The Dentist and the Immigration Lawyer: In Praise of "Commodity" Work

Posted: 04/16/2013 1:20 am

Last week, I went to the dentist. I enjoy having my teeth cleaned. I have an hour of calm in the most comfortable chair, and I'm the focus of attention for everyone who enters the room. I used the occasion to mull over different models for the delivery of legal services.

Perhaps dental care offers a useful comparison.

My dentist has an excellent job. She enjoys it -- I happen to know her father before her was a dentist to the stars. She controls her own hours, has friendly clientele, makes a good living, enjoys more than a modicum of prestige, and oversees a pleasant office environment.

I spent almost all of my time with the dental hygienist rather than the dentist. The dentist herself said hello at the beginning of the appointment, examined x-rays in the middle, and chatted a bit about the condition of my teeth at the end of my appointment. She had several appointments proceeding simultaneously.

There was a time when the dentist had more significant contact with the typical patient, but there also was a time when drills were manual and anesthesia unavailable.

Similar observations have been made about the medical profession. Doctors once drew blood; then nurses; now technicians.

Lawyers in some specialties have adopted a similar set-up. The firms dedicated to business immigration, for example, have a lawyer working with multiple paralegals. As some dental offices have a few dentists together, some immigration firms have a few lawyers together. (Law and dentistry are not the same in the numbers of practitioners though; there are many more lawyers than dentists.)

The more important point of the analogy to the dentist's office is that it engages in commodity work. I mean that it performs routine service such as check-ups and fillings for cavities; more profitable procedures involving orthodontics or cosmetics; as well as, less often, emergencies and root canals.

Patients have approximately the same number of teeth and they present more or less the same issues. During a day or even over a career, the variation among patients is not especially great. Dentists rarely face immediately life-threatening situations. Some dentists are better than other dentists, but so long as one's dentist is competent there isn't enormous variation among them either.

There is nothing wrong with that. The dentist's office fulfills a vital function. At my last dentist's office in a different city, I read the little sheet he had tacked up explaining why dental care was so important. Each time I was there, I learned again that good oral hygiene lowers the risk of a heart attack due to the various bacteria swirling around one's mouth that could affect the rest of the body.

My dentist provides service at the individual level. She may contribute to modest social change: she encourages all of her patients to take up flossing, and, thanks to her, I have developed that good habit. There is progress in dental care over time: mercury-free amalgams, ultrasonic cleaning, and digital imaging. But dental care has been performed personally and locally, and it likely will continue to be for some time to come.

All of these facts about the dental profession prompted me to realize that the current arguments about the legal profession are based on an assumption: that it represents some sort of profound failure to do commodity work. Critics have belittled commodity work. The label signals what is déclassé.

The implication is that lawyers should avoid commodity work; law firms that do it are inferior; and law schools that train people to engage in it should close. All that counts are "bet-the-company" cases and deals. The lawyers deserving respect do that and only that; they wouldn't ever touch commodity work; and they'll rid themselves of colleagues who do.

Everyone else should admire them. We should strive to emulate them -- even though we cannot attain their status, because by definition there is only so much premium work to go around.

Ergo beyond the elite firms all else is worthless . . .

This is crazy.
Almost all lawyers work for themselves, small firms, midsize firms, companies, or public entities -- not so-called "BigLaw." Almost all lawyers, like almost all dentists, do commodity work. That's what most work is for most people most of the time. To disparage commodity work is to disparage work itself.

By the way, even at the firm that prides itself on taking only the most significant matters, most of the people at that firm are still doing commodity tasks. The client may be glamorous, the dispute or deal might appear on the news or as gossip, and the bills no doubt are sizable. But the average grunt is still assigned to grunt.

We might bemoan the changes in health care for various reasons. The development of tiers of service providers should not be among them. For the normal patient, efficiency increases and cost decreases.

It is possible, I suppose, that some people who would have become dentists in that alternate universe where there is no recognition of a different tier within the field are consigned unhappily to becoming dental hygienists in our world. More likely, however, there are growing opportunities: the people who want to be dentists, but don't because of the presence of dental hygienists, choose a different livelihood altogether. The people who in fact wish to be dental hygienists have an option that opens up, better than what they otherwise would have pursued.

Likewise law. Notwithstanding the not-so-good projections for the employment of lawyers, there are good prospects for the employment of legal professionals. That seems contradictory, until you realize that much work that is "legal" is not being done by lawyers.

As dentists no longer are the only professionals providing dental care, lawyers are no longer the only professionals offering legal service. They increasingly work with, even compete against, accountants, consultants, paralegals, technicians, and do-it-yourself alternatives. If they wish to have certain functions reserved exclusively for them, they will need to show society there is a compelling reason for granting that monopoly. The lawyer is better at some tasks, but that doesn't mean they are better at all tasks for every client at any price.

More than fifty years ago, Thomas Kuhn introduced the concept of "paradigm shift." As happens with the popular version of a scientific concept, much was lost in translation. Everyone focuses on Kuhn's notion that revolutionary ideas come along now and then -- the earth revolves around the sun, not vice versa -- and forgets his other claim. Kuhn also pointed out that the community within an academic discipline is occupied with "normal science" except in those moments when a great thinker introduces a novel worldview.

A few people turn out to be the genius who initiates "paradigm shift." For the rest of us, and, as Kuhn observed, even for the genius after that defining moment, life is productive enough between such cataclysmic changes.

We return to the day to day work that must be done.