

The End of Lawyers?

Rethinking the Nature of Legal Services

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TODAY'S LEGAL PARADIGM	TOMORROW'S LEGAL PARADIGM
Legal Service	Legal Service
advisory service	information service
one-to-one	one-to-many
reactive service	proactive service
time-based billing	commodity pricing
restrictive	empowering
defensive	pragmatic
legal focus	business focus
Legal Process	Legal Process
legal problem solving	legal risk management
dispute resolution	dispute pre-emption
publication of law	promulgation of law
a dedicated legal profession	legal specialists and information engineers
print-based	IT-based legal systems

Fig. 1.1 The Shift in Legal Paradigm

that we are in a transitional phase between the print-based industrial society and the IT-based information society. Only when knowledge-based technologies allow us more effectively to manage these mountains of data that we have created, will we be fully in the information society.

I talked also of the 'latent legal market', and this attracted a lot of interest. This was the notion that many people in their social and in their working lives need legal help and would benefit from legal guidance but lack the resources, or perhaps simply the courage, to secure legal counsel from lawyers. Things have changed since then—on the Internet we now have vast resources available to people who can obtain practical, punchy legal guidance from the government's 2,500 websites or the many sites of the voluntary legal services sector. I contend that there is not just a latent legal market for the ordinary citizen but also for major organizations, when they too find it difficult (largely for reasons of cost) to secure legal guidance on all those occasions when they need it.

All of this led me to speak about access to justice—not in the sense that Lord Woolf, the former Lord Chief Justice, was speaking of access to justice, when he referred to improved access and greater access to dispute resolution; but in a broader sense. I had in mind the notion that as citizens we should be able to find out easily and quickly what our legal entitlements are, and in so doing, we should be able to avoid legal disputes.

I pointed at the same time to a phenomenon I refer to as 'hyper-regulation'. By that I meant we are all governed today by a body of rules and laws that are so complex and so large in extent that no-one can pretend to have mastery

The Path to Commoditization

A running theme of this book is that a pair of related forces will fundamentally transform legal service in the coming decade and beyond. The first of the pair will be a market demand for increasing *commoditization* of legal services, while the second will be widespread uptake of *information technology* (IT). I explore the former in this chapter and turn to the latter in Chapters 3 and 4.

A word about terminology is needed at the outset. When most lawyers speak today about 'commoditization', they generally do so reluctantly and frequently do so through gritted teeth. The term 'commoditization' is often used pejoratively to downplay some line of legal service that is no longer worthy of the self-respecting lawyer. If legal work can be commoditized, the conventional wisdom runs, this means it is routine and repetitive and can be standardized or computerized. In turn, for most lawyers, this suggests that it can no longer yield decent fees, for it cannot be undertaken on an hourly billing basis or for a substantial fixed fee. Commoditization, on this view, is the arch-enemy of the legal profession.

I find this line of argument rather limited. First of all, it is unashamedly lawyer-centric and so it invariably neglects the interests of clients. And yet, from the point of view of the recipient of legal services, whether a General Counsel or a citizen-client, if work that needs doing can be standardized and computerized, this is generally good news, because it should mean lower fees. Second, and more significantly, the concept of commoditization is bandied

about uncritically, by lawyers and policy-makers alike, with no apparent reflection on what its scope and implications might really be. It is wielded often as a term of derision but rarely as a carefully analysed concept. I think we can and should do better in defining a term that is now so widely relied upon in legal debate. Accordingly, amongst much else, I try to clarify the concept of commoditization in this chapter.

Taking a step to one side, classically speaking, commodities are physical and often raw materials such as coal, silver, or sugar. In business, the term is sometimes extended to include goods or artifacts that are mass produced and are often perceived to be of low value. If we refer to legal services as commodity, this is therefore metaphorical talk, because conventional legal and professional services are not physical materials, or goods, or artifacts. They are information services. But what is a commodity in the realm of information service? That is another key question that I answer in this chapter.

2.1 The evolution of legal service

I also have a broader purpose in this part of the book and that is to introduce a model that might help our understanding of the way in which legal service is evolving. The model, which can be applied to other professional services as well, depicts five steps on a path, as illustrated in Figure 2.1. Using this model, I make two main claims: first, that for the majority of legal services, there is an increasing pull by the market to the right-hand side, that is, towards becoming commodity (in the specific sense that I explain in some detail); and, second, that this move from left to right is being enabled very largely (but not exclusively) by existing and emerging information technologies.

As with all models, it is, of course, a simplification of reality. I am aware, for example, that the boundaries between each step on the path are fuzzy; that not all legal services evolve neatly and in a linear manner through each step; that some legal services might evolve no further than one particular step; and that some legal services may not evolve from the first step in that they may begin life at one of the later steps. Nonetheless, despite these limitations, my experience of introducing this model to numerous law firms and their clients has been positive. I therefore hope it serves as a useful tool for others to explain and predict the evolution of particular legal services and to bring into focus the key strategic options that lawyers face in developing

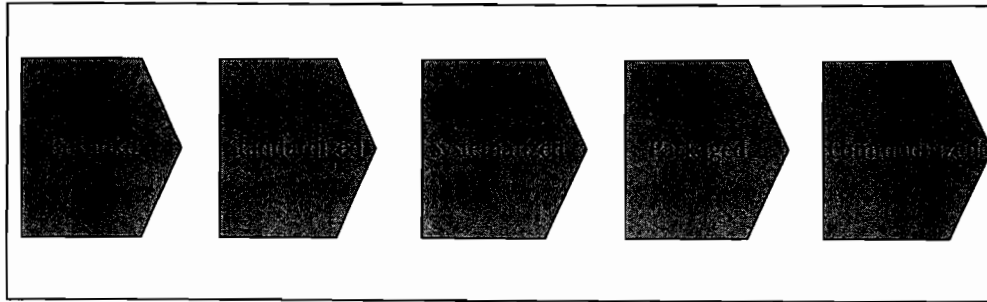


Fig. 2.1 The Evolution of Legal Service

their services for the future. I also hope that it provides a common vocabulary or framework that allows lawyers to compare their approaches to work with those of colleagues within and beyond their firms.

The first of the five steps along the evolutionary path is what I term 'bespoke' legal service. I have in mind traditional, hand-crafted, one-to-one consultative professional service, highly tailored for the specific needs of particular clients. I have come to realize, from addressing American audiences, that 'bespoke' is not a term that is used in the US. I am surprised. In the UK, we speak of bespoke software when we mean software that is specially written for one client or customer. We also talk about bespoke tailoring—a bespoke suit, of a Savile Row variety for example, is tailored for one individual. This contrasts with the off-the-peg suit which is designed to fit (give or take) many people. In short, bespoke service is highly customized service. Advocacy in the courtroom is a good example of bespoke service. The offering here is, in a sense, disposable, in that it cannot really be re-used. Clever arguments are articulated in the hearing room and then substantially lost in the ether, not preserved or bottled for re-use. Another illustration is the lawyer who drafts contracts by starting with a clean sheet of paper, a blank canvas, and not with some pre-existing text or documentation. The bespoke service is ordinarily provided by one lawyer or a very small number of legal practitioners and is delivered in a very personalized manner, usually supported by face-to-face meetings. The bespoke service may or may not be of a high quality. While much will depend on the talent of the lawyer delivering the service, creating a new document afresh, for example, can be an error-prone exercise.

Moving beyond bespoke work, when legal tasks are recurrent, and many are, there is the tendency for lawyers, in one way or another, to 'standardize'. This is the second step of my evolutionary path. Standardization avoids duplication of effort or reinvention of the wheel. If a particular problem or task has been faced in the past, why not draw liberally on previous experience

and work product? There are two forms of standardization. The first is standardization of process, where, for example, lawyers rely upon such tools as checklists or procedure manuals that articulate good practice. A proven approach or method for some given legal job is captured and re-used. The second is standardization of substance. This involves lawyers re-using pre-articulated bodies of text such as standard form documents, precedents, and templates, or past work product, such as opinions, advices, or solutions that have been deployed in the past. The standardization that I have in mind in this second step is paper-based. As with bespoke service, standardized service also tends to be delivered in a highly personalized manner, with regular, direct contact between the lawyer and client.

The third step on the evolutionary path is when legal service becomes 'systematized'. Here, systems are developed and used for the conduct of legal work. I am referring to systems that are designed for internal use only within a legal unit, so that within a law firm, for instance, the lawyers will be the users and not the clients. This is not simply the use of IT for the storage of standard procedures and documents. Instead, a variety of enabling technologies automate legal activities. For instance, paper checklists and written procedures can be brought to life using techniques such as interactive checklisting and electronic workflow, while the drafting of documents can be taken beyond the cutting and pasting of standard text into the realm of automatic document assembly, whereby polished contracts can be generated after a user has responded to a series of questions (the system holds standard blocks of text and rules for the use of this text—more is said of this in Section 4.1). In the world of banking and finance, many major law firms have developed document assembly tools to assist in the generation, internally, of large bodies of complex loan documentation, as with Allen & Overy's *newchange* system.¹ At the same time, innumerable smaller practices use these techniques in their conveyancing and personal injury practices. At this step on the evolutionary path, these tools are for internal use only, enabling speedier and more consistent legal work. However, the way in which the service is delivered is frequently less personalized. Electronic deal-rooms and case-rooms can be used—by consulting a website, clients can access their documents on an online basis, and also determine the status and cost of work undertaken for them.

From a technical point of view, the transition from the third to the fourth step of the evolutionary path is often fairly straightforward. Systems that are

¹ <<http://www.allenoverly.com>>.

used within a law firm can be made directly accessible to clients, usually across the Internet. One obvious example here is when law firms offer their clients access to their internal knowledge systems. More ambitious illustrations are where document assembly systems are given to clients to use directly, as Eversheds do to enable their clients to generate their own employment contracts.² The systems of the law firm and the knowledge embedded within them are thus 'packaged' for the client's convenience as a form (crudely) of DIY legal service. This is the fourth step in the evolution of legal service.

There are various other ways in which packaged legal services can be offered. They are based on IT. One is that a package might be brought directly to the marketplace without having evolved through the other three steps. LRN is a company that produces legal compliance tools which do precisely this.³ This company deploys multi-media, e-learning technology in support of its offerings. Non-lawyers can easily and rapidly learn about pressing legal issues, such as money laundering, by running through a video-based presentation and then a question-and-answer session. The use of multi-media in this way will be increasingly popular in packaged service, as discussed in Sections 4.4 and 6.7. Some major law firms repackage some of their multi-jurisdictional research as online legal reference services. The first firm to do this in a serious way was Linklaters with some of its *Blue Flag* products.⁴ For such law firms, packaged offerings are branded services, linked closely to the providing firms. These are distinctive offerings that seek to differentiate their providers and are ordinarily made available for a fee or on a licence basis. Another approach to packaged legal service is the development of electronic legal modules or products that can be implanted into clients' processes or systems. These packages might settle within clients' Intranets or be embedded more deeply within their systems. They provide a powerful way of injecting legal expertise into the life cycles of clients' business activities. This will prove to be a crucial technique for legal risk management.

The most subtle and potentially controversial transition on the evolutionary path is from the fourth to the fifth and final step, to that of 'commoditized' legal service. The central idea here is that a legal service or offering is very readily available in the market, often from a variety of sources, and certainly at highly competitive prices. A legal commodity, as I define it (and I fully accept that others use this term differently) is an electronic or online

² <<http://www.eversheds.com/hrcontractdemo>>.

³ <<http://www.lrn.com>>.

⁴ <<http://www.linklaters.com>>.

legal package or offering that is perceived as a commonplace, a raw material that can be sourced from one of various suppliers. Just as barrels of oil or sacks of sugar are regarded as basic and readily available offerings, then so too with legal commodities. As with a package, a commodity is an online solution that is made available for direct use by the end user, often on a DIY basis. Online debt collection services are legal commodities (even though, but two decades ago, debt collection was handled in a bespoke manner). Much of the material found on legal websites consists of legal commodities—more or less similar analyses of new regulations, for example.

Sometimes, lawyers are inclined to speak of some widely used standard form contracts as commodities. For instance, they say that the use of the following has become commodity work—the master agreement of the International Swaps and Derivatives Association (ISDA) and the standard form construction and engineering contract of the International Federation of Consulting Engineers (FIDIC). I used to agree with this but I have changed my mind.⁵ These standard form agreements belong in my standardized step. The confusion here is the imprecise use of the term, 'commoditization'. Referring to ISDA and FIDIC work as commodity work is a shorthand way of saying that it is highly routine and that not much cash can be made there any more. I reserve the word 'commodity' in a legal context to IT-based systems and services. This means that some legal services that lawyers already think have been commoditized are often paper-based and manually administered and so are not yet as efficiently delivered as they could be.

In summary, a commoditized legal service is an IT-based offering that is undifferentiated in the marketplace (undifferentiated in the minds of the recipients and not the providers of the service). For any given commodity, there may be very similar competitor products, or the product is so commonplace that it is distributed at low or no cost. My conception of commoditization in law is therefore narrower than that of the many lawyers who seem to use the term to refer to anything from the second to the fifth steps on my evolutionary path. The danger of that use of the word is—once again—that it obscures the commercial reality that high quality service, charged at a reasonable price and subject to regular update and maintenance, can be delivered in standardized, systematized, and packaged form. To reject these as mere commodity is to miss an opportunity to serve clients well and, if delivered cannily, to make a fair profit at the same time.

⁵ My early thinking was set out in R Susskind, 'From Bespoke to Commodity' (2006) 1 *Legal Technology Journal* 4.

Lawyers fear commoditization (in my sense) for two reasons. First, it seems to devalue the practice of law, reducing it to a mere electronic commonplace. The second is a fear of the economics of information commodity markets. Carl Shapiro and Hal Varian summarize this neatly:

In a free market, once several companies have sunk the costs necessary to create an undifferentiated product, competitive forces will usually move the product's price toward its marginal cost—the cost of manufacturing an additional copy. And because the marginal cost of reproducing information tends to be very low, the price of an information product, if left to the marketplace, will tend to be low as well. What makes information products economically attractive—their low reproduction cost—also makes them economically dangerous.⁶

And so, if more than two firms have made the initial investment in what turns out to be a series of very similar online legal products or services, then competitive forces will tend to drive the price of the commodity down towards the cost of reproducing and distributing the information, that is, to the cost of producing one new copy. Because this cost is negligible, the prices of legal information products, where there is competition, tend rapidly towards zero. Lawyers fear services whose price is zero. On the face of it, lawyers can therefore be expected to resist travelling along the evolutionary path I describe.

2.2 The pull of the market

Even at first glance, a number of distinctions can be plotted along the evolutionary path that I have laid out. For example, in relation to billing, service towards the left tends to be delivered on an hourly billing basis, while service towards the right tends to be offered on a fixed fee basis. The style of service also differs along the path. On the left, there is a stronger emphasis on the service being delivered by a trusted adviser (often even a thought leader), while offerings towards the right may be strongly branded but are essentially shrink-wrapped. Psychologically and emotionally, the comfort zone of law firms is towards the left, while movement towards the right is increasingly uncomfortable.

⁶ H Varian, 'Versioning: The Smart Way to Sell Information' in JH Gilmore and BJ Pine (eds), *Markets of One* (Boston: Harvard Business School Press, 2000) 134.

From an IT point of view, each step along the evolutionary path requires different forms of enabling technology. Any firm that aspires to providing packaged services, for example, must generally embrace online and document assembly technologies, while those that offer systematization will inevitably need to adopt Intranet, workflow, and (again) document assembly techniques. More generally, the further to the right one goes, the more 'disruptive' the technologies become, in that these systems fairly fundamentally challenge the conventional, bespoke way of working.⁷

The most common initial reaction to the model that I encounter from partners in law firms is as follows—where they have access to a large red pen, they draw a very bold circle around the bespoke box and then utter two assertions: first, that their firms only undertake bespoke work and, second, as a matter of strategy, that is how they wish to stay. The majority of lawyers have little appetite for the journey towards the right. Because commoditization is anathema to many lawyers, any movement in its direction is frequently regarded as generically offensive.

As a matter of fact, however, on careful analysis, very few law firms live by bespoke work alone. As one of innumerable possible examples, look at the leading banking practices of the largest firms in London—most of these firms have standardized long ago, many have systematized and the more innovative have already packaged. More importantly, as a matter of strategy, for reasons I discuss later in this chapter, it may in any event not be sustainable or desirable for firms to resist a move to the right.

I want now to challenge some of these first impressions in some detail. In the first instance, it is helpful to be clear about the nature of legal engagements for clients. Work on an individual matter for a client will seldom map directly onto just one of the five steps on the evolutionary path. Instead, work will tend to be distributed across a number of the steps. Crucially, very few engagements, as just hinted, are purely bespoke. And only a very few firms can live by bespoke work alone; these tend to be smaller, more niche, and genuinely distinctive practices. For most matters, it is hard to disentangle and undertake the bespoke in complete isolation. In any event, it is surely not politic, I would have thought, for a firm to say to its client that it only wishes to be involved in the expensive, bespoke aspects of any particular transaction or dispute and that it washes its hands of the rest (although I do know some very large firms who are sufficiently confident to do this).

⁷ Disruptive technologies are more fully explained in Section 3.6, and are the sole subject matter of Ch 4.

The key question in relation to any particular matter is this: what is the optimum balance and distribution of tasks and activities across the five steps? Clients should not expect that work will be, for example, entirely standardized. They should expect a spread of approaches for any given matter.

That said, it is clear from my research and discussions with clients over the past few years that they are increasingly encouraging law firms in a rightwards direction. This is partly for financial reasons. On the one hand, as mentioned, work towards the right tends to be offered on a fixed cost basis and clients tend to welcome the certainty that this brings. On the other, they are right to expect efficiency gains as a service becomes standardized, systematized, and more. Clients are attracted to firms with a strong track record in particular areas and this surely entails an ability to draw more rapidly and less expensively on past experience. Why pay for the wheel to be reinvented?

But clients are also attracted to the right because of the promise of better performance by their advisers. With more formal organization of procedures, knowledge, and expertise in place, gathered on a collective basis from across a firm, this should bring greater quality, consistency, and speed of turn-around. This is the essence of the discipline known as knowledge management. More, clients expect a match between the evolution of their offerings and those of their legal advisers. A shrink-wrap software supplier, for example, will require packaged or commoditized software licence agreements to accompany its products. Likewise, financial institutions are happy to instruct lawyers on a bespoke basis for their new products but as their offerings themselves become packages and commodities, it is reasonable for them to expect lawyers' input to be similarly configured. And likewise, as bespoke legal advice becomes more costly, small- to medium-sized businesses will increasingly find this type of advice to be beyond their reach. They will only be able to afford legal service that matches their scale, which will tend to be towards the right of the path. It might be thought, ironically, that only large firms will have the resources to develop these services. However, as examples in this book illustrate, some small and yet highly innovative firms do produce impressive online services.⁸

If the clients' pull away from bespoke service were not sufficient to incline law firms rightwards, then the prospect of competitors driving in that direction should surely give pause for thought. Although direct competitors may

⁸ eg Fidler & Pepper (see Section 3.3) and Tessa Shepperson (Section 4.5).

also feel most comfortable at the bespoke end, it is realistic to be concerned that one or some may break rank and so attain first mover competitive advantage. Major firms should also be wary of smaller firms who might seek to launch services towards the right, with a view to migrating to the left—the plan here would be to build confidence through efficient routine work and so position these smaller firms for more bespoke, high-end work. A further source of competition is the new player who might jump, as LRN has done, straight into packaged services and seek to dominate that sector. Alternative forms of legal businesses, as permitted under the Legal Services Act 2007, are also likely to start trading some way along the evolutionary path. All of these possible competitors are potentially disruptive and worrying for the law firm. With client pull and competitor thrust in a rightwards direction, it is unlikely that many law firms can prosper by bespoke work alone.

And if none of these arguments convince, then think for a moment about firms which are asked to deliver services on a fixed price basis. Quite naturally they find themselves looking for efficiencies and savings; and so, quite naturally, they will find themselves attracted to the right of the evolutionary path.

2.3 Opportunities for innovative lawyers

While some firms regard any movement to the right as threatening and unsettling, others will see exciting opportunities here. Systematization of service offers the chance to provide clients with a more responsive and competitively priced service and, if the offering is not matched by competitors, then profitability can be maintained and even increased. Firms that deploy automatic document assembly technology internally, for instance, may reduce the unit cost and unit profitability of each document produced for clients, but can radically increase their volume.

Far more contentious is the provision of packaged legal service. The intuition of many lawyers is that bespoke work is the most profitable for them and that venturing along the path that I have laid out is, by steps, increasingly unattractive from a commercial point of view. I accept, for reasons discussed earlier in relation to the tendency towards zero of prices in information commodity markets, that the commoditization of legal services of itself will yield little or no profit. However, I remain of the view, as first fully

articulated throughout my book, *The Future of Law*,⁹ that packaged online legal services can indeed give rise to substantial income and profit; indeed, on some occasions, much greater profit than is possible when selling one's time on an hourly basis.

I do accept, though, that it is early days and that we have not fully explored the ways in which cash might best be made from providing online legal services. So it has always been with new developments. Consider broadcast radio, which is a well settled service. It was far from clear, at the outset, how to make money from this innovation. Apparently, a magazine called *Wireless World* even sponsored a contest to determine the best business model for radio. The winning idea was 'a tax on vacuum tubes', with radio commercials being one of the more unpopular choices.¹⁰

At the current time, I believe the most promising commercial opportunity is this: if a chargeable online legal service is developed and is of such value and use to clients that they are prepared to pay serious fees for its use and there are no competitor products, then once the initial investment in the system has been made, all later sales yield funds that are unrelated to the expenditure of time and effort by lawyers. I like to refer to this as 'making money while you sleep'. It will immediately be seen that keeping the competition out of the market is central to success. Providers must lift the metaphorical bar so high that others will shy away from attempting to imitate. This does not mean that the price should be extremely high because this can result either in purchasers not buying or in potential imitators identifying the offering as potentially lucrative and therefore deserving of serious investment. The commercial trick, therefore, is to maintain the offering as a package and not let it slip into becoming a commodity. This distinction, between packaging and commoditizing, has not been recognized by most lawyers in the past. While the latter may indeed be commercially unattractive, I believe the potential for profitable packaged work is considerable. But the economics at play here are quite different from the business models with which most lawyers are familiar. Legal practitioners who want to climb the learning curve rapidly and learn how best to charge for packaged knowledge should draw heavily, as I have done, on the thinking of information economists. I have found *Information Rules*, by Carl Shapiro and Hal Varian, to be an especially

⁹ R Susskind, *The Future of Law* (Oxford: Oxford University Press, 1996; paperback edition, 1998) especially Ch 8.

¹⁰ See H Varian, 'Competition and market power' in H Varian, J Farrell, and C Shapiro (eds), *Economics of Information Technology* (New York: Cambridge University Press, 2004) 9.

rich source of guidance.¹¹ From this book, we can learn about techniques such as value-based pricing and versioning (for example when you deliver different versions of the same online offering, according perhaps to the level of experience of the user).

So what can a firm do if another competitor does indeed enter the market, if a package threatens to become a commodity? In summary, several options are open to the law firm. One is to add further value to the package to enhance it in a significant way so that it defies commoditization and once again delivers benefits to the client that are replicated by no other offering in the market. Another tactic is to sell the package to another organization that perhaps sees opportunities for maintaining it as a package and resisting commoditization where the law firm does not. A third option is to build brand awareness, so that users may choose a high profile offering over an unknown, even if the substance of the services is indistinguishable. A final option, when the transition to commoditization seems inevitable, is to give the commodity away to the marketplace at no cost to users. This is clearly a form of marketing. But many firms have unnecessarily adopted this tactic before fully exhausting the income potential of the packages in which they have invested. Some have done so in the mistaken belief that their rightful place is far further to the left and that the rest is a distraction for others to handle.

Although most partners in professional firms say that their firms mainly undertake bespoke work, and that is how they wish to stay, I am suggesting there is a natural flow so that many services will move, more or less quickly, along the evolutionary path. When clients are faced with a legal problem, they will increasingly be attracted to service towards the right and will increasingly call for justification and explanation when firms insist on staying to the left. In contrast, law firms will generally want to stay at the bespoke end and the partners will usually lack enthusiasm when departure from this end is proposed. Here lies the fundamental tension between the needs and wants of clients and their advisers. This is a theme that I reflect upon in more detail in Section 5.1, in my discussion of the asymmetry between lawyers and their clients.

Generally, though, if legal work is (for the provider) routine and repetitive, it is surely reasonable for clients to expect a high degree of systematization, some pre-packaged knowledge services, and even some commoditization,

¹¹ C Shapiro and H Varian, *Information Rules* (Boston: Harvard Business School Press, 1999).

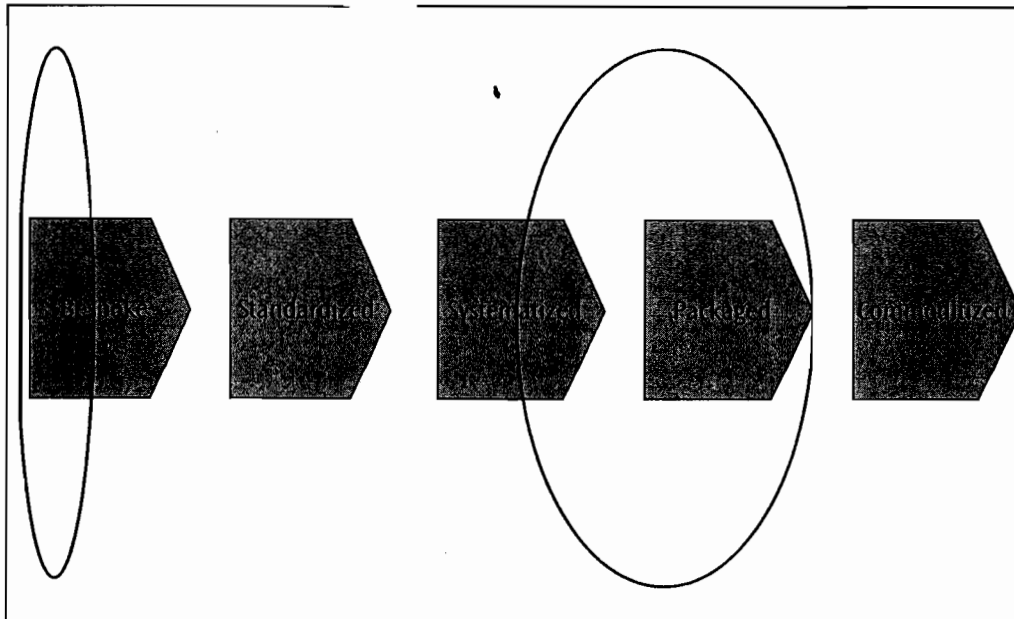


Fig. 2.2 Scope for Innovation

along with highly competitively priced (usually fixed cost) and well distilled collective expertise. If legal work is (for the provider) challenging and complex, it is then reasonable for clients to expect expensive, creative, genuinely expert, and trustworthy professionals, so long as they are supported by first-rate knowledge and research resources, perhaps charging by the hour but, more attractively and better, on the basis of the value brought to the client.

No matter how strong the gravitational pull to the right, I accept therefore that, because of the nature of some legal work, there will always be a place for bespoke work. But I do think that the demand (and justification) for genuinely bespoke work will diminish over time. It is helpful in this context to imagine the series of evolutionary steps as a conveyor belt, always running and bringing about a natural flow of work from left to right. Work that at one time is bespoke will move rightwards, while standardized service in its turn will transition into systematized, and so on. This presents a clear challenge for lawyers who are keen to remain very largely in the bespoke camp—they must continually innovate and so generate new bespoke offerings, because what is bespoke today will not be so in the future. This suggests that the scope for innovation (and so differentiation) in legal services lies as illustrated in Figure 2.2: on the one hand in creating new bespoke work and, on the other, in developing systems and packages ahead of the competition. Lawyers, in other words, can be innovative in the advice that they offer as well as the way in which they deliver their services.

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Conclusion—the Future of Lawyers

The future for lawyers could be prosperous or disastrous. The arguments and findings of this book can support either end game. I predict that lawyers who are unwilling to change their working practices and extend their range of services will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully for many years yet, even if they are not occupied with the law jobs that most law schools currently anticipate for their graduates.

I believe that lawyers, in order to survive and prosper, must respond creatively and forcefully to the shifting demands of what is a rapidly evolving legal marketplace. In this chapter, I revisit some of the market forces that are at play and suggest what this means for various branches of the legal profession. I then go on to identify what types of legal businesses and lawyers will thrive in the new order.

I make no attempt at this stage to précis the entire book. My main emphasis instead is on questions that flow from its title, *The End of Lawyers?*¹ Will the changes I identify bring about the end of lawyers? Or will a new and reinvigorated legal profession emerge?

¹ I reiterate that the question mark in the title is intended to confirm that this book is an inquiry into whether lawyers have a future rather than a prediction of their demise. Contrast N Postman, *The End of Education* (New York: Vintage, 1995) and A Kessler, *The End of Medicine* (New York: Collins, 2006).

8.1 The prognosis

My starting point for this final analysis is clients, especially in-house lawyers. Invariably, General Counsel tell me that they are now under three pressures: to reduce the size of their in-house legal teams; to spend less on external law firms; and to find ways of coping with more and riskier legal and compliance work than they have had in the past. Both internally and externally, clients are requiring *more for less*. From 2004 to 2007, I found this to be a running, background theme in my discussions with in-house lawyers. In 2008, in the slipstream of the economic downturn, it has become not so much a theme as an overriding imperative.

For law firms, these pressures on clients and the imperative that follows have disturbing implications. Increasingly, for example, firms are being called upon to reduce their fees, to undertake work on a fixed fee rather than an hourly billing basis, and to be far more transparent in their dealings with clients. Also they are coming to be selected, more than occasionally, on the advice of hard-nosed, in-house procurement specialists in client organizations rather than by old friends and colleagues. The legal market looks set to be a buyer's market for the foreseeable future.

At the same time, new competitors are emerging, such as outsourcers and entrepreneurial publishers; while liberalization of the legal market will bring external funding and a new wave of professional managers and investors who have no nostalgic commitment to traditional business models for law firms, including hourly billing and gearing obtained through the deployment of armies of hard-working young lawyers.

To cap it all, a number of disruptive legal technologies are emerging (such as document assembly, closed communities, legal open-sourcing, and embedded legal knowledge—see Chapter 4) which will directly challenge and sometimes even replace the traditional work of lawyers.

For many lawyers, therefore, it looks as if the party may soon be over.

I anticipate that the market is likely to respond in two ways to the changes just noted. First, new methods, systems, and processes will emerge to reduce the cost of undertaking routine legal work. This will extend well beyond the back-offices of legal businesses into the very heart of legal work. As I explain in Chapter 2, I expect there to be a strong pull by the market away from the delivery of legal advice on a bespoke basis. To achieve the efficiencies needed, I say that legal services will evolve from bespoke services at one end of a spectrum along a path, passing through the following stages: standardization, systematization, packaging, and commoditization. Many new ways of sourcing will emerge and these will often be combined in the conduct of

individual pieces of legal work. I call this multi-sourcing. These changes will affect not just high volume, low value work but also the routine elements of high value work.

The second response by the market will be for clients, in various ways, to share the costs of legal services. Again, this will affect the entire market. In-house lawyers, I suggest, will frequently work together, often as part of online closed communities (see Section 4.7), and find ways of recycling legal work amongst themselves. In areas where their duplication of effort and expense is considerable, such as regulatory compliance, they will collaborate intensively and so spread the legal expense amongst their number. At the other end of the spectrum, citizens will have ready access to online legal guidance and to growing bodies of legal materials that are available on an open source basis (see Sections 4.6 and 7.3). More, they will be able to share legal experiences with one another.

With clients cutting costs and finding alternative ways of sourcing work or sharing costs and collaborating regularly with one another, what does this mean for lawyers? On the strength of the arguments and findings of this book, I predict that there will be five types of lawyer in the future.

The first will be the 'expert trusted adviser'. This is the purveyor of bespoke legal service. The arguments of this book suggest that market pressures will generally discourage lawyers from handling matters in a bespoke manner wherever this is possible. Instead, standardized or computerized service will be preferred. However, on some occasions bespoke work will be unavoidable. For the foreseeable future, intelligent creative lawyers will be needed in certain circumstances—to fashion new solutions for clients who have novel, complex, or high value challenges (the expert element) and to communicate guidance in a highly personalized way (the trusted component) where this is wanted. The end of the expert trusted adviser is not therefore in sight. The danger facing many lawyers, however, is to assume that their clients' work always requires this expert or trusted treatment. Lawyers who handcraft while their competitors introduce new efficiencies (computerizing or outsourcing, for example) will not be practising in ten years' time, because bespoke service is a luxury that clients will not generally be able to afford.

My second category of lawyer for the future will be the 'enhanced practitioner'. This is the individual whose legal skills and knowledge are required not to deliver a bespoke service but, enhanced by modern techniques, to work further to the right-hand side of the evolutionary path that I introduce in Section 2.1. This lawyer will be supporting the delivery of standardized, systematized, and (when in-house) packaged legal service. The crucial point here, though, is that the market will only tolerate this lawyer's involvement

where legal experience is genuinely needed. Otherwise, other less costly sources of support will be favoured, such as paralegals, legal executives, and legal process outsourcing service providers. Today, clients frequently pay lawyers to do work that intelligent and trained non-lawyers could undertake. This will stop in years to come and the need for lawyers who perform routine work will diminish accordingly.

In contrast, there will be a much greater need for my third category of lawyer—the ‘legal knowledge engineer’. If I am right and legal service will increasingly be standardized and (in various ways) computerized, then people with great talent are going to be needed, in droves, to organize the large quantities of complex legal content and processes that will need to be analysed, distilled, and then embodied in standard working practices and computer systems. This new line of work will need highly skilled lawyers. The development of standard documents or procedures and the organization and representation of legal knowledge in computer systems is, fundamentally, a job of legal research and analysis; and often this knowledge engineering will be more intellectually demanding than conventional work (working out a system that can solve many problems is generally more taxing than finding an answer to one problem). It is entirely misconceived to think, as many lawyers do, that work on standards and systems can be delegated to junior research or support lawyers. If a legal business is going to trade on the strength of outstanding standards and systems, then it will need outstanding lawyers involved in their design and development. These legal knowledge engineers will also be needed to undertake another central task—the basic analysis and decomposition of legal work that I claim will be required if legal work is to be multi-sourced effectively and responsibly. Legal knowledge engineering, in the twenty-first century, will not be a fringe show at the edge of the legal market. It will be a central occupation for tomorrow’s lawyers.

Fourth will be the ‘legal risk manager’. This category of lawyer is sorely needed and is long overdue. Senior in-house lawyers around the world insist that they are in the business of legal risk management—clients prefer avoiding legal problems rather than resolving them. And yet, as I say in Section 6.7, hardly a lawyer or law firm on the planet has chosen to develop methods, tools, techniques, or systems to help their clients review, identify, quantify, and control the legal risks that they face. I expect this to change. Urgent demand from the market will lead lawyers (perhaps bolstered and emboldened by external funding) to offer a wide range of proactive legal services whose focus will be on anticipating and pre-empting legal problems. This will be quite different from legal work that concentrates on addressing specific deals or disputes. In some ways more like a form of strategy consulting,

this legal work will be wider ranging and more generic, helping clients to prepare more responsibly for the future. Again, this is not a peripheral job for the legal fraternity. This could fundamentally change the way in which the law is practised and administered.

My final category of future lawyer is the 'legal hybrid'. My premise here is that successful lawyers of the future, wherever they sit on my evolutionary path, will be increasingly multi-disciplinary. Many already claim that they are deeply steeped in neighbouring disciplines, as project managers, strategy and management consultants, market experts, deal-brokers, and more. In truth, though, these forays into other fields are not strategically conceived, formally planned, or supported by rigorous training. They are rather ad hoc and piecemeal initiatives. In contrast, legal hybrids of the future will be superbly schooled and genuinely expert in these related disciplines and will be able to extend the range of the services they provide in a way that adds value for their clients.

Taking these five categories together, it is clear that there will be work for lawyers to do in the future. What is much less obvious is whether today's lawyers will be equipped to take on the jobs I envisage. While the expert trusted adviser and the enhanced practitioner look much like contemporary lawyers, I predict that their number will be greatly reduced. The range of work of the expert trusted adviser will be reduced by standardization and computerization, while the enhanced practitioner's domain will be diminished by the emergence of alternative, lower cost individuals who can work responsibly with standards and systems. In some areas of law, lawyers will be less dominant, while in others (where there are, for example, online legal services or there is legal open-sourcing), they will no longer have a role. If the demand for conventional lawyers is reduced, I wonder how easily those whose jobs are threatened will be able to re-skill and become legal knowledge engineers, legal risk managers, or legal hybrids. The transition may not be easy.

In general terms, and to answer the question posed in the title of this book, I do not therefore anticipate (in the next twenty or thirty years at least) that there will be no lawyers. I expect instead that there will be significantly fewer lawyers providing traditional consultative advisory service; and I predict the emergence of new legal professionals with quite different roles in society. We will witness the end of many lawyers as we know and recognize them today and the birth of a new streamlined and technology-based generation of practising lawyers who are fit for purpose in the twenty-first century.

In very broad terms, it seems to me that solicitors and in-house lawyers whose work is largely routine are those most threatened by the future I am predicting. There will soon be less costly and more convenient ways of delivering

the service that today is their preserve. Of course, there are many solicitors and in-house lawyers who are highly specialized or are retained because of their special insight or their closeness to the business. For these advisers, the outlook is rather rosier but lawyers must be honest with themselves and recognize frankly when their work might be sourced differently.

The future of the work that is currently undertaken by barristers is generally encouraging. Most of this activity is highly bespoke and it is hard to see how oral advocacy and the dispensing of expert advice can be standardized or computerized. Dispute avoidance and online dispute resolution will chip away at some of this domain but I do not see these as eliminating advocacy entirely. Of greater concern to barristers in chambers should be major law firms who decide to resist the move to the right on my evolutionary path (Section 2.1) and instead build a far greater bespoke capability. This may involve amassing teams of high-powered legal solicitors with skills and expertise that rival those of barristers or it may entail the recruitment of barristers to these firms (which raises questions about the best business vehicles for the delivery of legal services—see Section 8.2).

A common response to much that I say, by cynics, sceptics, and doubters, runs simply and as follows—*computers cannot replace legal work*. Full stop. I will leave to one side the fact that this really is a gross oversimplification of my thesis, in that it ignores what I say about standardization, commoditization, and the transfer of many legal tasks from lawyers to non-lawyers. But even as a claim only about the impact of technology on lawyers, it is weak. I respond in two parts.

First of all, my interest is manifestly not in some wholesale, monolithic substitution of legal advisers by information technology (IT). Instead my focus, as far as IT is concerned, is on the extent to which some, much, or all of what lawyers do can be undertaken more quickly, less expensively, more conveniently, and in a less forbidding way by systems than by conventional work.

The question I therefore prefer to ask in this context is—from the clients' point of view, what tasks of lawyers will be better undertaken in the future by systems? It is a foolhardy lawyer indeed who unreflectively and dogmatically replies to this question by asserting 'none whatsoever'. Open-minded lawyers, and ones who genuinely care about the interests of their clients should, in the Internet age, continually be looking at ways in which IT can play a more prominent role in their services. And all of my experience, of working with innumerable law firms and in-house legal departments, leads me to claim that there is remarkable scope for greater deployment of technology. More radically, though, I do contend that for some lawyers, there are existing and emerging technologies whose widespread adoption will effectively

render them redundant. (Much the same has happened in many other sectors; lawyers are not immune from the destructive effects of the Internet and IT revolutions.)

I call technologies that threaten the work of today's lawyers and law firms 'disruptive legal technologies' (see Chapter 4). They do not support or complement current legal practices. They challenge and replace them, in whole or in part. This leads to the second part of my response to the non-believers. Most of the disruptive technologies that I identify (such as document assembly, personalized alerting, online dispute resolution, and open-sourcing) are phenomena of which most practising lawyers are only dimly aware. Also bear in mind that my predictions, in this book and in *The Future of Law*, are long-term predictions, stretching to 2016 and beyond. If lawyers are barely conversant with today's technologies, they have even less sense of how much progress in legal technology is likely in the coming ten years. Politely, it puzzles me profoundly that lawyers who know little about current and future technologies can be so confident about their inapplicability. To be able to claim responsibly that IT will have no or minimal effect on lawyers, as many do, surely requires some considerable depth of insight into what disruptive technologies do and will do in years to come. My purpose in writing my book is precisely to provide that insight.

I mention open-mindedness on the part of lawyers. I can honestly say that I know of no lawyer who has devoted serious time to exploring the impact of IT on the legal profession who has later abandoned legal technology and resumed normal business. On the contrary, lawyers who take the time to delve deeply into the possibilities invariably become committed advocates and practitioners. The commitment does not come, generally, in a matter of days or weeks. It takes, I find, months of study and exposure to practical case studies for the conversion to take place.

Just as research by the Oxford Internet Institute suggests that people who have the least experience of the Web are those who are generally most distrustful of it,² I find a similar situation amongst lawyers. Often, the most vociferous opponents of the Internet, those who see no possible application for emerging technologies in their firms, are precisely those who have near zero exposure to the systems in question. Just as in law, however, ignorance here should be no defence. There really is no merit whatsoever in blindly rejecting a set of new developments whose nature and scope are simply not understood.

² W Dutton and E Helsper, *The Internet in Britain 2007* (Oxford: Oxford Internet Institute, 2007).

Moving away now from practising lawyers, sceptical or otherwise, no analysis of the future of lawyers would be complete without some reflection on academic lawyers. In the first instance, it is clear that legal research has been transformed through technology. Whether as a top-notch scholar or a research student, the tools and facilities now available are wildly different from those of the past. An unparalleled range of resources are now to hand, delivered largely across the Internet. It is hard to imagine now the hassle involved in legal research two decades ago and more. We were largely constrained by the materials available in the libraries on the campuses in which we worked, with cumbersome and time-consuming processes to invoke if we wished to secure publications from elsewhere.

For many legal scholars engaged in serious legal research, however, electronic mail and virtual communities are even more significant than the greatly extended volumes and resources that are available. When I worked on my doctorate in the 1980s, there was a lady at Stanford University in California who was beavering away on a thesis along similar lines. During the three years, we met once, and exchanged a few letters and, I for one, was frustrated that we could not interact more regularly. If we were working on our theses today, I suspect we would be in almost daily contact by e-mail and participating together, no doubt, in various groups on a social network or two. Scholars need no longer be isolated islands of solitary reflection; they can join or engage in far more cooperative and communal discussions and debates—through social networks and blogs, for example. At the same time, academics think differently about publishing. In the 1980s, for example, it was common to wait over a year before a submitted manuscript appeared in print. Today, while conventional journals remain important, the legal blogosphere is a more immediate mechanism for rapidly sharing ideas. At the same time, we are able to use the Internet as a way of pre-publishing materials, so that ideas, theories, and findings can be publicized electronically prior to formal publication.

I am greatly enthused by the extent of the take-up of technology by academics involved with legal research. I am much less confident that our law professors are sufficiently exploiting emerging technologies (such as e-learning—see Section 4.4) in the teaching of our law students. More worrying still, I fear that few law schools are preparing our future lawyers for the very different legal workplace that I and others are predicting. Few law students have any sense of the likely impact or relevance of, for example, the commoditization of legal services, multi-sourcing, or disruptive legal technologies. Law firms should encourage law schools to expose their students

to likely trends and to think deeply about the new skills that will be needed in practice.³

A discussion of the future of lawyers would also be incomplete without another quick detour that looks at the key tool of their trade—the law book. I am often asked whether law books will survive. As a bibliophile and a gadget collector, I am torn. On the one hand, one of my favourite gadgets is a digital book by Sony, known as the Reader. It is lightweight, the size of a DVD box, with a print and paper-like display and it can hold hundreds of books. It can connect to the Internet and can handle sound and image. So why bother with legal tomes? Perhaps, many years from now, we will not. Many lawyers already prefer online law reports to conventional volumes, while the business of producing books has become secondary to online services for many legal publishers. Researching electronically is becoming natural and when lawyers do want paper, they can print important pages. However, the old counter-arguments remain: we like the touch, odour, and aura of books and libraries; books are pleasant to own and collect; reading a book seems easier and less prone to error than viewing on screen; and it is convenient to have many books open at once. So, nostalgia, tradition, and some plausible practicalities may keep law books on the go for some time yet. There is another reason that the printed page may not die for some time—unlike online resources, traditional articles and books are reassuringly finite. You know where you stand with print. The end is always in sight and in hand. Contents and index pages provide clear signposts and, although footnotes and bibliographies may send you scurrying for more, at least the original source is clearly bounded. Browsing the Web, even in authoritative and well conceived sites, is generally a more open-ended business. The innumerable links and the essential interconnectedness often give users a sense of a job never finished.⁴ It is not unusual to feel lost in cyberspace. After all, there are countless billions of pages out there.

On balance, though, my prediction is that, over the next twenty years, sales of substantive law books will greatly reduce. As display technology, storage, and search improve, it will become increasingly quaint and inefficient to reach for the book shelf. For readers who think this unlikely, think for a moment how few people of today consult traditional print-based encyclopaedias.

³ On new skills see Gene Koo, 'New Skills, New Learning: Legal Education & the Promise of Technology', The Berkman Center for Internet & Society at Harvard Law School (March 2007).

⁴ This is so despite the witty end-of-Internet page at <<http://www.shibumi.org/eoti.htm>>.

8.2 The implications

What are the implications, for the business of law, of the predictions that I make about the future work of lawyers? Three issues spring immediately to mind. The first concerns the structure and size of legal businesses, the second relates to innovation, and the third is about the type of people who will be lawyers in the future. I deal with each in turn.

In relation to the structure of legal businesses, the traditional model for most law firms has been that of a pyramid—with equity partners (owners of the business) employing and running teams of junior lawyers. This provides leverage for the partners—they benefit financially not only from their own efforts but from the surplus profit that is created through the work of their junior lawyers. A highly geared firm will have more junior lawyers per equity partner than a lowly geared firm and, all other things being equal, will be correspondingly more profitable. In accordance with this prevailing business model, law firms can only retain their profitability if this pyramidal structure is kept in place and the broader the base, the better. However, in this book I am suggesting that there are alternative ways of sourcing the work that is currently performed by junior lawyers—for example by outsourcing or computerizing. In other words, many of the tasks currently undertaken by these junior lawyers, often in costly buildings in leading financial centres, can more efficiently (cheaply) be done elsewhere or differently. More, the pyramidal structure is often also recognized as a source of unhappiness within law firms—the work that is parcelled up and delegated to junior staff is often tedious drudgery, even if its discharge in quantity can be profitable. On the face of it, if the grunt work is outsourced or computerized, then the cost goes down and the sum of human happiness increases. A win-win? Perhaps it is for the client and the disgruntled employee but it is not for many law firms. What is involved here is rather fundamental—subcontracting or computerizing work will result in a different shape of business model underpinning law firms. In summary, legal businesses make much of their money today from leveraging their junior people; if that leverage is displaced, then the profits will dip.

Of course, not all areas of work can be outsourced or computerized or sourced in other ways, and so the threat is not generic. But, I maintain, much can and will. This will not finish law firms but will necessitate major structural change in the long run. For example, it may lead very large firms to give up routine work (or multi-source it) and to build instead a much narrower pyramid with a lower proportion of junior lawyers to partners. Profitability might be retained by seeking to charge more for the genuinely expert lawyers

who are perched atop the pyramid dispensing bespoke advice. I can envisage various medium-sized firms merging to achieve a critical mass of experts, while divesting themselves of some of the junior lawyers who previously had been central to their business model. On this philosophy, though, I also expect that some very expert and experienced lawyers will leave large firms and set up niche practices, characterized by strong market reputation and track record, outstanding people, modest gearing, and very high hourly rates or fixed fees.

I fear for the future of very small firms whose work is not highly specialized—those with a handful of partners or even sole practitioners who are general practitioners. Unless their clients want to retain them for a highly personalized service, I cannot see how they will be able to compete with alternative methods of sourcing, whether by much larger law firms or by alternative providers.

The business model that supports the work of barristers may also be subject to change. While these trusted expert advisers will still be in demand (according to my thinking at least), there may be other commercial structures from which they can operate. The current model at the Bar—the self-employed, sole practitioner, who shares various services with fellow barristers—assumes no gearing, little capacity to multi-source, and few mechanisms for hedging against the risks of being a one person band. There is probably scope here for running the shared services more effectively through various forms of alternative sourcing. But some barristers might find it more comfortable to move to the highly niche expert firms that I am predicting or even, as has already happened, to very large firms.

Whether or not the age-old split of the profession, between barristers and solicitors, makes sense in the legal world I foresee, I defer for discussion on another day. The premise for any such debate, however, should be open-mindedness and not a reactionary preference for the status quo.

As for innovation, it is apparent that lawyers are heading for a time of great change and so we should ask whether and how lawyers, firms, and the profession might be the authors of this transformation. Should lawyers be innovating? Or setting up research and development programmes to cope in the new world?

For the law firm, there are three broad ways in which it can innovate: in the way in which it delivers its services (perhaps through some ground-breaking online system); in the actual advice it offers (for instance, a novel form of contractual arrangement); or in the way the business is run (for example in the way in which graduates are recruited). In the context of this book, innovation in the first and second senses are relevant—I discuss the need to meet

market demands by introducing new ways of sourcing legal work and note also that if lawyers want to live by bespoke work alone then they will need continually to develop imaginative new solutions.

I know from my work on legal technology, however, that lawyers do not find it easy to innovate, especially in the way in which they deliver their services. Historically, UK law firms have a stronger track record than US practices in technological innovation that benefits clients. The local market in the UK has been more competitive and there has been much stronger demand from clients. But how has innovation been achieved here? Management textbooks might suggest that these innovations will have flowed elegantly from the insights of management consultants, from lengthy strategy documents, from market research, and from away-days devoted to blue-sky, out-of-the-box, and lateral thinking. Not a bit of it. The reality is that the overwhelming number of innovations have evolved from the efforts of mavericks within law firms—energetic, often eccentric, frequently marginalized, invariably demanding, single-minded individuals who pursue ideas that are regarded in the early days as peripheral, irrelevant, and even wasteful. But the mavericks persevere and in their dining rooms or studies at home they beaver away, creating new forms of service for clients. Gradually, their innovations come to be recognized as significant and even client-winning. And soon, everyone claims that the mavericks had the firm's full support from the outset. A new discipline thus emerges—maverick management. This is the art of nurturing and encouraging mavericks, giving them space to innovate and wrapping some strategy and structure around their innovations only once their ideas have fully gestated. Mavericks are the research and development departments of many law firms.

Why have US firms exhibited an apparent indifference towards IT that directly helps clients? Generally, I have found that the major American firms have resisted serious investment beyond their own back-offices. They have often rejected knowledge systems and document assembly systems, for example, even though these can actually enhance or simplify client service. I believe they have done so because there has been little incentive to do otherwise. It is not easy to convince a group of millionaires within clear sight of retirement that their business model is wrong and that they should change direction and embrace new technologies. The top US law firms have been massively and satisfyingly profitable. Accordingly, they seem to be moved to change more by the threat of competitive disadvantage than by the promise of competitive advantage. Without hunger for change, without the worry of being left behind by the competition and, vitally, without clients clamouring for new forms of service, it will be business as usual for the US legal behemoths for

many years yet unless the credit crunch hits hard. They will wring every last cent out of the increasingly unsustainable practice of hourly billing and will steer well clear of innovative IT. Unless, of course, clients demand otherwise.

Should lawyers be technology pioneers? When they hear, say, about the great promise of wikis and blogs, or of the likely impact of e-learning and automated document assembly, should legal practitioners reach enthusiastically for their cheque books or more reflectively for a stiff, single malt? Broadly, when new technologies loom, a law firm can embrace one of three strategies. The first is to resist. Whether grounded in fear, ignorance, conservatism or insight, the purpose of resistance is to delay investment, often in expectation that the technology has been over-hyped. Alternatively, many senior partners hope they can hold out until retirement before the latest systems engulf them. Either way, Ned Ludd would have been proud. The second strategy is to prepare. This may be a grudging preparation—for the fateful day when clients or competitors leave the firm with no option but to invest. Or it may be part of a master plan, according to which the firm is like a finely tuned track athlete, poised at the final bend to pass and surge away from the early pace-makers. The third strategy is indeed to pioneer, to lead the way, and in so doing to try to achieve first-mover advantage.

Successful pioneering in IT is not temporary pace-making. It is about continually striving to keep ahead of the pack and reaping substantial rewards as a result. In the world of IT, however, there is much debate about its benefits. The whimsical sceptics often say you can recognize the pioneers by the arrows in their backs. The pioneers, it is jested, work at the bleeding edge rather than the leading edge. Flippancies aside, a more profound challenge to pioneers was recently laid down by Constantinos Markides and Paul Geroski, of London Business School. They argue in their book, *Fast Second*, that pioneering thinkers of radically new business ideas do not necessarily excel in commercially exploiting them.⁵ The idea of online bookselling came from an Ohio-based bookseller and not from Amazon. What about law? In truth, it is not yet clear whether it pays for lawyers to innovate and pioneer in IT. Did great benefits accrue to firms that led the way, for instance, in advanced financial systems, document management systems, or in human resource systems? Was the investment in the early bespoke systems worth it or might it have been better to wait for off-the-shelf solutions?

The systems just noted, no matter how trail-blazing, were for internal use within law firms. In contrast, competitive advantage will be achieved by firms

⁵ C Markides and P Geroski, *Fast Second* (San Francisco: Jossey-Bass, 2004).

when the technologies in question touch the lives of their clients—by providing new ways of working together or in packaging legal advice as online or embedded offerings. If technology can help to deliver cheaper or better service, many clients will sign up. That said, client-facing pioneering is not sufficient to sustain advantage. The trick here is not just to deploy the first workable system but to make it impossible or unattractive for competitors to imitate, and inconvenient or undesirable for clients to switch allegiance.

Although this book anticipates a veritable revolution in the nature of legal services, the changes I predict and advocate will not come about in one big bang. Rather, through a process of what I like to call ‘incremental revolution’, lawyers and their clients will change their ways in significant steps rather than huge leaps, but collectively these steps will add up to a very different legal world.

What about the types of people who will be our best lawyers in the future? It follows from what I say in this book that tomorrow’s lawyers can and should be far more efficient and business-like in the running of their practices; that they can and should be far more transparent in communicating with those that they advise and in exposing their working methods; and that large latent markets of unmet need can be realized and satisfied by delivering professional guidance as commoditized online service. The arguments and findings in this book call not only for a de-skilling and re-skilling of lawyers and for some fairly fundamental reconfiguration of legal businesses but, perhaps more fundamentally, for very different kinds of people working in the legal profession. I have been heavily influenced in my thinking in this context by an exceptionally thought-provoking book by Daniel Pink, *A Whole New Mind*.⁶ Published in 2005, Pink argues that:

The last few decades have belonged to a certain kind of person with a certain kind of mind – computer programmers who could crack code, lawyers who could craft contracts, MBAs who could crunch numbers. But the keys to the kingdom are changing hands. The future belongs to a very different kind of person with a very different kind of mind—creators and empathizers, pattern recognizers and meaning makers. These people—artists, inventors, designers, storytellers, caregivers, consolers, big picture thinkers—will now reap society’s richest rewards and share its greatest joys.⁷

In themes that resonate with some of the central messages of this book, Pink imagines a world where automation and outsourcing are commonplace;

⁶ D Pink, *A Whole New Mind* (London: Cyan, 2005).

⁷ *ibid* 1.

and when goods and services are in such abundance that design rather than functionality distinguishes one from another. Applying Pink's thinking to the legal world, the keys to the kingdom, as he puts it, will pass from the traditional, analytical, logical legal mind to a more creative and imaginative cadre of lawyers. His thesis applied to law would suggest that much legal work will either be outsourced or automated, and that which remains will be distinguishable on grounds of packaging and presentation more than on expertise. This certainly reflects an observation frequently made by in-house lawyers—that most good law firms are indistinguishable in terms of their legal expertise. This knowledge is taken for granted. At beauty parades and in bids for work, it is the flair, style, and presentation that often distinguishes one from another. Looking forward, I expect this to continue to be the case in relation to what I call 'enhanced practitioners', although it may hold less with respect to the finest legal experts, operating at their rarefied heights of the largest deals and disputes in the kingdom.

Pink also argues his case by suggesting that there will be a shift away from the dominance of 'left brain' thinkers to those of greater 'right brain' capacity. There is some interesting overlap here with the set of observations I made in Section 5.1 in relation to lawyers' inability to empathize with their clients. If Pink's analysis is right, the legal world today is dominated by 'left brain' thinkers who will not find it easy to empathize. And, of course, there is an interesting correlation here between the 'male brain' and the 'female brain'. Following the analysis of Simon Baron-Cohen, in his first rate book, *The Essential Difference*, the typical male brain systematizes while the female brain empathizes.⁸ Pulling all of these strands together, if my analysis in this book is sound, and the twin forces of commoditization and IT do indeed combine to create a legal environment in which much legal work is standardized and computerized, then we can well imagine that those individuals who are in future responsible for innovating, designing, marketing, and selling a multi-sourced legal service, will not be traditional, left brain males, but far more creative, innovative, artistic, and often female lawyers.

These individuals will inhabit a very different legal world, different not simply because lawyers will be drawn from a wider gene pool. The more fundamental difference—and we should not be deterred from noting this by dwelling too much on major law firms—is that a new interface will emerge between the non-lawyer and the law, between the citizen and the State. This is a central theme of the book. Traditionally, in a print-based industrial society

⁸ S Baron-Cohen, *The Essential Difference* (Harmondsworth: Penguin, paperback edition, 2004).

with an advanced legal system, much of the law (legislation, case law, and standard practice) is inaccessible to most lay people. There is too much law, it is too complex, and its impact is often not at all obvious to the non-lawyer. The legal profession has evolved to help to manage, interpret, and apply the law. This body of lawyers has become the principal interface between the law and the people. However, I am suggesting that possible new interfaces are emerging, so that lawyers will not, in the long run, be the only means of securing access to legal understanding and justice. Indeed, it will transpire, for the ordinary affairs of most citizens, that lawyers are not even the dominant interface.

For many lawyers, the idea of new legal interfaces may seem anathema to the very nature of professional service. Some will argue that a truly professional service is an irreducibly human service. But what do clients think? From my various research and consulting projects, I have discerned two broad views of the legal professional. The first might be called the 'trust model', according to which clients put trust in legal professionals largely because of who they are perceived to be. Lawyers are considered to be experts with competence and state-of-the-art knowledge not possessed by lay people and, on this view, they are regarded as the benevolent custodians of the law and legal institutions, ideally qualified to guide non-lawyers in relevant legal intricacies. But there is a second view and this I call the 'George Bernard Shaw model'. In accordance with this, as Shaw famously noted, 'all professions are conspiracies against the laity'. This view regards legal professionals not as benevolent custodians, but as jealous guards, who have for too long hindered access to the law and legal processes.

On balance, I think it is unhelpful to generalize about the motives of lawyers across the profession. I have little doubt that, within the legal population, there are both benevolent custodians and jealous guards. Either way, I do feel passionately that if IT-based services or other forms of sourcing can give rise to a quicker, better, more widely available, or cheaper service than that offered today, then I support these innovations wholeheartedly, even if their effect is financially disadvantageous to some lawyers.

