

# More Markets, More Justice

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*Abstract: People lack access to justice because the law is complex and expensive to use. Basic mechanisms of market competition can reduce both the complexity and the cost of law while securing law's principal function in society, which is to coordinate a community around a shared understanding of what is and what is not allowed. Creating markets for rules will make for better law and better legal systems by allowing people and organizations to select the rules and dispute-resolution processes that are best for them in a market in which providers of regulation compete on terms of cost and quality. Legal rules require special protection to make sure they deliver a more just, equitable world for all; this protection can be provided through a "superregulator," which licenses providers of law and legal services to sell their services in competitive markets.*

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In 1852, when the miners of Jackass Gulch needed a set of rules to manage the inevitable disputes that arose after hordes of hopefuls rushed in to stake a claim for California gold, they came up with six simple rules about how to stake and hold a claim. Everybody who wanted to pan for gold could understand them. Resolving disputes was quick and clear.

In the time of the California gold rush, the rules of mining mattered to ordinary people. Simple rules made the law accessible and useful. Today, the law of mining is the preoccupation, mostly, of commercial mining companies. Contemporary mining law is awash with statutes, regulations, and procedures, all adjudicated in case law accumulated over more than a century. It is no longer just about who gets the claim. There are rules about mine safety, environmental management, the interests of states and Native Americans, and more. Understanding the law of mining requires sophistication about a topic that fills volumes in a law library.

Today, most law has undergone the same transformation as mining law: law is complex for every-

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one, big or small, whether people are seeking divorce, protection against eviction, or unfair treatment at work. It is complex for a small business trying to comply with regulations, manage employment relationships, and avoid legal liability. It is complex for anyone concerned about privacy or the security of their data online. Up to a point, more complex law helps address more situations and concerns. Yet when law becomes too complex, it stops performing its key function: to coordinate a community around a shared understanding of what is and what is not allowed.

As the law becomes more complex, a new and significant inequality emerges between those who can navigate legal rules and procedures and those who cannot. People who write the complex terms of service, consumer contracts, employment agreements, organizational policies, and administrative rules that govern daily life have a much clearer understanding of those rules than those who must “click to agree” to them. People and organizations that can retain expensive lawyers for help in navigating and sculpting complex legal terrain have an advantage over those who must muddle through alone, barely comprehending the landscape.

Calling for simpler rules is easy and tempting: Simplify the tax code! Use plain language! Cut the red tape! But these calls rarely succeed. They do not address the basic pressures creating greater complexity. To generate stable, simpler legal systems, we need to do what works to manage complexity in other segments of modern life: harness the incentives of markets. Competitive markets prompt the designers of smartphones and laptops, for example, to make them able to do more, without becoming harder to use. Creating markets for rules can similarly prompt private legal designers to develop better laws and better systems for the

users of law. Markets for legal rules make sense only if they can deliver a more just, equitable world for all, and if they can be made truly competitive. In many cases, this can and should be done.

At bottom, the law is a set of rules for structuring relationships among people, organizations, businesses, and governments. It helps resolve disputes among those actors and makes it easier for people and organizations to plan by making behaviors easier to predict. Accessing the law means having the capacity to prod others – employers, government agencies, neighbors, businesses, prosecutors, police, school officials, landlords – into following the rules. Securing that capacity takes knowledge: understanding the rules and how to take steps needed to activate and shape the behavior of officials charged with enforcing the rules.

The more complex rules and processes are, the costlier it is to secure the capacity to ensure that the relationships are structured by the rules. More complex rules and processes require more steps and inputs; more steps equal more time and money to achieve an objective. More complex systems present more opportunities for errors, meaning that getting a rule enforced costs more. More complex systems present more points of potential disagreement and dispute, creating yet more steps and complexity. And, most important, more complex systems require more expertise and specialization, which means people can’t access the system of rules if they can’t afford to hire expert help.<sup>1</sup>

Reducing the cost of accessing law requires reducing law’s complexity and the cost of specialized help. Reducing complexity is really about *optimizing* complexity. Eliminating all complexity would eliminate much of the benefit of law,

because it would make rules unresponsive to the subtleties, ambiguities, and varieties of life. For example, landlords could never/always evict someone, fathers would always/never get custody of children, and businesses would always/never be responsible for injuries suffered by users of their products. Since the kinds of laws people want to live with require some complexity, they also entail costly specialized help, consuming resources in the training and compensation of people who develop the expertise needed to manage the complex rules and systems.

A key reason that access to justice is out of reach for many people is that contemporary legal systems are highly complex.<sup>2</sup> Many lay people find complex and difficult to understand the procedures needed to do what lawyers see as routine: for example, when they seek to expunge a criminal record, respond to an eviction notice, or challenge a child support order.

Much of the law that governs everyday actions like buying and selling is contained in contracts and other documents produced by private providers of goods and services. Most legal documents are written in legalese that most Americans, who read on average at an eighth-grade level, cannot really understand. The terms of service that shoppers “click to agree to” average two thousand words. Online user license agreements are routinely written at college reading levels.<sup>3</sup> Health plan guidelines are written at advanced college levels.<sup>4</sup> One study estimated that it would take someone approximately 250 hours a year, or forty minutes a day, every day, to read all the privacy policies he or she encountered online – and the vast majority would still not understand what they had read.<sup>5</sup>

The procedures to interact with large organizations – employers, schools, city officials, courts, administrative agencies – can be bewildering to ordinary people.

A 2015 study found that one of the most common provisions in the contracts between such organizations and their consumers and employees – an arbitration clause – might as well be written in a foreign language: only 9 percent of people presented with a standard credit card contract containing an arbitration clause could answer these two questions correctly: Did the contract you read contain an arbitration clause? (Yes.) If you sign this agreement and the credit card company overcharges you, can you take that dispute to court? (No.)<sup>6</sup>

Procedures can be complex even when rules are not. When the Department of Justice investigated municipal court practices in the City of Ferguson, Missouri, after the Michael Brown shooting in 2014, investigators uncovered a system not only rife with racial bias and constitutional violations, but also one in which “it is often difficult for an individual who receives a municipal citation or summons . . . to know how much is owed, where and how to pay the ticket, what the options for payment are, what rights the individual has, and what the consequences are for various actions or oversights.”<sup>7</sup>

Producing simplicity is not simple. Legal reasoning tends toward complexity: litigants press alternative interpretations of language to achieve the outcomes they seek, judges attempt to reconcile general language with the infinite variety of concrete circumstances they must judge, and multiple sources of law arise over time and require reconciling to maintain coherence and minimize conflicts.<sup>8</sup>

This complexity is created in a closed system that gives providers of law very little feedback on how well they are doing in fulfilling the needs of those who use the system. Legal systems are controlled and staffed almost entirely by lawyers, who all receive similar education, take the same tests to achieve entrance to the

profession, and are bound by the same professional rules, ethics, and culture.<sup>9</sup> They usually work in environments that are almost exclusively populated by other lawyers. Their conversations and debates make sense only to the legally trained. In such a closed environment, the legal rules and procedures these lawyers and judges develop are produced with essentially zero feedback from the people affected by those rules: people, businesses, and organizations. Lawyers and judges face only muted costs when the legal system doesn't work well for the people who use it: people might complain, but most people who need the law have nowhere else to turn, so their complaints can be ignored.

For our legal systems to become simpler and less expensive, users of law must be able to provide the kind of feedback that creates incentives for providers to do better.

Competitive markets generate these kinds of incentives. Producers lose customers if they ignore information about what the consumers want. They increase revenue when they attract new users by designing and delivering goods or services that better meet users' needs. Consider smartphones again: The ones that most people carry are produced in relatively competitive markets. The producers of smartphones face strong incentives to design devices that can respond to more complex online environments, diverse users, and heightened consumer expectations, while simultaneously being easy to use. The market for smartphones creates incentives to *optimize* the complexity of those devices: to balance the benefits of increased complexity (devices able to do more things) against the costs (devices that are too confusing to use). Simplicity is the hard-won result of competition to give consumers what they want.

Much contemporary law, by contrast, is designed in a bubble. Whatever designers produce – courts, legislators, lawyers – is tested against feedback only from other lawyers. Unless those designers have their feet held to the fire – for example, if they stand to lose users and revenues because the legal forms they design are too hard to use or they offer inefficient procedures for resolving disputes – there is little hope of resisting the tides of complexity.

In practice, markets for law already exist. Contracting parties can choose the state law they want to govern their contracts, although in business-to-consumer markets (as opposed to business-to-business markets) the choice is largely made by the business and not the consumer. There is a similar market for corporate law in the United States: companies can incorporate under the corporate law of a state of their choosing.

The current “competitors” in these markets are public actors: state legislatures and courts. To the extent they have an incentive to drum up business for their courts and legal profession, they compete in the market for contracts and in the market for incorporating companies. Delaware, for example, wins the competition for incorporation by providing a highly competent bench and bar to judge corporate law cases, with many corporations choosing to incorporate in Delaware instead of their home state. New York competes for the business of supplying commercial contracting law by authorizing its courts to decide cases even if the parties to the contract have no connection to New York.

But public actors, such as courts and legislatures, are not strongly competitive. A more fully market-based system of contract law or corporate law would open up competition to provide rules and procedures to private actors, whether they

operate for profit or are not-for-profit. A private company could sell its services to transacting partners who wanted a less complex set of rules and procedures than that offered by state providers of law, like California or New York. The company could offer a suite of services that accomplish the objectives of contract law, like coordinating expectations between parties, managing disagreements that arise about what was intended or how to respond to unanticipated circumstances, and determining a fair allocation of risks and costs when things go awry.

The company's tools for achieving those objectives might look similar to those familiar from state law, or not. The company might use pre-announced rules and doctrines, as a state does when it provides law, or it might analyze data from the experiences of consumers and potential consumers to determine best practices to achieve these objectives. Dispute resolution might be aided by algorithms that reach smarter solutions to reduce the costs of conflict. The services such a company offered might involve full-scale litigation like modern courts; but they might also provide a much simpler set of procedures, with transparent trade-offs between accuracy and cost that can help consumers decide which procedures work best for them. eBay, for example, chose to provide buyers and sellers on its site with rules simpler than the law of most states about who is responsible when goods don't arrive, to reduce the costs of disputes.<sup>10</sup>

Setting up an effective market for laws faces three challenges. One is the great diversity in consumer sophistication. Not all parties to an arrangement have the ability to make good choices when dealing with a legal provider. Another challenge is making sure that the market is competitive. There is already the risk of

inadequate competition for monopoly technology platforms and services – like Google and Facebook – in setting rules for what is allowed and prohibited online. A third challenge is making sure all interests at stake can participate in choosing who provides the law. Employees and consumers who sign contracts containing an arbitration agreement, for example, need public law to make sure they are not being exploited by their limited capacity to understand and exercise choice about the law. Even bigger challenges arise when third-party interests are at stake, such as environmental issues, workplace safety regulation, or data security. Rules in a new market for rules must protect the interests of the public as well as consumers and employees.

Building effective markets for law does not mean abandoning the role of governments in protecting their citizens through regulations but, rather, rethinking it. Today, most regulations are written in fine detail by public officials: politicians, civil servants, and administrative judges. Rules and procedures are slow to change in the face of the pace and complexity of modern life.

A better approach would be for government to focus on the *outcomes* desired from regulation. For example, what frequency of accidents is tolerable on the roads? What principles should govern the interaction between large data-collection entities and their users? What interests should be protected in a divorce? *How* these outcomes are achieved – rules about who can participate in a business, what business practices they follow, how technology is deployed to monitor performance, how compliance is incentivized – should be figured out by market actors who are rewarded for coming up with more effective and more efficient (less complex and less expensive) ways of getting to those outcomes.

This market for rules would be governed through *superregulation*. Government would license private regulators to compete in a competitive market. Instead of directly regulating the businesses that supply goods and services to consumers, businesses would choose their regulator from the market for regulators. Governments would then regulate the regulators, making sure the regulation they impose on the businesses that sign up with them achieve the objectives the government has set.

Although the idea of a competitive market for private regulators may seem outlandish, parts of such a system already exist. Today, many regulations are written by private standard-setting bodies and either adopted by governments or implemented voluntarily by businesses. Sometimes these organizations compete for “customers”: the International Organization for Standardization, the Forest Stewardship Council, and the Canadian and American Pulp and Paper Associations, for example, offer environmental standards that companies can choose to implement to ensure their products come from properly managed forests. European law requires food suppliers to obtain certification from private independent certifiers to ensure compliance with relevant food safety standards. Brokers and dealers in U.S. securities are subject to oversight by a private nonprofit membership organization, the Financial Industry Regulatory Authority (FINRA). Many suppliers of large corporations like Apple and Nike are subject to rules written by those corporations with respect to issues like workplace safety, child labor, and environmental practices.

The difference between existing models and superregulation is that, in most of these existing cases, either the private regulator holds a government-granted monopoly – like FINRA, for example – or

compliance with private standards is voluntary – as with privately developed environmental standards. Although the private regulators may be subject to some governmental oversight, that oversight is not tied to licensing based on the achievement (or not) of designated outcomes. Superregulation focuses government efforts on the regulation of the regulator, on the basis of outcomes, and requires a competitive market for regulators.

The clearest example of this model today is the United Kingdom’s approach to the regulation of legal services. Parliament passed the Legal Services Act in 2007, creating the Legal Services Board, an independent agency whose members are appointed by government. The Legal Services Board has only one function: to approve the private bodies that apply to be the actual regulators of legal services. Parts of the system are clearly not (yet) very competitive: the primary regulators emerged out of the preexisting trade associations for barristers, solicitors, and legal executives and the barriers to switching regulators are high because those regulators impose different, and costly, educational requirements. But on the horizon is a closer competition for regulation of a new breed of legal provider in England and Wales known as “alternative business structures” – companies like Price Waterhouse or LegalZoom – that can now provide legal services in this market. As of 2015, these providers can choose between licensing by the Solicitors Regulation Authority or by the Bar Standards Board.

The strategy of specifying general principles or outcomes instead of specific rules is known in the field of regulation as outcomes-based or principles-based regulation. It is already used in some settings such as environmental law, where instead of specifying what technologies or procedures a factory must use to reduce

pollution, governments establish acceptable levels of pollution. Under current approaches, the government leaves it up to the factory to decide what technology or procedures to use to achieve the required levels of pollution.

Under superregulation, however, the government would license third-party private companies to come up with specific methods for achieving pollution targets. It would then require the factory to become a customer of one of those third-party companies, to buy its regulatory services and comply with the methods its regulator develops. Individual factories in an industry might choose different regulators – just as companies now choose different accounting firms or computer systems – but all of the regulators available to be chosen would be licensed and required to demonstrate to government that the systems they impose on their regulatory customers achieve the government’s required outcomes.

If the government requires that pollution not exceed a particular threshold, for example, then each private regulator would have to demonstrate that, across all of the factories it regulates, pollution does not exceed that level. Individual private regulators might achieve that objective in different ways: one might impose technology requirements on the factories it regulates, for example, while another might impose process requirements. They might charge different prices for their regulatory services. Those differences would be determined by the market; the role of governments would be to ensure that this market was competitive and that all of the providers offer systems that achieve the government’s pollution targets.

Superregulation inserts an additional layer between governments and regulated businesses, creating an industry of private regulatory services. Although this seems like it would just make regulation

more complex, if the market were competitive it could reduce complexity. The reason is the same as anywhere we see benefits from companies that specialize in part of a production process. For example, a company that manufactures automobiles can produce in-house all of the parts and perform all the services it needs as inputs. Or it can, as most do, contract out many of these parts and services to other companies: suppliers that specialize in building brakes, for example, or managing relationships with customers. Vertical integration looks less complicated, but it forgoes the benefits of specialization and scale. The companies that the auto-manufacturer contracts with can often produce higher-quality and lower-cost inputs than the auto-manufacturer itself because they dedicate themselves to innovating and excelling in this narrower task, and because they can achieve greater scale. The brakes manufacturer can sell to many vehicle manufacturers; the customer management service to many companies beyond the auto industry. This kind of specialization and decentralization is a key feature of the modern economy.

Superregulation recruits the benefits of specialization and scale for regulatory systems. By having for-profit and not-for-profit private companies, which are competing for business and motivated by the incentives of profit and mission, specialize in translating broad principles and specific regulatory outcome targets into rules, procedures, and technology, it is possible to have better, more cost-effective regulatory approaches that do a better job of balancing the costs and benefits of the complexity of the rules. To make that happen, governments must have the capacity to make sure that private regulators are competitive and producing systems that achieve government targets.

Consider whether this approach could improve the management of landlord-

tenant disputes, for example. Currently in many jurisdictions, more than 80 percent, sometimes more than 90 percent, of tenants in eviction cases are not represented by lawyers. They face housing laws and procedures that are complex and confusing. Courtrooms dealing with these cases are chaotic. Even for landlords – many with legitimate interests at stake – evictions through court cases can be slow, unpredictable, and expensive.

Under a superregulatory approach to housing regulation, governments would first establish the goals and results they want to see in housing markets. Good outcomes of a landlord-tenant dispute system would likely differ from polity to polity, but it is likely they would include such factors as a housing stock that is reasonably safe and healthy, and cost-effective opportunities for tenants and landlords to express and have considered their legitimate concerns. Private housing regulators would then develop their own procedures and methods for achieving the publicly agreed on housing goals. One regulator might take a proactive approach, engaging in active monitoring of housing standards and tenants' financial circumstances to gain early warning of potential problems. Another might be largely reactive, creating an online system for tenants to enter and document housing complaints and for landlords to enter and document payment problems, as well as a dispute resolution system that is relatively simple and low-cost in straightforward cases and somewhat more involved in complex ones to follow up. A third might seek to improve landlord-tenant relationships on an ongoing basis through community-building and better communication, increasing the likelihood of amicable settlement of disagreements.

Governments – city governments for example – would audit the performance

of each regulator to make sure that it is achieving the outcomes the governments have set: Are housing standards across all of the units a regulator oversees reasonably safe and healthy? Are rent payments generally timely? Are both landlords and tenants satisfied with their ability to get quick and fair resolution of their concerns? Does everyone in the system understand how it works and what their rights and duties are? Regulators that do not meet these goals would lose their licenses. The only way to compete with lower fees would be for the private regulator to come up with less costly ways of maintaining the goals set by the city. Simpler systems are likely to emerge because there is an incentive to make them simpler.

A superregulatory model would work only if a city is able to effectively regulate the regulators – to make sure it discovers when a regulator is no longer meeting the standards the city had set – and if the market is competitive. The democratic process will have held city leaders politically accountable for ensuring that licensed regulators are not cheating the standards the city has set, in the same way that we now hold the city accountable for ensuring that landlords are complying with housing codes.

A competitive market harnesses the incentives for regulators to reduce the cost of achieving housing standards, thereby making it more likely that standards are met even in lower rent settings. And it can also recruit the incentives for tenants, and tenants' organizations, to monitor and publicize the performance of private regulators. This is an easier task for the market – just as it is an easier task for city authorities – when there are only three, or five, or even ten private licensed regulators to keep track of, as opposed to thousands of landlords operating as individuals or behind shifting corporate

identities. If a private regulator made it as difficult for a tenant to obtain fair enforcement of its rules against landlords as our current public housing courts do, we could anticipate market backlash or public outcry, and those tenants *with* effective housing choices would put pressure on the regulator to do a better job, generating benefits for those with little choice.

A superregulatory system should include the goal of making it possible for people to manage many of their ordinary legal situations on their own. Realistically, though, people and businesses will always need help understanding, navigating, and securing the benefits and protections of law. That is why it is critical to increase the use of markets to develop laws and to improve the performance of markets for legal help. Fundamentally, this means removing costly rules and barriers that are responsible for inflating the cost of accessing legal expertise. Current costs reflect the cost of conventional help from a lawyer, and the limited availability of alternative sources of legal assistance.

The other way in which we should be using markets better to increase access to justice is by reforming the market for legal services. The rules of professional conduct throughout the United States impose on the practice of law a business model that generates massive inefficiency. In law, a very large fraction of the hourly rate that clients pay ends up covering the cost of operating a barely sustainable business. Consider the following shocking finding. CLIO is a company that sells practice management software and services to small law firms, most of twelve or fewer lawyers. Small law firms provide most of the legal services that individuals and small businesses consume. In 2017, CLIO did a study of billing data from approximately forty thousand of its law-firm customers. In an average

eight-hour work day, lawyers in these small firms engaged in billable work for 2.3 hours. Of that, they billed 1.9 hours and collected payment for only 1.6 hours. Even though the average hourly rate paid by clients was \$260, the effective hourly rate received by the law firm was only \$52. From that amount, the law firm had to pay administrative staff, rent, technology costs, marketing costs, insurance, and so on. There is no good estimate of the average cost of law firm overhead. Some suggest the overhead is as much as 50 percent, meaning the lawyers in this study actually took home about \$25 an hour. But even if overhead costs were much lower – a lawyer working out of a home office, working without a secretary or paralegal, spending little on marketing, forgoing malpractice insurance (which is not mandatory in the United States) – lawyers in these practices, at best, would be making between \$30 and \$40 an hour for their efforts.

The difference between the \$260 an hour paid by the client and the \$25 to \$40 an hour received by the lawyer is inefficiency. It is a consequence of the tiny scale of the law firms that serve ordinary individuals and small businesses.<sup>11</sup> Lawyers in these practices spend more of their work time finding clients, managing administrative tasks, and collecting payment than makes economic sense.<sup>12</sup>

These law practices are so tiny because the rules of professional conduct effectively require them to be. They require lawyers to work only in businesses that are 100-percent owned, managed, and financed by those lawyers.

A more efficient business model would be for the vast majority of these lawyers to be employed by a large-scale business that invested in developing brand identity, organizational practices, customer service protocols, and technological tools to deliver cost-effective legal help

to people and businesses. Most lawyers don't want to run small businesses, and most lack the aptitude for it. They – and their clients – would be better off letting already established companies like LegalZoom, Avvo, RocketLawyer, Axiom, UpCounsel, and the like build a service platform, research the market, figure out pricing, handle billing, manage customer complaints, optimize the use of nonlawyer staff, and arrange financing, among other tasks.<sup>13</sup> Economies of scale could drive out a huge fraction of the current inefficiency in providing what millions need and most cannot get: advice from a lawyer.<sup>14</sup> Consider how many more people could afford some legal advice at \$30 to \$50 an hour compared with \$260 – that is likely what a large-scale legal services company could deliver. And the lawyers would earn as much as they do today and spend more of their time practicing law, making the most of their expensive education and human capital.

A more efficient market for legal services requires changing the rules of professional practice to allow businesses that – like all other service businesses in our economy – are owned, managed, and financed by people other than the specialists who are providing services to clients to compete. More competition creates the incentive for people to invest in devising less costly ways to help people with their legal problems.

Some worry that lawyers employed by profit-making firms would cease to be independent and faithful lawyers for their clients. But changing the business model does not change the obligation of lawyers to give independent and loyal advice. Regulation of these new legal services providers would help ensure that, despite their corporate status, they delivered reliable and appropriate legal assistance. Legal services would be regulated as most

organizational activity is in an advanced economy. Yes, there are failures: auto manufacturers have cheated on emissions tests, banks have cheated on account openings, hospitals have failed to protect against disease outbreaks by skimping on protocols, and universities have failed to protect their students against on-campus sexual assaults by sweeping complaints under the rug. But the failures are only a small part of the picture: in the majority of the landscape, remarkably, most people are safe, every day; most get what they paid for, every day. It is possible to develop regulatory regimes that achieve this in law as well.<sup>15</sup>

Allowing legal services to be developed and delivered by entities with full access to the economic tools and business models used throughout the economy would foster the development of cost-reducing innovations in law. Some of these involve technology: phone apps that can take a photo of a legal document, decipher it, and deliver targeted advice; online services that can support people navigating court and administrative procedures alone; artificial intelligence that can help resolve basic disputes; and blockchain systems that can enforce judgments by taking advantage of blockchain's ability to automatically transfer digital assets when an adjudicator has reached a decision in a case. Others involve appropriate use of people who are not lawyers but have expertise in particular types of problems or procedures – for example, filing documents for an uncontested divorce; developing a plan for a child with disabilities entitled to educational benefits; presenting evidence to contest an invalid municipal ticket or summons; or developing a simple estate plan – rather than requiring a highly trained and expensive J.D. to do the work. Again, this makes most sense within the framework of the organizational practice of law, with

large organizations optimizing the deployment of different types and levels of expertise, to deliver cost-effective and high-quality legal assistance.

The key to all of this is opening up markets for innovation of new ways to deliver what people and businesses need: timely, reliable, and useful help navigating a

complex legal world. Without those markets, law cannot attract the innovation, investment, and creativity it needs, and it cannot get out of the tightly sealed box in which lawyers, through bar associations, have secured the practice of law. Solving this problem requires talking seriously, and sensibly, about markets in law.

## ENDNOTES

- <sup>1</sup> For further discussion on the relationship between complexity and the price of access, see Gillian K. Hadfield, “The Price of Law: How the Market for Lawyers Distorts the Justice System,” *Michigan Law Review* 98 (4) (2000): 953–1006.
- <sup>2</sup> I present some of these measures in Gillian K. Hadfield, *Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy* (Oxford: Oxford University Press, 2017), chap. 7.
- <sup>3</sup> Jens Grossklags and Nathan Good, “Empirical Studies on Software Notices to Inform Policy Makers and Usability Designers,” in *Financial Cryptography and Data Security*, ed. S. Dietrich and R. Dhamija (Berlin: Springer, 2007), 341–355; and Yannis Bakos, Florencia Marotta-Wurgler, and David R. Trossen, “Does Anyone Read the Fine Print? Consumer Attention to Standard Form Contracts,” *Journal of Legal Studies* 43 (1): 1–35, 22. Grossklags and Good analyzed the fifty most popular software downloads in 2006 and found that the longest license agreement was associated with Adobe Reader, at 9,313 words.
- <sup>4</sup> John Aloysius Cogan Jr., “Readability, Contracts of Recurring Use, and the Problem of Ex Post Judicial Governance of Health Insurance Policies,” *Roger Williams University Law Review* 15 (2010): 93–126.
- <sup>5</sup> Aleecia McDonald and Lorrie Faith Cranor, “The Cost of Reading Privacy Policies,” *I/S: A Journal of Law and Policy for the Information Society* 4 (3) (2008): 543–568.
- <sup>6</sup> Jeff Sovern, Elayne E. Greenberg, Paul F. Kirgis, and Yuxiang Liu, “‘Whimsy Little Contracts’ with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements,” *Maryland Law Review* 75 (1) (2015): 1–134.
- <sup>7</sup> “The initial information provided to people who are cited for violating Ferguson’s municipal code is often incomplete and inconsistent. Communication with municipal court defendants is haphazard and known by the court to be unreliable. And the court’s procedures and operations are ambiguous, are not written down, and are not transparent or even available to the public on the court’s website or elsewhere.” United States Department of Justice, Civil Rights Division, *Investigation of the Ferguson Police Department* (Washington, D.C.: United States Department of Justice, 2015), 45, [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).
- <sup>8</sup> I call this the “entropy to legal complexity.” Hadfield, “The Price of Law.”
- <sup>9</sup> Lawyers all complete similar legal education and the vast majority completed an undergraduate degree in arts, humanities, or qualitative social sciences such as history, sociology, and political science; only 15 percent completed an undergraduate degree in economics or business, 6 percent in science or engineering. Law School Admissions Council, “Applicants by Major: 2017–2018,” <https://www.lsac.org/data-research/data/applicants-major>.
- <sup>10</sup> See Amy Schmitz and Colin Rule, *The New Handshake: Online Dispute Resolution and the Future of Consumer Protection* (Chicago: American Bar Association, 2018).

- <sup>11</sup> There were about three hundred thousand law firms in the United States in 2012. Roughly half were solo practices and another 20 percent employed between two and ten lawyers (estimates based on ABA data for 2005, the latest year for which data were provided as of 2018).
- <sup>12</sup> According to the 2017 CLIO study, lawyers in these small firms spent half of their unbilled time on administrative tasks and one-third on business development; the remainder was spent on licensing and continuing education.
- <sup>13</sup> I am on LegalZoom's Legal Advisory Council.
- <sup>14</sup> For a more detailed treatment of the efficiency benefits of scale, see Gillian K. Hadfield, "The Cost of Law: Promoting Access to Justice through the (Un)corporate Practice of Law," *International Review of Law and Economics* 38 (2014): 43–63.
- <sup>15</sup> See Gillian K. Hadfield and Deborah L. Rhode, "How to Regulate Legal Services," *Hastings Law Journal* 67 (1) (2016): 1191–1224.