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More than two-thirds of the unauthorized immigrant population—roughly 8 million out of 11.2 million—is in our nation's workforce, and growing evidence suggests that unauthorized workers are more likely than their authorized counterparts to experience workplace-related violations. Although scholars have begun shifting their focus to the agencies empowered to regulate immigrants in the workplace, important questions remain unanswered. Why, for example, has the Department of Labor, our nation's top labor enforcement agency, struggled to protect unauthorized workers against this exploitation despite the scope and seriousness of the problem? And why has Immigration and Customs Enforcement, our nation's top immigration enforcement agency, resisted taking into account the labor consequences of their actions? Our ignorance is becoming increasingly indefensible given that agencies often have the final word within an immigration universe characterized by legislative stasis. A closer look reveals a peculiar dynamic: ICE has relatively little interest in regulating the relationship between employers and unauthorized workers, while the DOL has a relatively high interest but lacks the autonomy to effectively do so—a dynamic that tends to foster interagency conflict, ultimately enabling the problem of labor exploitation to persist. What is the way out? Borrowing the insights of administrative law scholars, this Article argues that increasing the ability of the DOL to monitor immigration enforcement decisions can help minimize the externalities that ICE actions ordinarily force the DOL to absorb. This monitoring framework constrains the ex ante stage of decisionmaking, complements existing immigration scholarship (which has tended to focus on ex post remedies like expanding the ability of the DOL to issue temporary visas), and pushes back on ICE's law enforcement culture (which has traditionally resisted the incorporation of labor norms). Moreover, the monitoring framework is able to track evolving problems of coordination and to identify emerging vulnerabilities as the Executive's immigration enforcement authority continues to grow and outpace the development of adequate constraints on the exercise of that authority.

RESPONSE ESSAYS

ARTICLES

Lawyers traditionally have conveyed legal expertise in the form of advice tailored to individual clients' needs. This business model is reinforced by licensing and professional responsibility rules designed to ensure lawyers' competence and loyalty to clients' interests. An alternative model based on the sale of legal information in impersonal product and capital markets is challenging the traditional professional model. In this new world, legal information engineers would to some extent replace legal practitioners. This Article provides a theoretical intellectual property framework for the regulatory decisions that must be made as the two models collide. We show that traditional professional regulation inhibits full development of the new business model by prohibiting some of its practices and limiting intellectual property protection for legal information. We challenge this approach by showing how a fully developed legal information market could substitute for some of the protection that licensing and professional responsibility rules provide consumers without the current model's negative effects of restricting the supply and raising the costs of legal services. We apply our analysis to some actual and potential markets in legal information.

Over the last three decades, corporate white-collar criminal defense and investigations practices have become established within the nation's largest law firms. It was not always this way. White-collar work was not considered a legal specialty. And, historically, lawyers in the leading civil firms avoided criminal matters. But several developments occurred at once: firms grew dramatically, the norms within the firms changed, and new federal crimes and prosecution policies created enormous business opportunities for the large firms. Using a unique data set, this Article profiles the Big Law partners now in the white-collar practice area, most of whom are male former federal prosecutors. With additional data and a case study, the Article explores the movement of partners from government and from other firms, the profitability of corporate white-collar work, and the prosecution policies that facilitate and are in turn affected by the growth of this lucrative practice within Big Law. These developments have important implications for the prosecution function, the wider criminal defense bar, the law firms, and women in public and private white-collar practices.

NOTES

In December 2010, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples. The U.N. Declaration articulates a framework of indigenous rights founded in the right to self-determination. Specific corollary rights flow from the right to self-determination. Among these is indigenous peoples' right to "free and informed consent prior to the approval of any project affecting their lands or territories or other resources." Currently, the United States embraces a policy of "meaningful consultation" when federal agencies undertake projects affecting indigenous peoples and their traditional lands. Such consultation is particularly significant in the context of traditional lands that have been classified as "public lands." The consultative processes mandated by federal statutes, however, fall short of adequately protecting indigenous interests within the context of large-scale extractive industries. These inadequacies are exemplified by the 30-year struggle waged by the Western Shoshone people, who currently contest a massive, open-pit cyanide heap-leach gold mine on one of their sacred mountains that is located on "public" land in Nevada. This Note proposes that the U.N. Declaration's free, prior, and informed consent standard should be interpreted as a spectrum along which different contexts require different levels of indigenous participation. Ultimately, the United States should endorse a shift in policy toward requiring indigenous consent in the limited context of large-scale extractive industries operating on indigenous peoples' traditional lands.

Most individuals entering bankruptcy must choose to file under either chapter 7 (liquidation) or chapter 13 (reorganization)—with some wealthier filers only having the option of filing chapter 11. Individuals make their chapter choice based on the relative costs and benefits of each option. This Note explores one of the issues that may encourage debtors to opt for chapter 13 bankruptcy: lien-stripping of wholly valueless junior home mortgages. Based on the reasoning of two U.S. Supreme Court cases, Nobelman v. American Savings Bank and Dewsnup v. Timm, courts have generally allowed this type of lien-stripping in chapter 13 but not in chapter 7. This Note examines the application of these Supreme Court cases to the issues of whether strip off of valueless junior mortgages should be allowed in both chapter 7 and chapter 13. I argue that courts should harmonize these cases to allow strip off in both chapters because such an approach is more faithful to the language of the Bankruptcy Code and would implement better public policy.

ARIZONA CASE NOTE