

# DEBATE: IS THE PRACTICE OF LAW A MONOPOLY?

## WORLD DOMINATION

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**The classic concept of a monopoly identifies only one supplier of a good or service, thereby allowing that supplier to charge whatever they wish—without fear of competition.**

There are critics of the legal profession who claim that lawyers hold a monopoly on the practice of law and that, therefore, the profession needs to be more strictly regulated the same as any other supplier of goods or services. We will examine where the debate currently stands and what the future portends for addressing our critics.

**“INTENSIFYING MARKET COMPETITION IS MAKING SIZEABLE LAW FIRMS WITH HUNDREDS OF LAWYERS RECEPTIVE TO MERGER OFFERS THAT THEY WOULD NEVER HAVE CONSIDERED A FEW YEARS AGO.”**

—THOMAS CLAY, PRINCIPAL,  
ALTMAN WEIL, INC.

## The Competition Conundrum

Walk into any major office tower in an American city or merely stroll through a busy commercial district, even within a residential area, and you will find numerous spaces occupied by law firms. That fact in itself should refute the notion that lawyers are monopolists who eschew competition. Furthermore, with more lawyers per capita than in any other country (the last ABA survey disclosed over 1.3 million licensed attorneys), the practice of law can hardly be said to reside in the hands of a single service provider or among just a few.

If monopolies are further defined

by fixing the price in the marketplace, here, too, the falsehood of a monopoly is disproved by the very fact that no conspiring group of lawyers sets legal fees, and if anything, the vast number of lawyers generates fierce competition.

Yet, the assertion that the legal profession amounts to a monopoly persists.

## Creeping Encroachment

At first glance, the very notion that ‘lawyers have a monopoly on the practice of law’ comes across as quite absurd. Would a neurological patient want anyone other than a brain surgeon performing their brain surgery? Or anyone other than a qualified mechanic tuning their car? However, in recent years, alternatives to having lawyers practice law have taken hold with much force as various legal technicians, paralegals, and other non-lawyers encroach on the field. And their professional fees? Much lower than those of licensed lawyers. At the same time, law office employment has shrunk since 1998 while the outside, non-lawyer legal services industry has grown—and that trend is continuing.

## Pros and Cons of Regulatory Reform

Proponents of lawyer reform argue that as presently structured, the purported lawyer monopoly fails to address the needs of not only low-income clients but also small-business owners for whom

## Executive Summary

### › The Issue

Is the legal practice industry itself a monopoly?

### › The Gravamen

The answer depends on one’s viewpoint: on the one hand, non-lawyer encroachment is a fact, while mega-firm growth limiting competition continues unabated.

### › The Path Forward

A balance will have to be struck whereby a range of reasonable practice tasks can be assigned to non-lawyers, and one-stop shop interests are preserved for the benefit of clients and Big Law.

prevailing hourly-rate legal fees are out of reach. To break this 'monopoly', advocates of reform advance the notion that more non-lawyers can be engaged to perform such tasks as drafting pleadings, providing both substantive and procedural information to clients facing a lawsuit, providing critical counsel to such clients, and even advocating for litigants in a court of law. All of which begs the question: are they encouraging the unlicensed practice of law? And, how will we now define **'the practice of law'** going forward?

Proponents of maintaining the time-honored status quo contend that only lawyer control over the practice of law can assure quality legal representation via analyses that take years of training and law firm experience to hone. Non-lawyers, they point out, are bound by no state ethics protocols, nor are their bar oversight and disciplinary structures governed by state supreme courts and bar associations to protect the non-lawyers' clients. Under one regulatory initiative tested in Washington State in 2012 to promote non-lawyer advocates in various practice fields, the result was not as expected, and the Washington Supreme Court closed down the program after seven years.

## An Unexpected Competitor

But competition for lawyers is not just coming from non-lawyers but also from non-humans. The decline of Big Law has been predicted by those who note the huge disruption in the practice of law by 'disruptive technology'. What is emerging—and has already

emerged—is an entirely new business model under which structures that have been in place for 100 years are no longer relevant. Rather than 21st Century technology being exploited as a wonder tool for lawyers, some observers see lawyers coming into a serfdom relationship with technology whereby AI is being employed in countless ways where lawyers used to practice law. Whether this new form of 'competition' has its limits remains to be seen.

## Global Context of Practice Monopoly

2021 saw nine major Big Law cross-border mergers, with several other smaller, boutique mergers also taking place. While growth and position leveraging remained the main motivator last year, in 2022, a different consideration is driving cross-border mergers: global recession. Big Law firms used to gobble up smaller firms—trampling low-hanging competition in the process—but now, the trend is shifting and big firms are gobbling up... other big firms and in the process, creating global mega-firms of 1,000+ lawyers. These firms dominate legal markets from Asia to Europe and the Middle East.

What does that mean for competition? You don't have to be a Monopoly® board game player to arrive at the answer. First, you beat them; then, you eat them. And in the process, dictate how high legal-spend can go when there is no competition in sight. Smaller firms are agreeing to mergers because they can no longer compete in the current recession—while larger firms are seeking acquisitions so that they

## Action

### 1 Understanding Monopolies:

Every lawyer should become familiar with the anti-trust and anti-competition provisions of the Sherman Act and how they might apply to the practice of law.

### 2 Non-lawyer Tasks:

Consider in what areas your practice can make use of non-lawyers, and how non-lawyer assignments can actually benefit your firm.

### 3 State Regulation:

Non-lawyer competition is expanding, and it is therefore prudent to know how various jurisdictions are crafting statutes and regulations to deal with this change in the business model.

### 4 Cross-border Cautions:

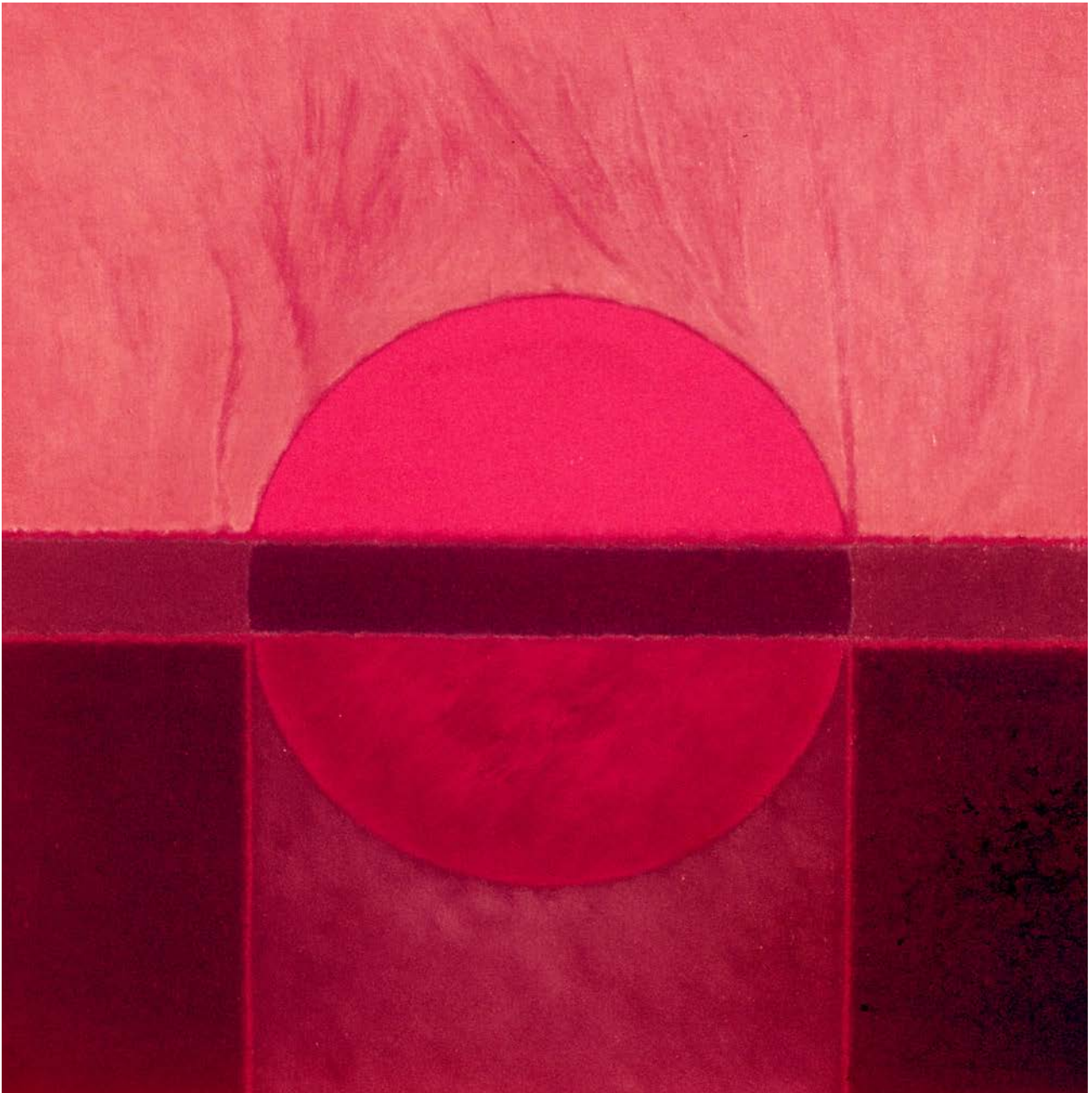
What might not constitute monopolistic practices in the U.S. could nevertheless expose your firm as it expands overseas; know the regulations of the market you are expanding into before acquiring a foreign firm.

can continue to dominate as one-stop shops with even less competition while better serving their clients.

Fewer law firms equal less choice in the marketplace—a primary element of the classic

definition of a monopoly.

So, which is it? Has the practice of law become a monopoly? Closing arguments are still being presented in the court of public opinion.



## Further Reading

1. <https://www.theregreview.org/2022/02/09/kirby-piercing-lawyer-monopoly/>
2. <https://abovethelaw.com/2022/10/law-firm-merger-activity-expected-to-increase-thanks-to-recession-fears/>
3. <https://abovethelaw.com/2019/09/the-so-called-lawyer-monopoly/>
4. <https://scholarship.law.unc.edu/ncjolt/vol20/iss3/4/>
5. <https://ir.lawnet.fordham.edu/flr/vol82/iss6/12/>
6. <https://ir.lawnet.fordham.edu/flr/vol82/iss6/17/>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions.

Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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