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Book Review: “The Licensing Racket” – Part 1

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Rebecca Haw Allensworth of Vanderbilt Law School has published a thought-provoking book on professional regulation (licensing) in the United States: *The Licensing Racket: How We Decide Who is Allowed to Work & Why it Goes Wrong* (Cambridge: Harvard University Press, 2025). While the approach in the US is different in several respects from that in Canada, there are lessons in her book for regulators in this country.

Allensworth argues that the licensing system in the US is broken and needs fixing. Relying on a systematic review of licensing bodies in the US, and illustrating her findings through real world examples, she presents two major themes in the book. First, licensing creates barriers, often unnecessary, to entering the profession and these barriers result in a monopoly. Second, licensing creates systemic challenges for regulatory boards to adequately protect the public.

Barriers to Entry

Allensworth begins by describing the broad scope of licensing in the US, estimating that about 20 percent of workers cannot practice

their occupation without a licence. She also provides an analysis of the theory of professional regulation (e.g., to address information asymmetry) and its economic impact (e.g., licensing reduces the number of providers, resulting in scarcity of services, and creates a premium for the cost of services) resulting in marginalized communities having difficulty in accessing the services.

She describes licensing boards as private professional associations “dressed up in governmental clothing.” The majority of board members are from the profession, often recently retired from serving in the professional association. They are funded by licensing fees which are often kept too low to properly fund their activities. Being practising members of the profession means that they generally do not have regulatory expertise (that a state bureaucrat would usually possess). Government oversight of the regulator, while possible, is often perfunctory. She observed repeated instances when board members let down their guard and viewed licensees as their “constituents” or “stakeholders.”

In attending board meetings and reviewing board decisions, Allensworth observed a pattern of boards applying strict entry standards but not going nearly far enough in disciplining dangerous practitioners. “It may be hard to get into the club of the professionally licensed, but once you’re in, you’re in.”

Entry standards achieve three rewards for members of licensed occupations: reduced competition (but increased compensation); increased prestige (sometimes called credibility, legitimacy, or identity); and control and autonomy over their work. Once regulation is achieved, entry requirements (e.g., amount of education, hours of experience, and fees) only “ratchet” one way, which is up.

Barriers to entry take various forms:

One overlooked barrier raised by licensing is the bureaucratic thicket that must be traversed to get a license. An applicant has to learn all the rules and deadlines in her state, obtain official documents from testing companies, educational institutions, and sometimes courts, all in the proper notarized format and by the sometimes draconian deadlines.

Other barriers include inappropriately strict educational, language proficiency, and criminal record requirements.

These barriers have contradictory implications. They generally provide an advantage to privileged demographics (e.g., white males) but also provide an opportunity for less privileged demographics (e.g., racialized women) to achieve economic advances if they can obtain a licence.

The focus on barriers to entry (vs. protection of the public) was reinforced by statistical analysis. For the professions reviewed (health professions were excluded for this aspect of the analysis) complaints about

service quality or safety were much more likely to come from the public than from other licensees. In contrast, complaints about unlicensed practice were much more likely from licensees than from the public. Also, the likelihood of enforcement action against those practising without a licence was significantly higher than that against licensees for quality or safety concerns.

The discussion regarding turf wars (“dressed up in health and safety concerns”) will ring familiar to Canadian regulators. “Unsurprisingly, most turf wars are less about safety and more about exclusivity.” Allensworth describes the tactics used by various professions to expand turf (e.g., teach it in school) or resist encroachments upon turf (e.g., enforce title protection, issue cease and desist letters). Innovation is discouraged by turf battles.

Some of Allensworth’s extended illustrations are particularly informative. For example, in a chapter about the COVID pandemic, she describes how the turf war between physicians and nurses revealed barriers that led to real world consequences. The death rate in jurisdictions that had fewer restrictions on nurses, especially nurse practitioners, was materially lower than jurisdictions with more rigid rules.

As noted, Allensworth makes the important point that boards composed largely of part-time practitioners may be familiar with the profession but often have little regulatory expertise. However, for many Canadian regulators, this gap is at least partially filled by staff and organizations of regulators. Allensworth’s observation is that US boards often address this gap by relying on professional associations (e.g., to draft standards), taskforces dominated by professional groups, adopting private industry standards of practice, using testing organizations often affiliated with advocacy organizations, and deferring to professional educational institutions that benefit from high

educational and continuing education requirements.

Our sense is that Canadian regulators need to resist the complacency she describes as existing in US licensing boards. However, there are several differences between the US context, as outlined by Allensworth, and the Canadian experience which may, at least partially, address the concerns. For example:

- Canada appears to have fewer regulated professions and occupations per jurisdiction than many US states. Most Canadian jurisdictions have fewer than 50 such regulators, rather than hundreds.
- Most Canadian jurisdictions have made a concerted effort to separate professional regulators from associations. Membership in a professional association is generally voluntary, and they usually have fewer numbers than their regulatory counterparts.
- While licensure still exists for many professions in Canada, legislatures are increasingly using other regulatory mechanisms such as title protection, or a narrower list of restricted acts, which reduces the monopolistic effect of professional regulation.
- While there are exceptions, at least some third-party providers of

regulatory-related services such as examinations and registration candidate assessments, are either affiliated with the regulator or independent of professional associations and advocacy organizations.

- Many Canadian regulators are beginning to adopt some form of competency-based selection for their boards or councils, and some have higher proportions of public appointees to boards and discipline committees than those in the US as described by Allensworth.
- Many regulators have independent oversight bodies such as appeal boards and fairness commissioners. Some even have superintendents. At a minimum, there is a government department to whom they report and need approval for most major policy regulations or by-laws. In addition, there are judicial appeals and reviews available, which seem to be relied upon regularly (although the latter is likely also accessible in the US).

In part 2 of this article, we will look at the second theme of Allensworth's book, ineffective public protection. We will also review some reforms that she proposes.

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