1970s and 1980s, creating
a top forty hit was the only way to ensure an audience of millions.\textsuperscript{173} Now,
because of massively decreased distribution costs and market fragmentation,
hits are no longer the only market in media. Indie musicians can now sell
their music and generate sizeable income without ever having a top-forty
hit.\textsuperscript{174} As Anderson writes, “the hits now compete with an infinite number of
niche markets, of any size. The era of one-size-fits-all is ending and in its
place is something new, a market of multitudes.”\textsuperscript{175} As distribution costs
have fallen, Internet retailers can offer thousands of products that traditional
retailers could not profitably stock.\textsuperscript{176} Many of these products have always
been available, but in our hits-oriented marketing culture, consumers have

\begin{itemize}
  \item \textsuperscript{168} See Dougherty, \textit{supra} note 149, 12–13; see Strangler & Maxwell, \textit{supra} note
  148, at 3, 8; see Pink, \textit{supra} note 155, at 31.
  \item \textsuperscript{169} See Anderson, \textit{supra} note 164, at 10.
  \item \textsuperscript{170} Id. at 6–10.
  \item \textsuperscript{171} Id. at 6.
  \item \textsuperscript{172} Id. at 5.
  \item \textsuperscript{173} Id. at 2.
  \item \textsuperscript{174} See Wikipedia, Deerhunter, https://en.wikipedia.org/wiki/Deerhunter (last vis-
it July 16, 2014) (Indie band Deerhunter has been able to capitalize from a
world-wide niche market without having a traditional “hit”).
  \item \textsuperscript{175} Anderson, \textit{supra} note 164, at 6.
  \item \textsuperscript{176} Id.
\end{itemize}
had difficulty locating them.\textsuperscript{177} Now, technology makes it easy for consumers to search for and locate these niche markets.\textsuperscript{178}

\begin{center}
\textbf{The New Marketplace}
\end{center}

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{long_tail.png}
\caption{From Dustin Luther—Relevance is at the Long End of the Tail, Rain City Guide, http://raincityguide.com/2006/04/10/relevance-is-at-the-long-end-of-the-tail/.

In a chart of sales statistics, products that sell only once or twice in small numbers occupy the end of the chart, the “long tail.”\textsuperscript{179} These products sell in small numbers, but because there are so many of these sales, they add up to a sizeable share of the market.\textsuperscript{180} Because the Internet connects so many thousands of consumers to a vast array of products, the long tail is economically viable. eBay (used goods) and Google (small advertising) are examples of successful long tail businesses.\textsuperscript{181}

The way to exploit the long tail is to connect supply and demand by introducing consumers to new products through algorithmic recommendations that are based on past purchases of like-minded consumers. By harnessing the big data of e-commerce, businesses are able to drive the demand

\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id. at 10.
\textsuperscript{180} ANDERSON, supra note 164, at 9.
\textsuperscript{181} Id. at 10.
further into the long tail.\textsuperscript{182} This author agrees with law futurist Richard Susskind—there may be latent long tail markets for law.\textsuperscript{183} There is a way for lawyers to access latent long tail niche markets for unique legal services. But, as argued in Part Four of this article, to do so, lawyers must be free from the “tyranny of geography”\textsuperscript{184} that limits lawyer access to the market for legal services to just one state. When potential customers are spread too thin, the effect is the same as no customers at all.\textsuperscript{185} Moreover, to connect consumers to niche legal services, lawyers must be able to generate robust consumer demand. That requires loosening the ethical standards that prohibit lawyers from directly soliciting clients.

The other trend that has fueled long tail markets is increasing demand for individualized bespoke products that fit one’s unique tastes.\textsuperscript{186} The next section addresses this trend.

3. The Heartbeat Economy

The participatory culture of the Internet has stoked consumer demand for highly individualized products; this demand has aligned with innovative production and distribution models brought about by new technology.\textsuperscript{187} Futurist Peter Day labeled this trend the “heartbeat economy” in a provocative article for the BBC News service.\textsuperscript{188} Other analysts have described this trend as “mass customization.”\textsuperscript{189} “Consumers are now able to mix their own ce-

\begin{itemize}
\item \textsuperscript{182} Id. at 55.
\item \textsuperscript{183} Susskind, The End of Lawyers, supra note 12, at 235 (“In law, as elsewhere, there seems to be a ‘long tail’ of demand that has not been satisfied by the working practices of the past.”).
\item \textsuperscript{184} Anderson, supra note 164, at 17, 162.
\item \textsuperscript{185} Id.
\item \textsuperscript{186} Id. at 11.
\item \textsuperscript{189} See, e.g., O’Reilly, supra note 187; see also Elizabeth Spaulding & Christopher Perry, Having It Their Way: The Big Opportunity in Personalized Products, FORBES (Nov. 5, 2013), http://www.forbes.com/sites/baininsights/2013/11/05/having-it-their-way-the-big-opportunity-in-personalized-products/; Weintraub, supra note 187.
\end{itemize}
real [], design their own shoes [], and shop for artwork that fits an exact space.”

With the older mass production model, customers had little choice about items they could purchase. Henry Ford famously declared that his customers could have “any colour he wants as long as it is black.” Under the old “Fordist” model, “customers were interesting to the corporations only to the extent [that] they [c]ould buy what the businesses could supply.” Just as the Fordist production model migrated to the developing world to capitalize on its cheap labor, older production models are being replaced with something else. Day predicts that to remain competitive, western companies may need to abandon the mass-market model and commit to fulfilling specific customer orders with the utmost speed and efficiency.

Consumers have rejected their old role as passive consumers, and now demand much more choice. “[C]ontemporary] customers don’t want a choice. They want exactly what they want.” In this era of hypercommodification of retail markets, uniqueness and exclusivity have immense market value. As Chris Anderson writes:

Our growing affluence has allowed us to shift from being bargain shoppers buying branded (or even unbranded) commodities to becoming mini-connoisseurs, flexing our taste with a thousand little indulgences that set us apart from others. We now engage in a host of new consumer behaviors that are described with intentionally oxymoronic terms: “massclusivity,” “silvercasting,” mass customization.

Smartphones exemplify this trend—no two smart phones are alike; they are all individually customized by the user. 3D printing is another example of the “heartbeat economy.” 3D printers allow producers to veer from the mass production model and make inexpensive bespoke items, like prosthetic

190. Weintraub, supra note 187.
191. See Day, supra note 188, at 2.
192. Id.
193. Id. at 5.
194. See id. at 2, 5.
195. See id. at 5.
196. See id.
198. See Hracs et al., supra note 2, at 1150.
199. ANDERSON, supra note 164, at 10.
201. Id.
For the past 100 years, mass production was considered the best way to make things; hand-crafted items were usually dismissed as novelty items.203 Now, "[w]e are about to see a real awakening of this idea of unique products of all kinds."204

The heartbeat economy also links to the long tail niche markets concept. As technology makes it possible to create inexpensive bespoke products, producers can now capture the demand from those “millions of markets [with] dozens of consumers,” rather than being dependent upon “dozens of markets [with] millions of consumers.”205 Day posits that service industries will tap into the heartbeat economy next, but admits that he is uncertain as to how.206

Although many of the entrants into the customization market have been global businesses operating on a mass scale, a strong indie version of the trend is percolating up.207 Just as mass retailers invite customization, indie fashion designers hold “cocreation” workshops, inviting consumers to participate in the production process.208 At these workshops, consumers pay a fee for the materials and guidance to construct their own clothing.209

Consumer demand for indie craft and artisanal products can also be seen in the rise of Etsy, a website that enables individual producers to sell their wares.210 Sales on Etsy have reached over $400 million, with over 875,000 active shops.211 Consumer demand for exclusive hand-crafted products taps into a number of non-economic desires.212 In these transactions, neither a low price nor convenience is the determinative factor.213 Again, as a reaction to “hypercommoditization,” individuals are motivated to consummate

202. See id.
203. See id.
204. Id. (quoting Scott Sumitt, CEO of Bespoke Innovations, a 3d printing company making prosthetic devices).
205. Id. at 6 (quoting Joe Kraus, founder of excite@home).
206. See Day, supra note 188.
207. See Hracs et al., supra note 2, at 1151–56 (describing how indie producers leverage exclusivity and individuality to generate demand for their products); see also Spaulding & Perry, supra note 189 (examples of mass customization and the effects the internet has had on creation of this consumer trend); see generally O’Reilly, supra note 187 (examples of mass customization on a global scale).
208. See Hracs et al., supra note 2, at 1152 (The cocreation trend can also be seen in music, where musicians interact directly with fans to schedule small “salon” shows, rather than playing at large concert venues.).
209. See id.
211. Id.
212. Hracs et al., supra note 2, at 1150–51.
213. Id.
purchases "by the conquest of distance, obstacles and difficulties."\textsuperscript{214} The allure of these products might also be explained by a kind of nostalgia for "a more materially substantive past."\textsuperscript{215} The desire for individuality in a mass landscape also compels "sophisticated consumers to avoid or subvert the mainstream" and make "one-of-a-kind," handcrafted purchases.\textsuperscript{216}

The big question is whether the trend toward exclusivity and uniqueness can be applied to the legal services market. Can lawyers generate a desire, not solely motivated by economics, for exclusive and individualized legal products? The thesis here is that they can. To a certain extent, technology has not dissolved all demand for a craft-oriented approach to services.\textsuperscript{217} For instance, graphic design is a craft-oriented service for which people are still willing to pay, even though one can easily make a logo with inexpensive software.\textsuperscript{218} The thesis here is that there is latent demand for legal products, particularly for private-law, transactional arrangements that will enable consumers to radically reorganize their lives and move from an exclusivity/ownership model to a sharing model. This brings up the concept of the sharing economy, the next relevant market trend.

4. The Sharing Economy

Technology has also enabled the "sharing economy," a new form of commerce where users harness technology in ways that allow them to monetize surplus value under their control.\textsuperscript{219} In 2004, Yochai Benkler predicted the emerging sharing economy and conceptualized "shareable goods," or goods with excess capacity, which can be harnessed through sharing relations.\textsuperscript{220} According to Benkler, examples of this new mode of exchange include traditional carpooling and SETI@Home, where users pool excess computer processing power to scan space for the presence of extraterrestri-
als. Benkler further theorized that the sharing economy would not rely on traditional top-down management structures, but rather would manage itself via a decentralized, community-based, norm-enforcement system. Benkler believed that sharing communities would police themselves through three mechanisms: (1) repeat interactions would incentivize cooperation; (2) the wide diffusion of information would help reduce risk and predict future behavior; and (3) members of the community would collectively discourage anti-social behavior.

Benkler was right: "[s]ocial sharing and exchange [have become] common modalities of producing valuable desiderata at the very core of the most advanced economies—in information, culture, education, computation, and communications sectors." Services like Lyft and Uber allow individuals with vehicles to make extra income by giving others a ride. Air BnB allows individuals to rent out their excess residential space to other users, and TaskRabbit enables individuals to use their surplus time and transportation resources to run errands for others.

The sharing economy increases demand as people realize that non-exclusive sharing or renting arrangements allow them to enjoy and use property without spending beyond their means. For example, Forbes estimated that the sharing economy generated $3.5 billion dollars in income in 2013 for users. The sharing economy also has the potential to generate new markets for legal services. By using technology, lawyers may capture long tail markets, generate demand for individualized legal products, and tap into the sharing economy. However, lawyers must first consider the potential dark side to the sharing economy.

221. Id. at 275.

222. See id. at 320, 333.

223. See id. at 333.

224. Id. at 278.


5. The Sharing Economy v. Disruption, Innovation, Creativity and Social Harm

The dark side of technological disruption is that it eliminates jobs, particularly jobs toward the bottom of the workforce hierarchy.\textsuperscript{231} That means much fewer non-skilled jobs for ordinary workers.\textsuperscript{232} This also means fewer jobs for lawyers because new technology products like LegalZoom reduce the pie available for solo practitioners.\textsuperscript{233} Moreover, few individuals tend to win during any disruption in the market. In the tech sector, vast rewards go to a few extraordinary workers, such as inventors of successful apps.\textsuperscript{234} Likewise, in the legal sector, the winners are the individuals who start successful law-tech businesses like legal zoom.\textsuperscript{235} The end result is expanding income inequality in all market segments, including the legal profession. Thus, while the mainstream media valorizes the disruption of old industries, globalized commerce has harmed workers immensely. As labor becomes more and more casualized, the idea of going to work and having a life-long “career” is out of reach of many of today’s workers.\textsuperscript{236} Some perceive that companies that designate themselves as sharing economy companies, such as car-pooling companies like Lyft and Uber, are particularly exploit their providers.\textsuperscript{237} One view is that companies like Lyft and Uber seek profits for shareholders and high salaries for management by charging excessive fees to the drivers who are trying to earn extra money in their free time.\textsuperscript{238} This segment of the sharing economy, along with other forms of contingent labor arrangements, con-


\textsuperscript{232.} See Blinder, supra note 231.

\textsuperscript{233.} See Barton, supra note 12, at 8, 124 (explaining that between the 1980s and now, solo practitioners have experienced a 37% decline in real income and theorizing that the trend will only get worse as services like Legal Zoom take a greater hold in the market for legal services).

\textsuperscript{234.} See generally Blinder, supra note 231 (describing the reduction in “ordinary jobs” that resulted from e-commerce).

\textsuperscript{235.} See Barton, supra note 12, at 19 (describing a “winner take all” paradigm for disruption in the legal industry).


\textsuperscript{237.} See Morozov, supra note 219.

\textsuperscript{238.} Thomas Frank, \textit{TED Talks Are Lying To You}, SALON.COM (Oct. 13, 2013), http://www.salon.com/2013/10/13/ted_talks_are_lying_to_you/.
tributes to the erosion of full-time employment and health benefits for employees.\footnote{239}

The optimistic rhetoric regarding innovation and creativity is also disingenuous at times. Thomas Frank argues that the rhetoric about creativity and innovation, commonly seen in TED talks, is not really about creativity; but rather represents a kind of “professional consensus.”\footnote{240} The rhetoric of disruptions, creativity, and innovation is really:

the story of brilliant people, often in the arts or humanities, who are studied by other brilliant people, often in the sciences, finance, or marketing. The readership is made up of . . . members of the professional-managerial class[,] each of whom harbors a powerful suspicion that he or she is pretty brilliant as well.\footnote{241}

Another problem is the rhetoric that touts worker autonomy in the sharing economy. According to this rhetoric, all workers are “self-employed entrepreneurs who must think like brands.”\footnote{242} Members of the managerial class gain a cause for celebration, but this is a hollow platitude. The rhetoric masks the fact that other people, high above these working “entrepreneurs,” are profiting off of workers’ excess labor and surplus space. Evgeny Morozov calls this rhetorical sleight of hand “neoliberalism on steroids.”\footnote{243}

Moreover, what normative values underlie innovation, creativity, and disruption? Harvard Business School professor Clayton M. Christensen originated the term “disruptive innovation,” and defined it as selling a lower quality product that initially reaches less profitable customers but eventually takes over and devours an entire industry.\footnote{244} Companies that merely focus on “sustaining innovation” will lose out as the disrupting upstarts overtake the incumbents’ market share.\footnote{245} Christensen’s theory influences many powerful circles, including legal circles.\footnote{246} Disruption innovation theory explains that,

\begin{itemize}
\item \footnote{239} Id.
\item \footnote{240} Frank, supra note 238 (citing MIHALY CSIKSZENTMIHALYI, CREATIVITY: FLOW AND DISCOVERY OF INVENTION 31 (1996)).
\item \footnote{241} Id.
\item \footnote{242} Morozov, supra note 219.
\item \footnote{243} See id.
\item \footnote{245} Id. at xvii–xx.
\item \footnote{246} See Barton, supra note 12, at 6–7, 125–43 (applying Christensen’s theory to the legal services market); Frank Pasquale, Disruption: A Tarnished Brand, CONCURRING OPINIONS (June 19, 2014), available at http://www.concurringopinions.com/archives/2014/06/disruption-a-tarnished-brand.html (remarking that “I’ve been hearing for years that law needs to be ‘disrupted.’ ”).
\end{itemize}
for some, the ascension of LegalZoom as a market player is taking over the "bread and butter" business of many solo practitioners.247

In a recent New Yorker article, Harvard history professor Jill Lepore sharply criticizes Christensen's disruption theory.248 Lepore argues that Christensen's data is too thin to support using disruption as a viable business planning theory.249 For instance, in analyzing the disk-drive industry that Christensen studied, Lepore points out that those manufacturing firms that remained committed to "sustaining innovation" through "incremental improvements" survived, "whether or not they were the first to market the disruptive new format."250

Although Lepore's arguments concerning the viability of disruption as a predictive business model are open to debate,251 Lepore also levels a powerful normative argument. Lepore criticizes disruption innovation theory for urging rapid change without pausing to consider the public good.252 In other words, disruptive innovation can come at a tremendous social cost. For instance, in the late 1990s and 2000s, the financial services industry engaged in innovative disruption by selling subprime mortgages, collateralized debt obligations, and mortgage-backed securities.253 Contrary to Christensen's theory, Canada's TD Bank, which failed to participate in the market for subprime mortgages and instead focused on sustainable innovation, became "one of the

247. See Barton, supra note 12, at 6–7, 125–43 (explaining that Christensen's disruption theory predicts that mass systemized legal products like LegalZoom has displaced the bread and butter work of solo practitioners and will continue to eat into this market sphere).


249. See id.

250. Id.

251. See Drake Bennett, Clayton Christensen Responds to New Yorker Takedown of 'Disruptive Innovation', BLOOMBERG BUSINESSWEEK, June 20, 2014, available at http://www.businessweek.com/articles/2014-06-20/clayton-christensen-responds-to-new-yorker-takedown-of-disruptive-innovation#p3 (In this article, Professor Christensen charges Lepore with academic dishonesty on account that others have argued all of Lepore's criticisms before. In response to Lepore's pointed criticism that Christensen unsuccessfully used his theory to predict future trends (i.e., Christensen did not believe the iPhone would be a successful disruptive device) Christensen responded that his theory is constantly evolving, responding to past mistakes in judgment).

252. Lepore, supra note 248.

253. Id.
strongest banks in the world." But, "[w]hen the financial services industry disruptively innovated, it led to a global financial crisis."

In questioning the normative value of disruption theory, Lepore has captured a zeitgeist moment, seizing upon the "pervasive anger at the corporate and political classes that used the theory of disruptive innovation to justify an endless procession of company downsizings and closings over the past thirty years." The legal profession should consider the human cost, to individual lawyers and to clients, of innovation and disruption in law. Legal professionals should also theorize sustaining models of innovation for legal services that do not necessarily require a lessening of quality. As the author has written before, the idea that corporate legal clients are entitled to a Mercedes lawyer while others can make do with the innovative and disruptive Toyota Camry lawyer, insults both lawyers and clients alike. Christensen's model might accurately describe market mechanisms, but the model falls short as a professional framework for how lawyers should serve their clients.

6. A Possible Utopian Silver Lining

Technology may still help individuals improve their livelihood in a way that does not fall into a winner-takes-all pattern of inequality, despite the social harm that runs in tandem with market disruption. A more cynical view is that the current structure of business will not change. The golden age that lasted from the 1950s to 1970s, before outsourcing, contingent labor arrangements, and technological advances, will not return. Law practice will also not return to a time period lasting from the 1960s to the 1990s, when both big law firms and solo practitioners enjoyed rising incomes. If this is accurate, then perhaps the legal profession should consider how to make the best of a bad situation.

Amidst the harsh reality of this new normal, individuals can harness new market and cultural forces to create alternative social and transactional arrangements. For instance, even with the potential for harmful excess within

254. Id.
255. Id.
258. See Barton, supra note 12, at 55–58 (referring to a time when partners in law firms and profits were increasing).
259. See id.
the sharing economy, it is still worth considering whether aspects of the sharing economy can foster community and improve the lives of stakeholders involved in the enterprise. To avoid the excess harms that come from the over-commercialization of sharing economic principles, the profession might consider limiting the definition of the sharing economy. Janelle Orsi, the sharing economy lawyer profiled in the next section, argues for envisioning a sharing economy as:

[encompassing] a broad range of activities, including worker cooperatives, neighborhood car-sharing programs, housing cooperatives, community gardens, food cooperatives, and renewable energy cooperatives. These activities are tied together by a common means (harnessing the existing resources of a community) and a common end (growing the wealth of that community). The sharing economy is the response to the legacy economy where we tend to be reliant on resources from outside of our communities, and where the work we do and the purchases we make mostly generate wealth for people outside of our communities. The rich are still getting richer, and the sharing economy can reverse that.260

Thus, for Orsi, the sharing economy may not include typical capitalistic companies that employ exploitive means to generate large shareholder profits and executive pay. With this definition in mind, consider whether there are roles for lawyers in the sharing economy and whether lawyers might ignite demand for bespoke legal services in niche markets.

III. THE INDIE LAWYER OF THE FUTURE

A. The Solo Practitioner of the Past

Before peering into the world of future indie lawyers, consider the dominant image of solo practitioners.261 Solo practitioners are usually portrayed as lowly members of the profession, who are afflicted with an almost innate inability to comply with ethical rules and norms.262 Jerome Carlin, a sociologist who conducted two formative studies of lawyers in the 1960s writes:

261. See, e.g., CARLIN, LAWYERS ON THEIR OWN, supra note 6, at xv.
262. See id. (discussing solo practitioners are still, in 1994, “least able to conform to ethical and professional standards”); see also Fred C. Zacharias, What Lawyers Do When Nobody’s Watching: Legal Advertising as a Case Study on the Impact of Underenforced Professional Rules, 87 IOWA L. REV. 971, 1006 (2002) (explaining solo practitioners are often associated with advertising, which is seen as reflecting poorly upon the profession) [hereinafter Zacharias, What Lawyers Do When Nobody’s Watching]; Levin, Professional Development of Solo and Small Firm Practitioners, supra note 6, at 847–48, 851 (discussing
Finding himself on the lowest rung of the status ladder of the profession, with little or no chance of rising, his practice is restricted to the least remunerative and least desirable matters—to the dirty work of the profession, and beset by competition from lawyers and laymen alike, the individual practitioner is frequently a dissatisfied, disappointed, resentful, angry man.263

Solo practitioners have long borne the brunt of class bias and elitism within the legal profession. Now is the time to remodel the image of the solo practitioner in America.

In his 1976 classic, Unequal Justice, Lawyers and Social Change in Modern America, Jerome Auerbach linked the creation of the ABA’s 1908 Canons of Ethics (the first of the ABA’s model ethics standards) to elite lawyers’ xenophobic and racist animus toward solo practitioners, fueled by fear of “other” lawyers that primarily consisted of immigrant solo practitioners.264 At this time, elite lawyers feared that too many foreign lawyers vied for entry into the profession.265 These elites criticized foreign lawyers, and other aspiring lawyers, for not being “from Anglo-Saxon stock [and not] having the faintest apprehension of the nature of our institutions, or their history and development.”266

In 1908, members of the ABA perceived a conflict between respectable lawyers who could maintain the “pristine glory” of the profession and a new class of lawyers that allegedly demoralized the profession on account of their “eager quest[s] for lucre.”267 As a result, the ABA committee charged with promulgating the first ethics code proposed canons to ban both advertising and direct solicitation to change the conduct of solo practitioners.268 Auerbach argued that the 1908 Canons of Ethics “concealed class and ethnic hostility,” even though the primarily White Anglo Saxon Protestant (WASP), ABA rule-makers attempted to insulate themselves from the “ethically contaminating influences.”269 These “ethically contaminating influences” included new urban solo practitioner lawyers from primarily Jewish, Catholic, or non-

that solo practitioners receive significantly less income and substantially more discipline than their big firm colleagues); see generally Jerold S. Auerbach, Unequal Justice, Lawyers and Social Change in Modern America 40 (1976) (explaining at the beginning of the 20th century, elite lawyers despised the influx of immigrant solo practitioners and viewed them as defiling the profession).

263. Carlin, Lawyers on Their Own, supra note 6, at 73.
264. Auerbach, supra note 262, at 40–41, 51.
265. See id. at 121.
266. Id.
267. See id. at 40–41.
268. Id. at 42–43.
269. Id. at 50.
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WASP backgrounds. The Anglo lawyers who populated the rule-making, ethics committees seriously differed from the class of lawyers subject to the rules. Taking no prisoners, Auerbach trenchantly exposed the extreme biases that shaped the American legal profession's ethics and norms. Bald-faced bias certainly played a role in shaping the culture of the legal profession, but it is also probable that the process of promulgating the 1908 Canons was more nuanced than Auerbach presented it. The negative image of solo practice that Auerbach documented still endures. Today, the dominant view is that solo practitioners occupy the bottom rungs of the legal profession.

In 1975, after studying the Chicago Bar, John P. Heinz and Edward O. Laumann described the legal profession as encompassing two hemispheres with a definite hierarchical structure. The hemispheres consisted of solo practitioners on one side with corporate big business lawyers on the other. In 1995, when they updated the study, they found the two hemispheres endured. Heinz and Laumann's Chicago Bar studies offer impeccable data and analysis, as well as a clear, hierarchical framing. Solo practitioners are at the bottom and corporate lawyers are at the top.

Many argue that solo practitioners are less intellectually capable than corporate lawyers because they engage in less complex legal work than lawyers who do corporate work in a big law firm or big business setting. As discussed elsewhere, this reductive dichotomy does not hold when one con-

270. Auerbach, supra note 262, at 50.
271. Id.
272. See id.
274. See Carlin, Lawyers on Their Own, supra note 6, at xiv, 8; Levin, Professional Development of Solo and Small Firm Practitioners, supra note 6, at 847–48.
276. Id.
277. Id. at 7.
iders what corporate lawyers and solo practice lawyers actually do on a day-
to-day basis.279

Finally, solo lawyers are often viewed as unethical and sleazy, espe-
cially in contrast with lawyers working in large law firms.280 This view de-

rives, in part, from the fact that solo lawyers are disciplined at a greater rate
for ethics violations than lawyers working in larger firms281 and from the fact
that legal, and popular, culture show disdain for solo practitioners who ac-
tively seek out business through advertising.282

The unethical view of solo practitioners is likely related to the type of
work they perform. Jerome Carlin, sociologist and lawyer, characterized the
solo practitioners’ work as “dirty work, the ‘crap,’ the ‘junk’ that no one else
will handle, but which the younger lawyer will often have to take if he wants
any business at all.”283 Carlin further argued that:

the individual lawyer generally finds it difficult if not, in some
instances, impossible to conform to the ethical standards of prac-
tice. In his efforts to obtain business, and in his dealings with cli-
ents and various public officials, he is frequently exposed to
pressures to engage in practices contrary to the official norms. . . .
[B]ecause he is more likely to get the dirty work the individual
lawyer is less likely to keep clean.284

For example, the character of Saul Goodman on the television show
Breaking Bad is perhaps no greater testament to how early twenty-first cul-
ture views solo practitioners. Saul Goodman is the penultimate shyster, the

279. See Jewel, Tales of a Fourth Tier Nothing, supra note 257, at 131–37.

280. See Levin, The Ethical World of Solo and Small Law Firm Practitioners, supra
note 7, at 311–12.

281. Id. at 310–13 (citing Bruce L. Arnold & Fiona M. Kay, Social Capital, Viola-
tions of Trust and the Vulnerability of Isolates: The Social Organization of Law
(1995) (noting that solo practitioners receive the majority of professional mis-
conduct sanctions); see also Mark Hansen, Picking on the Little Guy: Percep-
tion Lingers that Discipline Falls Hardest on Solos, Small Firms, A.B.A.J.,
Mar. 2003, at 32–33 (discussing studies of attorney disciplinary actions in Cali-

fornia, New Mexico, Virginia, and Oregon that indicate a higher rate of sanc-
tion imposition against solo and small firm practitioners); Hal R. Lieberman,
How to Avoid Common Ethics Problems: Small Firms and Solos Are Often
Subject to Disciplinary Complaints and Malpractice Claims, N.Y.L.J., Oct. 28,
2002, at 20 (noting that the vast majority of New York attorneys subject to
disciplinary complaints are small firm and solo practitioners)).

282. Levin, The Ethical World of Solo and Small Law Firm Practitioners, supra
note 7, at 311–12; Zacharias, What Lawyers Do When Nobody’s Watching,
supra note 262, at 1014–15.

283. CARLIN, LAWYERS ON THEIR OWN, supra note 6, at 6.

284. Id. at 92.
lawyer who will do anything for a fee. Goodeman embodies all the negative stereotypes of solo practitioners in America by advertising extensively on bus station benches, having an office in a shabby shopping center, and participating in Walter White’s descent to criminal overlord status.

Conflicting with the negative image associated with solo practitioners, there is some evidence that solo practitioners are more satisfied and exercise more autonomy than big firm, elite lawyers. Moreover, the fact that solo practitioners receive more disciplinary complaints than lawyers who work in larger firms does not necessarily mean that one group is less ethical. Large firm lawyers are less likely to receive disciplinary complaints compared to solo practitioners because clients of solo practitioners “have fewer mechanisms for redress when their lawyers engage in wrongdoing” as opposed to corporate clients.

It is time to change the narrative and remodel the image of the solo practitioner. The “indie” term in this article’s title is not just a ploy for novelty in the pages of a law review. For years, solo practitioners have endured terrible public relations issues. Instead of a disdainful view, society should emphasize that the indie lawyer chooses to work on his or her own, representing individual clients—real people with real problems, exercising more autonomy, and enjoying far more flexibility and work-life balance than the big law attorney. When considering new technology, new markets, and community-oriented, cultural trends, practicing law on one’s own has the potential to maximize professional autonomy, make legal practice meaningful, and improve the everyday lives of others.

B. The Indie Lawyer of the Future

The indie lawyer of the future crafts individualized legal products for consumers who wish to reorganize their everyday personal or work lives. The indie lawyer provides face-to-face advice and clients seek out his or her professional wisdom. The indie lawyer’s legal products are mostly private


286. Levin, Preliminary Reflections on the Professional Development of Solo and Small Firm Practitioners, supra note 6, at 848, 896 (“It appears that the typical solo or small firm practitioner who represents the middle-class client is not the undereducated and disillusioned lawyer who Carlin described forty years ago, but rather someone who often has chosen that form of practice and is generally satisfied with it.”); see also Heinze, supra note 275, at 118 (describing survey results where 87% of solo practitioners reported freedom of control over their work product while only 58% of lawyers practicing in firms of 31–99 lawyers and 59% of lawyers practicing in firms with more than 100 lawyers reported this level of autonomy).

287. Levin, The Ethical World of Solo and Small Law Firm Practitioners, supra note 7, at 314.

288. Id.
law transactional documents that allow people to share real and personal property, share services, or create alternative transactions to eliminate reliance on corporate institutions.

Driving potential demand for these products is cost of living, which increases as the costs of transportation, housing, childcare, and higher education increase. Concurrent with increases in the cost of living, there is greater precarity in work, with more contingent and temporary work arrangements and an expansion of low paying service jobs that offer little room for growth. If Herman Daly’s admonition that society should focus on more development and less growth is accepted, then the legal profession should craft legal products to allow people to do more with less. Traditionally, private law products have only benefited the very well-off. For instance, employment agreements provide security and certainty that benefit only high-level executives and those professors who are tenured or on a tenure-track. On the other hand, most ordinary people work in a highly precarious at-will employment situation.

If and when individuals turn toward a less competitive notion of work and business, traditional employment hierarchies are challenged, and a market emerges for alternative legal arrangements, such as cooperatives and low-profit organizations. These alternative organizations would engage in commerce. Instead of adopting an owner-take-all structure, the purpose of running the alternative business is to enable all of its employees to earn a living wage. The legal services required to create these new organizational forms represent a new market, because unlike will or lease products, such as those offered by LegalZoom, inexpensive individualized private law documents do not exist in today’s marketplace.

There is a potential demand for dispute resolution services that are held either face-to-face or by using cheap and accessible conferencing technology like Skype, even though most legal services in a community-centered sharing economy are transactional in nature. Despite criticism for the disruption concept earlier in this paper, community-centered indie lawyering can overlap with disruptive technology. For instance, Wevorce combines individualized lawyering, family counseling, and technology to help individuals turn a

289. See Noah, supra note 231, at 50.

290. See id. at 50–54.


292. Saru Matambanazo, Untitled Manuscript (Tulane Univ. School of Law) (on file with author).


294. See Barton, supra note 12, at 148–50.
contested divorce into an easy, inexpensive, non-contested, pro se divorce.\textsuperscript{295} Wevorce shares some of the attributes of the indie lawyer model because the service uses both individual lawyers and parenting experts. Thus, Wevorce combines an individualized bespoke approach with Internet-driven forms. This hybrid model has potential uses in other court system contexts, such as bankruptcy.

A few lawyers out there actually exemplify the indie lawyer model. The most visible of these lawyers is Janelle Orsi. Orsi both maintains a law practice\textsuperscript{296} in Berkeley, California and runs the nonprofit Sustainable Economies Law Center (SELC).\textsuperscript{297} In 2012, Orsi published Practicing Law in the Sharing Economy, which documents her approach to practicing law.\textsuperscript{298} Despite its revolutionary content, Orsi's book has received little attention from legal academics.

Orsi writes "transaction lawyers are needed, en masse, to aid in an epic reinvention of our economic system."\textsuperscript{299} She predicts that:

Every community in the United States will soon need sharing economy lawyers, grassroots transactional lawyers, or whatever you may prefer to call these new legal specialists. With around 30,000 incorporated towns and cities in the United States, we will soon need at least 100,000 sharing economy lawyers. And as the sharing economy becomes the predominant economic force in our society, then all transactional lawyers in the United States (approximately 500,000) should consider transforming the focus of their practices to smooth the way toward a more sustainable economy. No matter how you do the math, the sharing economy offers a huge opportunity to new and experienced lawyers alike.\textsuperscript{300}

Orsi argues sharing economies give rise to collaborative transactions that do not fit within existing buyer/seller, landlord/tenant, or employer/employee relationships; thus, the need for specialized sharing economy lawyers.\textsuperscript{301} In a sharing economy, many of these traditional categories overlap and lose their mutually exclusive character.\textsuperscript{302} The sharing economy needs

\begin{itemize}
\item \textsuperscript{295} Wevorce, http://www.wevorce.com/about.html (last visited Sept. 19, 2014); Barton, supra note 12, at 148–50.
\item \textsuperscript{297} Sustainable Communities Law Center, http://www.theselc.org (last visited Sept. 19, 2014).
\item \textsuperscript{298} Orsi, Practicing Law in the Sharing Economy, supra note 122.
\item \textsuperscript{299} Id. at 1.
\item \textsuperscript{300} Id. at 2.
\item \textsuperscript{301} See id. at 13.
\item \textsuperscript{302} Id. at 14.
lawyers to mold legal arrangements, encompass new thinking, create new categories, and even develop new modes of regulation where traditional categorical lines are shifted and modulated.\textsuperscript{303} For instance, employment law is generally designed to strike a power balance between employers and employees, but in alternative work arrangements, like a cooperative, everyone is an owner and a worker. This creates the potential for mismatch with existing employment law regulations.\textsuperscript{304}

This new type of lawyer is "essentially a transactional lawyer that focuses on the needs of the communities and enterprises developing within the new economy."\textsuperscript{305} The skills required of a sharing lawyer include: the ability to recognize and manipulate legal categories and boundaries; to build up new forms from scratch (rather than working from boilerplate forms); to facilitate and mediate disputes; and to understand and counsel on the risks of litigation.\textsuperscript{306}

Orsi’s brand of lawyer is more cooperative than adversarial, which goes against the grain of dominant legal culture.\textsuperscript{307} Law students are also somewhat unprepared for becoming sharing lawyers because law schools focus analysis on existing doctrine, with little emphasis on creating novel legal frameworks or "pav[ing] new ways."\textsuperscript{308} If this sharing model of lawyering takes off, then legal education should shift to accommodate it.

Although traditional legal instruction does not develop all the skills needed for practicing law in the sharing economy, Michigan State College of Law’s Reinvent Law Laboratory is an exception. Founded by forward-thinking professors Renee Knake and Daniel Martin Katz, Reinvent Law’s impressive compendium of courses encourages students to develop innovative and disruptive legal services products.\textsuperscript{309} Many Reinvent Law students work on traditional projects that focus on big data, the large-scale computerized delivery of unbundled legal services, as well as logistical approaches to product management at large law firms. But some Reinvent Law students are taking a more indie path, pursuing community-centered projects designed to deliver customized legal products to individual consumers. At a recent Reinvent Law workshop, students detailed plans to: pursue tech-enabled practices, give legal advice to educators, help independent filmmakers structure their contracts, and give privacy law advice to computer users. One Reinvent Law student, Karen Francis-McWhite, has a plan to provide inex-

\textsuperscript{303} See id. at 13.
\textsuperscript{304} See ORSI, PRACTICING LAW IN THE SHARING ECONOMY, supra note 122, at 13.
\textsuperscript{305} Id. at 25.
\textsuperscript{306} See id. at 25–27.
\textsuperscript{307} See id. at 22–23.
\textsuperscript{308} See id. at 30.
pensive legal advice designed to help individuals achieve a homesteading lifestyle. This plan emphasizes home ownership, self-reliance, sustainable consumption, urban farming, and generative energy practices (i.e., living off-the-grid). The seeds for transforming the solo practice of law may come from such students if these soon-to-be lawyers graduate and can kindle demand by putting these ideas into practice. The indie lawyer will take off and run. Orsi advocates that lawyers embrace entrepreneurship in an alternative framework. Instead of an entrepreneurship model that emphasizes relentless competition, Orsi argues that entrepreneurs “will be successful based on the relationships they built with others, but not based on their ability to compete with others.” By focusing on community, resilience, and sharing, Orsi’s community-oriented vision of legal practice encompasses all of the theoretical, cultural, and market ideas discussed in this article. But the wonderful thing about Orsi and SELC is that her theory works in practice. She is successful in making a comfortable living from a law practice that taps into the sharing economy. Orsi’s non-profit SELC constitutes a community of like-minded attorneys and professionals pursing the same practice goals. She illustrated that sharing law is more than just an idealist theory.

For indie lawyers to thrive, they probably need to practice, as Orsi does, in a densely populated area, ideally one with a deeply embedded progressive worldview, where a sharing culture has already taken hold. Alternatively, the indie lawyer could use technology to reach hundreds of potential customers across the country via long tail legal services. However, as explained in the next section, for a single lawyer or a small law firm to access this potential long tail market, the ethics rules that strictly limit the multi-jurisdictional practice of law must change. The next section advocates for changing the Model Rule of Professional Responsibility 7.3(a), the ethics rule that prohibits lawyers from directly soliciting clients. To open up this new market, lawyers must directly advocate the benefits of using law to transform individuals’ everyday lives. This advocacy could require a direct sales approach.

More students should not take out loans and attend law school because of the optimism for the future of the indie lawyer. Other, more complicated things must happen for the indie lawyer model to thrive, such as driving down the cost of legal education. With law school debt levels hovering at $125,000 for private law graduates and $75,700 for public law graduates, it is not even possible to think about forging an independent path in law


311. ORSI, PRACTICING LAW IN THE SHARING ECONOMY, supra note 122, at 7 (emphasis in original).

312. ABA MODEL RULES OF PROF’L CONDUCT, R. 5.5 (2013).

313. ABA MODEL RULES OF PROF’L CONDUCT, R. 7.3 (2013).

without guaranteed income and no benefits. For most new graduates, the indie lawyer model might serve as a side-project while they also work a standard job with salary and benefits. Or, it might be something law graduates turn to after working full time at a traditional law job. However, if more lawyers choose an indie path, this field of lawyering could grow and lead to the possibility of entry-level positions.

Fortunately, the indie lawyer model allows space for cheaper, alternative paths into the legal profession through the apprenticeship model.315 This model allows students to become members of the bar after working for a number of years in a law office. The indie lawyer movement would also embrace lawyers with Juris Doctorites (JDs) from inexpensive (but not ABA accredited) law schools.

Fleshing out the concept of a DIY legal education is beyond the scope of this article, but some existing institutions support such a path. California is perhaps best known for having several inexpensive law schools that are not nationally accredited through the American Bar Association, such as the online Concord Law School (graduates can take the California bar).316 Additionally, there are inexpensive state-accredited law schools, such as the Nashville School of Law317 (graduates eligible for Tennessee bar membership), Miles Law School,318 and Birmingham School of Law319 (graduates eligible for Alabama bar membership). For the DIY-minded law student, these non-mainstream schools offer a dramatically less expensive path into the legal profession. Of course, the rampant elitism in the legal profession means that some, possibly many, in the profession place little to no value on these educational credentials. And the legal profession’s devaluation of a non-traditional JD could bleed into client perceptions of quality. But the whole point of DIY culture, as applied to education, is to reject cookie-cutter models and elitist credentialing systems.320

315. Orsi, Practicing Law in the Sharing Economy, supra note 122, at 31–32.
C. The Relevance of the Indie Lawyer

The indie lawyer operates in small-scale niche spaces that are not yet connected to mass consumer demand. This begs the question: what is the relevance of studying such a small group of lawyers? The answer is that a small group of niche actors has the capacity to induce radical societal changes, even if they occur very slowly. Here, the work of Frank W. Geels, a scholar writing about how technological innovations evolve to influence society, provides a valuable analytical framework for understanding why niche markets are so important in a legal context.

Geels theorized that technological change should form a multi-level perspective of three pathways. Geels’s top level is the macro *socio-technical landscape*, the realm of “macro-economics, deep cultural patterns, [and] macro-political developments.” Geels’s second meso-level is the *socio-technical regime*. The socio-technical regime is made up of: (1) cognitive routines that make professionals “look in particular directions [for solving problems] but not others”; (2) internal norms and rules for doing things; and (3) sunk investments (adaptations that people have made in response to particular technology, such as familiarity with a certain kind of computer interface). Change at the socio-technical landscape and regime level can take decades. Once technology becomes useful it becomes deeply embedded in people’s minds and in institutional structures (the socio-technical regime). Eventually, it becomes instantiated in macro-political and institutional structures (the socio-technical landscape).

Change happens at the third level, Geels’s *technological niches*. The niche level provides an incubation space for radical innovation to develop, often by “small networks of dedicated actors, often outsiders or fringe actors.” Isolation from the market is actually helpful for incubating radical innovations.


322. *See id.* at 441.


324. *Id.* at 400; Geels & Kemp, *Dynamics in Socio-Technical Systems*, supra note 321, at 443.


326. *See id.* at 443–44.

327. *See id.* at 443; Geels & Schot, *Typology of Sociotechnical Transition Pathways*, supra note 323, at 400.

innovations because “most [new] inventions are relatively crude and inefficient on the date they are first recognized as constituting a new invention. They are, of necessity, badly adapted to many of the ultimate uses to which they will eventually be put.”

Since they are working outside of the mainstream and are not immediately concerned with producing large profits, niche actors have the freedom to ignore embedded rules and improvise. Through trial and error, they can create imaginative solutions to particular problems. Once a niche technology “develops a technical trajectory of its own and rules [for its use] begin to stabilize,” more and more users will adopt the new technology. Eventually, niche technologies are adopted and accepted such that they become embedded in society’s meso and macro levels. Geels applied his theory to explain how the Netherlands transitioned from cesspools to integrated sewer systems and how Dutch waste management transitioned from uncontrolled waste dumping to a differentiated system.

Applying Geels’s theory to law helps predict that a novel legal product will emerge out of an indie lawyer’s practice and will have the capacity to transform how people legally structure their everyday lives. In this instance, law and legal products are analogous to technology and technological products. For example, property arrangements that are founded upon collective sharing principles (rather than atomistic ownership rights) may prove effective in the small-scale niche setting. These arrangements have the capacity to eventually influence large-scale legal structures. Understandably, the indie lawyer’s radical innovations may not immediately get adopted. They conflict with entrenched ways of practicing law—the cognitive structures, routines, contract boilerplate, and consumer expectations upon which our legal infrastructure is based. Nonetheless, once enough lawyers and clients adopt and use these new legal arrangements, pathways will shift and the legal system (e.g., the category of property law) will begin to look different.

To a certain extent, Christensen’s model of disruption tracks Geels’s model for technological change when applied to the legal market, but the frame is markedly different. The legal disruptors who would package and commoditize legal products for mass consumption are pursuing profit payoffs, even if the initial payout is small. Unlike the mass legal retailer, the indie lawyer is developing innovative products in a bit of vacuum. Separated from mass demand and existing legal infrastructure, the indie lawyer can

330. See id. at 443–44.
331. Id. at 444.
332. See id.
333. Id. at 446–50.
think deeply and design radical products that might better meet the human needs of his or her clients.

Although the indie lawyer needs to make a reasonable living, his or her income needs are smaller than a company seeking to maximize profits for its members or shareholders.335 This smaller need for income enables the indie lawyer to easily incorporate social goals that may not directly align with profit seeking into his or her practice. For example, the indie lawyer, by virtue of his or her situation, can conceive of and execute radical solutions to legal problems, such as drafting a home sharing agreement from scratch. A purely capitalistic business would reject such a project for being too far removed from the potential for profits. The fact that niche lawyers are disconnected from mass markets gives these lawyers the capacity to foster structural legal change.

At some point, the question of disruption will arise. What is to prevent the indie lawyer from disruption by offering a cheaper, lower-quality model of legal services that enables sharing arrangements? If the indie lawyer is like the DIY craft producer on Etsy, what is to prevent the law version of a mass retailer like Urban Outfitters from invading and destroying the individual’s Etsy retail market?

This author argues that the indie lawyer should stoke the forces mentioned earlier in this article: (1) rising consumer demand for unique products that can be customized;336 and (2) increasing consumer desire to engage with community centered businesses.337 These market and cultural forces could sustain a demand for an individual lawyer with high emotional intelligence who offers practical wisdom to his or her clients. Although a number of the transactional documents can be offered by services like Legal Zoom, the cheaper alternative represents an impersonal one-size-fits-all product. For some, lower cost will be the deciding factor. But for others, the extant desire for the individually tailored may prevent the indie attorney from disruption by the mass retail of legal services.

IV. Reforming Ethics Rules

A. Initial Thoughts on Lawyer Ethics Reforms

Several longstanding rules of professional conduct must be overhauled for the indie lawyer of the future to thrive. The rules of professional conduct are too restrictive to foster true innovation in the practice of law and unduly

335. The author recognizes, of course, that not all lawyers would accept a reasonable income as the goal for their law practice. Many individual lawyers would seek to maximize their income in the same way that a corporation would. But some attorneys, such as Janelle Orsi, see their role in less capitalistic terms and view themselves as playing a “vital role in the preservation of society.” ORSI, PRACTICING LAW IN THE SHARING ECONOMY, supra note 122, at 25.

336. See supra notes 188–218 and accompanying text.

337. See supra notes 121–136 and accompanying text.
hamper the professional autonomy of lawyers practicing on their own. Ethics rules are often criticized for two interconnecting harms that relate to the topic of this article. First, overly broad ethics rules tend to dampen innovation in legal services markets. Second, ethics rules tend to harm the business of solo practitioners while simultaneously reinforcing hierarchy in the profession. Ethics rules help maintain law’s professional hierarchy because they allow elite lawyers (who do not need to directly solicit clients, for instance) to continue to look down on solo practitioner lawyers whose livelihoods are constricted by these rules.

In the context of legal ethics rules and innovation, the scholars referenced in Part I argue for providers of legal services to better provide leverage capital and technology to generate large profits by liberalizing legal regulations. For instance, some authors argue that allowing corporations to hold ownership interests in law firms will ameliorate the current access to justice problem, making the delivery of legal services cheaper because corporations can deliver services on a much larger scale than solo practitioners and small firm lawyers. Other authors argue that allowing the corporate practice of law allows law firms to receive large infusions of equity capital. Still others argue that allowing non-lawyers to hold equity interests in law firms facilitates more innovation because innovators are more likely to come from outside, rather than inside, the legal profession. Finally, scholars argue that


339. AUERBACH, supra note 262, at 43, 50-51.


343. See Moliterno, supra note 338, at 107; Hadfield, Legal Infrastructure, supra note 13, at 55-56.
the market can regulate lawyers more effectively than an expansive ethics code.  

There is room to criticize some of these economic arguments for less lawyer regulation. A relentlessly economic approach tends to exclude some important but unquantifiable factors. As James Boyd White writes, economics' neutrality:

on all questions of motive external to the acquisitive and competitive ones enacted in the exchange game [rational persons acting in their own self-interest] is to be silent on all the great questions of human life; questions of beauty and ugliness in art and music, sincerity and falsity in human relations, wisdom and folly in conduct and judgment, and on the greatest of all questions, which is how we ought to lead our lives.  

The ethical rules need to be liberalized for reasons that deviate from a pure market-based approach. In addition to enabling more large-scale innovation, changing the ethics rules will allow individual lawyers to use technology to connect with clients one-to-one and to deliver customized services—but on a much larger scale than previously realized. Moreover, in terms of an organizing principle for lawyer ethics, a community-centered ethics model, in which community norms can help shape individual lawyer ethics, offers a better framework than the market because the community captures more values related to the public good than a disembodied market of self-interested actors. 

Below are several areas within our ethics rules that should be modified to foster indie lawyering. The rules should be changed to permit: (1) direct solicitation, particularly for transactional services; (2) law practice across jurisdictions; (3) non-lawyer participation in the ownership and operation of law firms; and (4) lawyers to speak more freely in their legal communities.

B. Direct Solicitation B Unlocking Latent Markets

Model Rule of Professional Conduct 7.3(a), which prohibits lawyers from directly soliciting legal services, needs modification to allow direct solicitation in all forms except in circumstances involving fraud, misleading

346. Commons scholar Elinor Ostrom has also found that community can function to regulate the behavior of individuals in common ownership schemes. See supra note 92 and accompanying text.
347. Model Rule of Professional Conduct 7.3(a) provides that “[a] lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment . . . when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has
information, overreaching, or an intent to stir up frivolous litigation. Such modifications would allow the indie lawyer to open up latent markets by publicizing how novel legal services can help clients transform their everyday lives by doing more with less. Indie lawyers must directly sell the benefits of these services to tap into this potentially large latent market.348 Daniel Pink’s conclusion that “we’re all in sales now” rings absolutely true, especially in this context.349

Lawyers need to the opportunity to stoke latent demand by explaining the benefits of how new legal arrangements, based in the sharing economy, can benefit potential clients. In a seminal 1980 article, William Felstiner, Richard Abel, and Austin Sarat theorized that disputes become legal claims through a process of perception, blame assignment, and then a decision to enter the litigation process.350 Arguably, the same process applies for lawyers seeking to persuade individuals that the purchase of inexpensive but individualized private law products will help them reorder their lives for the better.

The only current exception in Rule 7.3(a) is if the solicitation is not significantly motivated by the lawyer’s quest for pecuniary gain.351 This exception derives from two Supreme Court cases decided in 1978.352 In Ohralik v. Ohio State Bar Ass’n, the Supreme Court upheld disciplining a lawyer who directly solicited two young accident victims.353 Ohralik approached one victim while she was in the hospital lying in traction, and he approached the other victim at her home.354 In both solicitations, he concealed a tape recorder that documented the conversations.355 The Supreme Court held that Ohio’s ban on direct solicitation was reasonable as a prophylactic measure.356

In the companion case to Ohralik, In Re Primus, the Supreme Court held that a lawyer’s direct solicitation of a client was permissible if pecuniary

a family, close personal, or prior professional relationship with the lawyer.” MODEL RULES OF PROF’L CONDUCT, R. 7.3(a) (2011).

348. See SUSSKIND, THE END OF LAWYERS, supra note 12, at 234 (theorizing the existence of a latent legal market); see also Renee Newman Knake, DEMOCRATIZING LEGAL EDUCATION, 45 CONN. L. REV. 1281, 1291 (2013) (“The unmet need for legal services must be channeled into a demand for legal services.”).

349. PINK, supra note 155, at 9, 19 (Even if not officially in sales, we all spend a great part of our day “persuading, influencing, and convincing others.”).


351. See MODEL RULES OF PROF’L CONDUCT, R. 7.3(a) (2011) (Public Interest Exception).

352. Id.


354. Id.

355. Id. at 450–51.

356. Id. at 464–68.
gain was not the attorney’s primary motivation. In In Re Primus, an ACLU attorney sent a letter to a woman, who, in exchange for continued receipt of government benefits, had agreed to be sterilized as part of an Aiken County, South Carolina program to encourage sterilization. The letter detailed that the ACLU offered free legal representation to women sterilized in this manner. In this case, because the lawyer’s pecuniary gain was not the primary motivating factor of the solicitation, disciplining the lawyer was unconstitutional under the First and Fourteenth Amendments. Rule 7.3’s public interest exception derives from these two cases.

However, a better and more workable approach would be to dispense with the expansive prohibition. Instead, the rule should focus on the context of the conduct and eliminate specific targeted conduct. The court could still discipline Ohralik for overreaching if the rule prohibited direct solicitation in circumstances involving fraud, misleading information, overreaching, or intent to stir up frivolous litigation. In addition, a relaxed rule would open communication channels and allow the delivery of more information about potentially transformative legal services.

Alternatively, the courts might consider dropping the ban on direct solicitation for legal services that are transactional in nature to resolve the concern about the overreaching aspects of direct solicitation in a litigation context. In 1993, in Edenfield v. Fane, the Supreme Court held that a ban on direct solicitation for certified public accountants was an unconstitutional restriction on speech rights. The Supreme Court reasoned that accountants are different from lawyers because they are “not trained in the art of persuasion” and that the accounting profession “emphasizes independence and objectivity, not advocacy.”

Does this professional distinction make sense in light of the fact that nearly all businesspeople today engage in persuasion? Nonetheless, a strong analogy can be made to what accountants and transactional lawyers do. Because transactional lawyers are not seeking to convince potentially

358. Id. at 414–17.
359. See id. at 422, 439.
360. See id.
361. See Model Rules of Prof’l Conduct, R. 7.3(a) (2011) (Public Interest Exception).
362. Louise L. Hill, A Lawyer’s Pecuniary Gain: The Enigma of Impermissible Solicitation, 5 Geo. J. Legal Ethics 393, 417 (1991) (arguing that the ethical prohibition should focus on the context of the conduct and eliminate specific targeted conduct rather than the global prohibition on solicitation).
364. Id. at 775.
365. See supra text accompanying note 349.
vulnerable clients to initiate litigation in which the attorney has a direct monetary interest, Rule 7.3(a)'s prophylactic framework makes less sense.

The proposed modification to Rule 7.3(a) will not harm the legal profession or lead to more attorney misconduct. The modification would merely represent a shift from a prophylactic rule to a rule focused on specific kinds of misconduct. Moving from an expansive prophylactic approach makes good policy sense for two reasons. First, consumers will benefit from increased information about legal services, specifically because the rule would allow diversification of sources for this kind of information.

Second, relaxing the longstanding ban on direct solicitation would correct an imbalance in the ethics rules, which many criticize for favoring elite lawyers working in a large firm setting. The passive standard ingrained in the ethics rules ("Let business seek the young attorney") only applies to attorneys working at corporate law firms where reputation, visibility, and a strong social network help bring in business. On the other hand, for individual lawyers who represent individual clients, the ethics rules hamper the ability to build a practice. This codified passivity standard allows elite lawyers to label solo practitioners' solicitation of business as unethical. The rules allow upper-level lawyers to cloak themselves in the mantle of the virtuous lawyer while excluding solo practitioners from claiming this status. In this way, the rules engender further stratification in the profession. Liberalizing the rules to allow direct solicitation would end this unfortunate imbalance. This change would also help indie lawyers build up a business, ultimately making the independent practice of law more sustainable.

C. Multi-State Practice: Enabling Long Tail Markets for Legal Services

Model Rule of Professional Conduct 5.5(b) should be revamped so lawyers can practice law across geographic borders, particularly if legal services can easily conform to variations in state law. The Uniform Bar Examination is one potential way to achieve this goal.

366. Auerbach, supra note 262, at 41–42 (quoting George Sharwood, Essay on Professional Ethics (1854)).

367. Id. at 43.

368. Levin, The Ethical World of Solo and Small Law Firm Practitioners, supra note 7, at 311–12.


This article posits that a latent market for legal services and a latent demand for individualized, bespoke legal services exist. However, indie lawyers need enough clients to allow them to profitably deliver customizable legal products to capitalize on this demand. Thus, lawyers must be able to capture clients from all across the country, not just one jurisdiction.

Model Rule of Professional Conduct 5.5(b), in its current form, prevents lawyers from harnessing technology to access long tail markets. Lawyers have access to technology that delivers services without the burden of geographic limitations. Nonetheless, the ethics rules impose a “tyranny of geography” that prevents individual lawyers from creating new, transformative markets for legal services. As Stephen Gillers has argued, “technology does not recognize [geographic] borders.” Gillers is correct because technology renders geography obsolete and has opened up the possibility of unleashing new long tail markets. However, the ethics rules prevent lawyers from even trying to unlock long tail markets.

For instance, Richard Granat, one of the pioneers of delivering legal services on the Internet, has built a successful practice by cornering the market for accessible family law products in Maryland. Fortunately, there was a sufficient demand for his product within the State of Maryland. But what about the lawyer who envisions a demand for simple, customized agreements musicians can use to govern their relationships as they produce music and go on tour? Sufficient demand for that type of law product will probably not exist if the market is limited to one state. But, if we expand the net to the entire United States, then a market for such a product could emerge.

As Stephen Gillers and others have argued, the Uniform Bar Examination (UBE) could solve the problem. The UBE, which is produced by the

372. See Model Rules of Prof'l Conduct, R. 5.5(b) (2013) (prohibiting attorneys from providing legal services in jurisdictions where they are not admitted, subject to some limited exceptions); see also Anderson, supra note 164, at 52–53 (explaining the theory behind long tail markets).

373. See Anderson, supra note 164, at 17, 162–64.


375. Id.


378. Ward, supra note 115.

379. See id.

380. See Gillers, A Profession, If You Can Keep It, supra note 374, at 966, 971, 999–1001, 1120 nn.52 & 185 (citing Tiffany M. Williams, Examining the Fea-
National Conference of Bar Examiners, is a single test that an applicant can use to gain admission to several states.\textsuperscript{381} Fourteen states have already adopted the UBE, although some require a separate educational component or separate jurisdiction-specific test.\textsuperscript{382} In addition to the UBE, states must agree to lessen their admission fees and bar dues. Most lawyers will still not have an increased practice area within reach if they are required to pay excessive admission fees and yearly dues.\textsuperscript{383} If states are unwilling to liberalize restraints on multi-jurisdictional practice, another solution is a more organized federal bar for lawyers practicing in areas like immigration and tax.\textsuperscript{384} Another potential solution is a broader federal law license promulgated under Congress’s Commerce Clause power.\textsuperscript{385}

D. Ownership Structure and Multi-Disciplinary Practice B Empowering Social Enterprise and Interdisciplinary Law Firms

Model Rule of Professional Conduct 5.4\textsuperscript{386} should be modified to allow nonlawyers to participate in legal businesses so that the indie practice of law may flourish. Rules 5.4(a)\textsuperscript{387} and 5.4(d)\textsuperscript{388} prevent nonlawyers from participating in or owning any aspect of a law business. Rule 5.4(b) prohibits interdisciplinary models of law practice, like where a lawyer wants to form a


381. \textit{See} Gillers, \textit{supra} note 380.


387. \textit{See id.} R. 5.4(a) (prohibiting a law firm from sharing legal fees with a nonlawyer).

388. \textit{See id.} R. 5.4(d) (prohibiting nonlawyers from owning any interest in a law business).
partnership with a nonlawyer, such as a family counselor. Striking these unnecessary restrictions will allow lawyers to explore alternative community-centered formats for legal businesses.

These rules have been criticized primarily as antithetical to innovation because they prevent the corporate practice of law. Consequently, both the kind of capital a law firm can raise and the scale that a law business might achieve are restricted. The other argument is that excluding nonlawyers from the law business maintains silos between disciplines and closes off the law to outsiders who might contribute innovative solutions.

The American Bar Association must also rid the code of these rules for reasons other than the standard economic ones. Relaxing these rules would generate alternative models of law practice: egalitarian business models grounded in both commerce and community. For example, some want to create a social enterprise law firm that pursues the hybrid goal of generating a profit and achieving social objectives. The organizers of a social enterprise law firm model might want to structure it as a cooperative. A law cooperative would give all business members a voice in management and an ownership interest opportunity. Another alternative model could include a law collective, which also rejects a hierarchical organizational structure and

389. See id. R. 5.4(b) (prohibiting lawyers from forming partnerships with nonlawyers).
390. See, e.g., Hadfield, Legal Infrastructure, supra note 13, at 55–56 (discussing the limitations on the corporate practice of law and innovation).
391. See id. at 55–57; Hadfield, The Cost of Law, supra note 341, at 54–55; see also Larry E. Ribstein, The Death of Big Law, 2010 Wis. L. Rev. 749, 788–89, 803–04 (2010); Ribstein, Lawyers as Lawmakers, supra note 383, at 314; Gillas, A Profession, If You Can Keep It, supra note 374, at 1007–10; Gillas, What We Talked About When We Talked About Ethics, supra note 391, at 268.
393. See Hadfield, Legal Infrastructure, supra note 13, at 56.
394. Reiser, supra note 127, at 681 (A social enterprise organization is a hybrid business organization that pursues both profit and community oriented goals.).
395. See Orsi, Practicing Law in the Sharing Economy, supra note 122, at 8, 36–52 (discussing various alternative models for law practice that embrace the social enterprise concept).
396. See id. at 36, 38 (discussing the cooperative as a type of “sharing economy law practice”).
397. See id. at 38–41; see also East Bay Cmty. Law Ctr., Green-Collar Cmty Clinic & Sustainable Econ. Law Ctr., Think Outside the Boss: How to Create a Worker-Owned Business 1, 1–2 (rev. 4th ed. 2014), available at www.academia.edu/1829531/Think_Outside_the_Boss_How_to_Create_a_Worker-Owned_Business (explaining the structure and benefits of a “worker cooperative”).
the division between attorneys and laypersons.\textsuperscript{398} The social enterprise concept has given rise to a number of other forms indie legal businesses could utilize, such as "the low-profit limited liability company, the benefit corporation, the benefit LLC, the flexible purpose corporation, and the social-purpose corporation."\textsuperscript{399} Nonetheless, ethics rule 5.4(d) would not allow these models to be used in a way that embraces layperson participation or ownership.\textsuperscript{400}

Rules 5.4(b) and 5.4(d) harm the indie law business model by unnecessarily cordoning other disciplines from law businesses. For instance, imagine that a forward-thinking lawyer wanted to create a business that combined family law legal services, dispute resolution mechanisms, and counseling services. The ethics rules would not allow the nonlawyers to receive an ownership interest in this business or participate in its management.\textsuperscript{401} These restrictions hamper the massive economies that could be achieved if corporations were allowed to deliver legal services to individual consumers.\textsuperscript{402} Moreover, the rules prevent innovative, small-scale business models from getting off the ground.\textsuperscript{403} The rules prevent innovation like the Wal-Mart style delivery of legal services\textsuperscript{404} and sustainable innovation that can benefit both clients and individual lawyers.\textsuperscript{405}

The recommendation here is that the Bar Association rid the specific prohibitions within Rules 5.4(a), 5.4(b), and 5.4(d). In their place, Rule 5.4 would simply prohibit nonlawyers from regulating the lawyer's independent professional judgment regarding the representation of a client. This language

\textsuperscript{398} See Orsi, \textit{Practicing Law in the Sharing Economy}, supra note 122, at 38, 42–44.

\textsuperscript{399} Reiser, supra note 127, at 683.

\textsuperscript{400} See Model Rules of Prof'l Conduct, R. 5.4(d) (2013); see also Hadfield, \textit{The Cost of Law}, supra note 341, at 46–47 (There is an argument that Rule 5.4(d) might allow a non-profit business model, which seems to countenance nonlawyer involvement in nonprofit law businesses); \textit{but see} Orsi, \textit{Practicing Law in the Sharing Economy}, supra note 122, at 44–45 (It is unclear how the ethics rules would treat these social enterprise forms because they are hybrid models.); Reiser, supra note 127, at 681, 685–86.

\textsuperscript{401} See Model Rules of Prof'l Conduct, R. 5.4(b), (d) (2013).


\textsuperscript{403} Hadfield, \textit{Legal Infrastructure}, supra note 13, at 55.

\textsuperscript{404} See, e.g., Legal Services Act, 2007, c. 29, §§ 89–102, sch. 13 (Eng.) (This law is colloquially known as the Tesco law, because it enables large retail chains that are not owned by lawyers to deliver legal services); see also Moliterno, supra note 338, at 899; Knake, \textit{Democratizing the Delivery of Legal Services}, supra note 341, at 6–8 (discussing Wal-Mart's delivery services).

\textsuperscript{405} See Hadfield, \textit{The Cost of Law}, supra note 341, at 61.
would effectively capture the conflicts of interest the existing rules seek to prevent. More expansive and specific prohibitions are unnecessary.

E. Lawyer Speech: Promoting Supportive Communities for Indie Lawyers

New technology enables new forms of community spaces that are not constrained by geography or real estate. Listservs, blogs, and discussion boards provide an online community where attorneys can talk shop and receive mentoring and advice on questions about attorney ethics. Robust online communities are important for attorneys practicing on their own because they lack the kind of safety net enjoyed by attorneys practicing in a large-scale setting. This difference in practice structure likely explains why solo practitioners receive more attorney discipline than attorneys working in larger firms.

As previously discussed, attorneys must speak freely about the practice of law for these online communities to flourish. Speaking freely necessarily includes a broad right to criticize the judiciary. To this end, Model Rule of Professional Conduct 8.2 needs modification to give greater speech protections to attorneys.

Rule 8.2 prohibits lawyers from “mak[ing] a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer . . . .” The language of Rule 8.2 tracks the language of N.Y. Times v. Sullivan, the Supreme Court case that enshrined the “actual malice” standard into First Amendment defamation law.

406. See Model Rules of Prof’l Conduct, R. 5.4 cmt. 1–2 (2013); see also Knake, Democratizing the Delivery of Legal Services, supra note 341, at 5–6 (explaining that the prohibitions in the rules are “purportedly justified by concerns about . . . conflicts of interest”).


408. See supra notes 137–47 and accompanying text.

409. See Bauer, supra note 145, at 6–7; see also Levin, supra note 7, at 387–88 (advocating that solo practitioners should be encouraged to affiliate with another lawyer to create a safety net).

410. See Bauer, supra note 145, at 6–7; see also Levin, supra note 7, at 387–88 (advocating that solo practitioners should be encouraged to affiliate with another lawyer to create a safety net).

411. See Jewel, I Can Has Lawyer, supra note 96, at 362.


413. Id.

The problem with Rule 8.2 is that the actual malice standard that applies to other members of the public is not the same standard that applies to attorneys.\footnote{See Margaret Tarkington, The Truth Be Damned: The First Amendment, Attorney Speech, and Judicial Reputation, 97 Geo. L.J. 1567, 1569 (2009) ("[M]ost state judiciaries have read the ... [actual malice] standard out of the language of Model Rule of Professional Responsibility 8.2, interpreting it and other rules to punish speech that impugns the integrity of the judiciary without requiring a showing of knowledge of or reckless disregard as to falsity.").} Attorney speech that criticizes the judiciary is held to a higher standard.\footnote{Id.} For instance, this article previously discussed a Florida defense attorney who was disciplined for speaking out online about his perception that a judge was being unfair and arbitrary.\footnote{Id. at 357–60.} Specifically, he called the judge an "Evil, Unfair, Witch," stated that she had an "ugly condescending attitude," that she was "unfit for her position," and that she was "seemingly mentally ill."\footnote{Id.} Typical First Amendment defenses, including review of Conway's mindset in making the statement to ensure it rose to the reckless disregard standard,\footnote{See Jewel, I Can Has Lawyer, supra note 96, at 357–60.} the requirement that speech of public concern be "provably false,"\footnote{Id. at 357 (citing Sean Conway, Judge Aleman’s new (illegal) “One-week to prepare” policy, JAABLOG (Oct. 30, 2006, 9:11 PM), http://jaablog.jaablaw.com/2006/10/30/judge-alemans-new-illegal-oneweek-to-prepare-policy.aspx; Letter from the Florida Bar, Alan Anthony Pascal Bar Counsel, to Sean William Conway (Apr. 13, 2007), available at http://www.floridayoujudge.com/wp-content/uploads/2014/04/Sean-Conway-Florida-Bar-Investigation-Letter.pdf.).} and the general rule that rhetorical hyperbole is not actionable defamation\footnote{See Jewel, I Can Has Lawyer, supra note 96, at 359 (citing Letter from Sean Conway, Attorney, to Alan A. Pascal, Member of Fla. Bar Counsel (Apr. 17, 2007), available at http://www.floridayoujudge.com/wp-content/uploads/2014/04/Sean-Conway-Florida-Bar-Investigation-Letter.pdf. ("Conway believed he was alerting other defense attorneys within his [online] community to the unfair . . . practices of a publicly elected judge.").} did not play a large role in resolving the disciplinary action. Rather, the Florida State Bar argued that upholding the public reputation of the legal profession and the judiciary was more important than an individual attor-
ney's free speech rights. The Florida Supreme Court accepted the Florida Bar's reasoning.

Imposing discipline on lawyers like Mr. Conway who speak out against judges is the wrong result. This outcome chills the speech of attorneys who inhabit online communities, which in turn inhibits the growth of these communities. Both the democratic ideals that underlie free speech, as well as its community building function, should have outweighed any concern over the sanctity of the legal profession or the judiciary. Mr. Conway belonged to an online community that was comprised of criminal defense lawyers. With the exception of high stakes white-collar criminal work, criminal defense lawyers typically work as solo practitioners or in small firms. Lawyers working for large firms have access to a community of practice that is supported by the law firm's institutional structure. For instance, when a lawyer working at a large firm experiences a frustrating encounter with a judge, he or she can go behind closed doors to vent and receive counsel from other firm members. However, lawyers working by themselves do not have this option. The legal community should correct another imbalance in the ethics rules and liberalize how lawyers speak in online communities.

V. CONCLUSION

Technology, market, and cultural forces have laid the groundwork to transform the solo practice of law. Although many areas of legal services have moved from an individualized model to a larger model, current trends that emphasize resilience, community, and DIY practices point toward a possible latent consumer demand for individualized, tailored legal services. This article focused on possible latent markets for private-law, transactional products, but it might be possible to apply technology to reach long tail markets for legal products that require interaction with the court system as well. This will become a reality if courts become more technologically advanced and allow lawyers to appear virtually.

There are a few indie lawyers practicing in California. Currently, the trend is in an infant stage. The current ethical rules need to be remodeled for

422. See Jewel, I Can Has Lawyer, supra note 96, at 359–60 (quoting Fla. Bar v. Wagner, 212 So. 2d 770, 772–73 (Fla. 1968)).

423. Id. at 358–59; see Tarkington, supra note 415, at 1589–90, 1606–07 (noting that the problem with lawyer free speech is that the fact-finders who are deciding lawyer discipline cases are not the equivalent of an impartial jury. In cases where the judiciary is purportedly defamed, members of the judiciary decide the lawyer's fate).


425. See id.

426. Id. at 357.

427. See id. at 356.
it to grow. Liberalizing the ethical rules for lawyers to stimulate more innovation and competition in the legal services market is a viable theory. But beyond these economic rationales, one must consider how changes to the ethical rules might produce a more sustainable legal profession that can benefit both individual lawyers and clients.

The indie style of law practice raises exciting possibilities for transforming the practice of law and making the solo practice of law more engaging, more fulfilling, and more community-centered. However, the ideas in this article are not intended to promote the enduring value of a law degree or encourage more students to attend law school with the hope of becoming a successful indie entrepreneur. For the indie lawyer to truly take off, other structural changes must happen. Reducing the cost of attending law school is the most important reform. But even with the difficulties indie lawyers face, both practicing and upcoming lawyers will successfully capture these latent markets and pioneer a new style of lawyering.
Comments