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Last month, thousands of recent law school graduates sat for a bar examination in their chosen state of practice. They were not undertaking a harmless rite of passage but overcoming a malicious obstacle: an artificial barrier to entry in the form of occupational licensure.

Barriers to entry are restrictions on access to, or participation in, markets or vocations. Occupational licensure is a type of barrier to entry that regulates professions by requiring certification and licensing in the manner of medieval guilds. Medicine and law are perhaps the most recognizable professions to require their practitioners to obtain and maintain licenses.

The purpose of occupational licensure is to reduce competition by using government power to restrict membership eligibility in a profession. The criteria for membership are often prohibitively expensive for low-income earners. To be admitted to the law in nearly every state in the United States, you must not only pass a bar examination but also earn a law degree from an accredited law school, admission to which requires a bachelor's degree from an accredited university.

The average student-loan debt for graduates of American colleges is around $29,400. The average student-loan debt for graduates of American law schools is between $75,700 and $125,000, depending on whether the school is public or private. The American Bar Association imposes heavy burdens on law schools such as accreditation standards that are inefficient and that drive up costs so that over time the high price of legal education is passed on to the public in the form of attorneys' fees and costs. Having already saddled themselves with student-loan debts, recent law-school graduates pay thousands of dollars for bar-preparation courses to study for an examination that, if passed, will open the door to a job market that is the worst in recent memory. Nobody struggling financially should attempt to leap over each of these expensive hurdles.

Before the rise of bar examinations and professional licensure during the Progressive Era in the United States, aspiring attorneys simply "read law" as apprentices for practicing attorneys or as clerks for local law firms. Once they achieved a certain level of competence, apprentices were released from their tutelage and eligible to accept clients. Those jurisdictions that did require examinations allowed judges to conduct informal interviews with candidates to determine the candidates' moral and intellectual fitness for practice. Such examinations were typically mere formalities: few candidates failed; few careers were at stake as the interview took place. Newly admitted attorneys had to demonstrate their excellence in order to gain clients. They launched their careers by charging low fees that even the poorest in society could pay. Attorneys who did not prove fit for practice never gained enough clients to sustain their business and were forced to embark on other professions.

In the late-nineteenth and early-twentieth century, energetic and entrepreneurial members of the middle to lower classes in cities such as New York and Chicago began to threaten the legal establishment that had previously been comprised of a mostly wealthy and elite fraternity. This fraternity simply could not compete with low-cost providers of legal services because, for example, the most elite attorneys considered it unseemly and degrading to advertise for services or to offer contingency fees. Bar associations that were once voluntary organizations of upper class professionals therefore began to use their political clout and government connections to obtain powers conferred by legislatures. They wanted to keep the lower classes out of their profession and to preserve a highbrow reputation for lawyers. They began to exercise a monopolistic control over the practice of law within their respective jurisdictions. Today they constitute authorized arms of the State.

In most jurisdictions' bar associations determine who may be admitted as members and who must be excluded, whether and to what extent lawyers may advertise their services, what constitutes the "authorized" practice of law, whether a law firm must have a physical office with a non-residential mailing address, and under what conditions contingency fees are permissible. These anti-competitive practices hit communities most in need the hardest by increasing the costs of legal services beyond the ordinary person's ability to pay.

The bar examination is the most hyped precondition for membership in a state bar association. Like hazing, it is more ritual than training; it does not help one learn to be an attorney or indicate any requisite skills for practice. It tests how well someone can memorize arcane and esoteric rules and their trivial exceptions, many of which have no bearing on actual practice. Few if any lawyers spend their days memorizing rules for courts or clients, and no one who intends to practice, say, corporate law in a big city needs to memorize obscure criminal law rules that were long ago superseded by statute.

Despite reciprocity among some states, the bar examination restricts the free flow of qualified attorneys across state lines, forcing even the best attorneys to limit their services to certain jurisdictions. The bar examination also creates racial disparities among practicing attorneys as minority passage rates tend to be lower, a fact that flies in the face of nearly every bar association's purported commitment to diversity.

Keeping the number of lawyers low ensures that lawyers may charge higher fees. Keeping the barriers to entry high ensures that the number of lawyers remains low. It's a popular fallacy to complain that there are too many lawyers. We don't need fewer lawyers; we need more, so long as we gain them through competitive forces on a free market.

We need to unleash capitalism in the legal system for the benefit of everyone. We could start by eliminating the bar examination. Doing so would have no marked effect on the quality of lawyers. It would drive down the high costs of legal services by injecting the legal system with some much-needed competition. It would make practitioners out of the able and intelligent people who wanted to attend law school but were simply too prudent to waste three years of their lives and to take on tens-of-thousands of dollars of student-loan debt while entry-level legal jobs were scarce and entry-level legal salaries were low. Justifications for the bar examination are invariably predicated on paternalistic assumptions about the ability of ordinary people to choose qualified attorneys; such arguments ignore the number of ordinary people who, today, cannot afford qualified attorneys at all under the current anticompetitive system.

Abolishing the bar examination would benefit the very community it is supposed to protect: the lay public.

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