



The Importance of a Legal Ecosystem

Tom Clarke Principal Research Associate, National Center for State Courts

Not all legal problems require the services of a lawyer or all the processes of a court. The concept of a “legal ecosystem” might be an effective way of increasing access to justice, especially for self-represented litigants.

An ecosystem is a concept that comes from ecology. It has several defining characteristics:

- *It consists of a system that is more than the sum of its parts (systemic).*
- *Changes in any part of the system affect all other parts of the system (integration).*
- *There is a hierarchy to the system (hierarchical).*

The ecosystem concept has recently been applied to several aspects of the legal system as a useful analogy. For example, the Justice for All (JFA) project seeks, according to its guidance materials, to help states achieve 100 percent access to justice.¹ Funded by a variety of foundations, the JFA project encourages states to assess their legal services across a very broad array of potential capabilities, understand where gaps in those services exist, and support stronger integration of those services from the customer viewpoint.

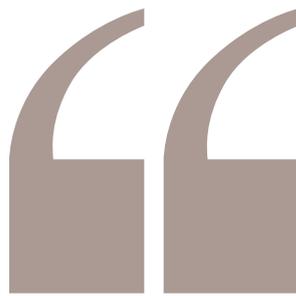
¹ Justice for All grants have been received to date from the Public Welfare Foundation, the Kresge Foundation, the Open Society Foundation, and the JPB Foundation. Thirteen states have been funded to create action plans for achieving 100 percent access and implementing the first several projects of those action plans. The National Center for State Courts and the Self-Represented Litigation Network maintain a JFA website (<https://tinyurl.com/yyodcbqz>) with resources and provide technical assistance to both grantee and non-grantee states on their access-to-justice efforts.

Because those with legal problems are often discouraged or defeated by the lack of system integration of legal services, the JFA premise is that an ecosystem approach is needed to solve the access problem. Early pilots of the JFA approach in several states have uncovered a surprising number of service gaps and helped states identify ways to better integrate those services.²

A second application of the ecosystem concept applies to delivering legal services. This idea derives from the example of the health-care system, where new roles have proliferated over the last several decades in recognition that not all medical problems require the expertise and expense of a doctor. Washington State and Utah have piloted new legal roles that sit between a lawyer and a paralegal. Some states allow for very limited legal roles around tasks such as closing real-estate transactions. One can easily imagine a set of legal roles like those in health care that are systematically matched to the task at hand and reduce costs to the customer.

So far unremarked is the idea that legal services themselves could benefit from an ecosystem approach. The traditional idea has always been that the courts have a monopoly on resolving legal disputes. That belief has been gradually eroding over several decades as independent arbitration and mediation capabilities sprang up in almost every state. More recently, a wide array of nonprofit and for-profit organizations now offer a broad selection of legal services, ranging from answers to single legal questions on one end to the negotiation and creation of court-judgment-ready agreements on the other end.

There is no doubt that the availability of many such legal services online has affected what business comes to lawyers and courts in an unprecedented way.



Courts have already seen their national caseload decrease by roughly 20 percent over the last decade as citizens and corporations voted with their feet for alternative dispute resolution processes that are less expensive, less complex, and faster.



Offering legal services online offers advantages of scale and cost-effectiveness not possible just a few years ago. Analysis of customer queries online also enables providers of online legal services to understand and cater to those who have legal problems in a fine-grained way that could not be imagined in the past. Indeed, like many current for-profit companies, one significant advantage the upstarts have obtained is very detailed knowledge of their potential customer base. These data enable them to segment their customers carefully and offer appropriately tailored services in a way that most courts do not.

The impact of alternative dispute resolution on courts has already been huge. Complacently assuming a strong continuing hold on its traditional monopoly, courts routinely assert their totally passive role toward legal disputes. They claim to have no control over what comes in the courthouse door. However, courts must routinely respond to legislative proposals that significantly affect what cases come to them.³ The court rules they establish and the business processes they use strongly affect demand for their services.

This is even more true now that there are so many alternatives for resolving legal disputes. Courts have already seen their national caseload decrease by roughly 20 percent over the last decade as citizens and corporations voted with their feet for alternative dispute resolution processes that are less expensive, less complex, and faster. This is obviously just the beginning.

While lawyers have not generally resisted the use of mediation and arbitration, most state bar associations have battled vigorously against most of the new competing legal organizations. If restrictions on who can provide legal services and how they can provide them were loosened, the erosion would probably accelerate.

² The first round of JFA states included Hawaii, Alaska, Georgia, New York, Minnesota, Colorado, and Massachusetts.

³ One such example is a proposal made several years ago in Washington State to establish a new water court. Numerous states have modified the maximum and minimum amounts in controversy for their general- and limited-jurisdiction civil-court cases. Many states have also decriminalized large numbers of traffic cases.



The paradox is that while the courts are losing business, the proportion of people with unmet legal needs remains stubbornly around 80 percent—a huge gap between supply and demand. One explanation for this vast imbalance is that the traditional monopoly of the courts and the bar prevents a true market from developing that could meet the legal needs of everyone. When one size fits all and that size is the slowest, most expensive, and most complex version of a solution, then many people will be unable to use that solution.

This is where the concept of a legal ecosystem comes in. The research on unmet legal needs is spotty and incomplete, but it suggests that those needs range from simple answers to single questions to complex trials with full due process. If a proper legal ecosystem existed, appropriate legal services could be matched to each type and level of legal problem. Legal services would use a broad array of processes exhibiting a mix of costs, speeds, degrees of due process, convenience (such as availability at any time and place online), and other key characteristics that matter to consumers.

If such a legal ecosystem were allowed to develop, one can imagine the traditional courts taking their proper place at the apex of the system. Courts are slow, complex, and expensive for a good reason. They enforce a maximum amount of due process to ensure fairness in legal disputes that matter the most. Examples include potential loss of life and freedom, potentially large economic losses, and situations with vast power or information asymmetries (as when individuals have disputes with governments or large corporations). Those kinds of cases should and probably will always remain in the courts.

Everything else is fair game for a legal ecosystem. Courts are unlikely to compete successfully with the rest of that ecosystem for the remaining kinds of legal disputes. Courts are constrained by state and federal statutes, several hundred years of common law, and severe funding limits on investment.



...the proportion of people with unmet legal needs remains stubbornly around 80 percent... if a proper legal ecosystem existed, appropriate legal services could be matched to each type and level of legal problem.



They are also extremely risk averse, as all political organizations are, because any failure is likely to invite quick and severe punishment. In an environment like that, no court is likely to outcompete other providers of legal services based on cost, speed, or technological innovation in general.

A true legal ecosystem would be a fundamentally new system, with which the public would be totally unfamiliar. Marketing, consumer education, and training would be required for those with legal problems to understand what legal services might be appropriate for them and to find the right type of providers.

Here the example of health care might be at least partly instructive. Consumers by and large do not have to understand or select appropriate medical roles. The health-care system does that for them. Instead, those with health problems select a desired health-care organization or provider, who in turn decides what medical role needs to address each health issue.

The provision of medical services is also undergoing rapid evolution. Hospitals do both more and less than they used to. Small local clinics now offer a surprising array of convenient and less expensive services. Drug-store chains and other similar large commercial companies now offer immediate health-care services by professionals in their many locations.

Remote, virtual health-care services (video consulting, non-video diagnosis, drug requests) are rapidly proliferating online with no end in sight.

How do consumers make sense of these different possibilities? First, each type of health-care organization advertises its services to varying extents in ways that the public can understand. The descriptions are free of technical medical jargon and focus on problem descriptions as nonprofessionals would describe them. An increasing proportion of them also clearly communicate what the costs of those services are, and many of those costs are fixed up front. Traditional hospitals remain the one bastion of opaqueness when it comes to costs, but even that is beginning to change.

Providers of legal services need to emulate this approach. Describe legal services in terms of legal problems as their customers would understand them. Use nontechnical language. Be transparent about costs. Fix the cost of most services. Imagine how different the legal ecosystem would be if those changes were made. It is hard to believe that 80 percent of legal needs would continue for long to be unmet in that ecosystem.

In this evolving legal ecosystem, courts are no longer a monopoly provider, but merely yet another provider of legal services among many. They remain privileged in several important ways, but the courts cannot presume upon those advantages to maintain their current proportion of the legal-services market. They must also adapt and specialize in services for which they have a natural and enduring edge.

Organizations are justly infamous for defending their own interests. This is just as true for government or nonprofit entities. That means that the public cannot rely on the courts or the bar to do the right things in support of a legal ecosystem. It is likely that state legislatures will need to apply some motivating pressure. Technically, almost all state supreme courts have the legal authority to at least partially deconstruct the monopolies on legal services that still formally exist, even if they are under attack from all sides.

Recent experience suggests that those courts will only act when state legislatures threaten to step in.⁴ Otherwise, courts are too beholden to state bars that will battle to the death against such changes. However, the courts' interests are rapidly diverging from the interests of the bar as they confront the growing army of self-represented litigants and quickly decreasing caseloads.



...if the courts are serious about access to justice and maintaining a healthy rule of law, then they need to find ways to support the evolving legal ecosystem... as long as the bar maintains its hold on regulation, other roles and service providers will be blocked.



Lawyers face their own issues. In a healthy legal ecosystem, many legal problems would be resolved using the services of nonlawyers (indeed, sometimes of non-humans or software). Like the courts, full-service lawyers will always be needed for complex and high-stakes legal problems, but that is probably it. Thus, the bar must face the reality that its current cohort is mismatched with the demand. Trying to protect its eroding monopoly will be a failed long-term strategy. Better to learn from doctors and understand an appropriate and cost-effective role within a legal ecosystem.

The legal ecosystem is coming. Nothing will stop it. The question is not if, but when. The most important question is how. If the courts are serious about access to justice and maintaining a healthy rule of law, then they need to find ways to support the evolving legal ecosystem, including those delivered by for-profit organizations, and ensure that the quality of those services across the board will be adequate for all consumers. That will require one additional innovation: more cost-effective regulation of legal services.

The way lawyers are currently regulated is incredibly expensive and mostly ineffective. A legal ecosystem can never operate well if that is the only way that quality control can be ensured. As long as the bar maintains its hold on regulation, other roles and service providers will be blocked. This is a problem that legislatures can and will step up to soon if state supreme courts are unwilling to act. That assertiveness is likely to be needed, since supreme court justices only know the regulatory structures now in place for lawyers. Significant

innovation will need to come from elsewhere, even from other countries. We know it is possible. Let's get started.

⁴ It is difficult to cite many examples yet, since some of these dialogues occur behind the scenes. A recent U.S. Supreme Court decision on the state regulation of dental services in North Carolina was an event that sparked conversations in a number of states. Utah and Arizona are states where those conversations resulted in projects to address changes in how legal services are regulated.