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Introduction—the Beginning of the End?

The title and theme of this book—the end of lawyers—might appear rather self-destructive. I am a lawyer myself (of sorts). Many of my close friends are lawyers. Most of my clients are major law firms. Socially and commercially, it might seem that I am shooting myself in both feet.

However, as the question mark in the title should at least hint, I write not to bury lawyers but to investigate their future. My aim is to explore the extent to which the role of the traditional lawyer can be sustained in coming years in the face of challenging trends in the legal marketplace and new techniques for the delivery of legal services. The book is neither a lawyer-bashing polemic nor a gratuitous assault on the legal profession. Nor again is it a political rant, presaging the withering away of law and lawyers. Instead, it is a collection of predictions and observations about a generally honourable profession that is, I argue, on the brink of fundamental transformation. More, it is a set of ideas about the law, our main form of social control, and the way its institutions can and should change in our remarkably evolving world.

That said, I do admit, if I may give away the ending, that the book does point to a future in which conventional legal advisers will be much less prominent in society than today and, in some walks of life, will have no visibility at all. This, I believe, is where we will be taken by two forces: by a market pull towards *commoditization* and by pervasive development and uptake of *information technology*. Commoditization and IT will shape and characterize twenty-first century legal service.

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Against this backdrop, I should be honest about one issue from the outset. I do not believe lawyers are self-evidently entitled to profit from the law. As I have said before, the law is not there to provide a livelihood for lawyers any more than illness prevails in order to offer a living for doctors. Successful legal business may be a by-product of law in society; but it is not the purpose of law. And, just as numerous other industries and sectors are having to adapt to broader change, so too, when appropriate, should lawyers. This book calls for the growth and the development of a legal profession not by ring-fencing certain categories of work as the exclusive preserve of lawyers; nor by encouraging cartel-like activity which discourages all but lawyers from engaging. Rather, it calls for lawyers, their professional bodies, their policy-makers, and their clients, to think more creatively, imaginatively, and entrepreneurially about the way in which lawyers can and should contribute to our rapidly changing economy and society.

1.1 The challenge for lawyers

More specifically, the challenge I lay down here is for all lawyers to introspect, and to ask themselves, with their hands on their hearts, what elements of their current workload could be undertaken differently—more quickly, cheaply, efficiently, or to a higher quality—using alternative methods of working. In other words, the challenge for legal readers is to identify their distinctive skills and talents, the capabilities that they possess that cannot, crudely, be replaced by advanced systems, or by less costly workers supported by technology or standard processes, or by lay people armed with online self-help tools. I argue that the market is increasingly unlikely to tolerate expensive lawyers for tasks (guiding, advising, drafting, researching, problem-solving, and more) that can equally or better be discharged by less expert people, supported by sophisticated systems and processes. It follows, I say, that the jobs of many traditional lawyers will be substantially eroded and often eliminated. At the same time, I foresee new law jobs emerging which may be highly rewarding, even if very different from those of today.

While I hope this book will be of interest to many general readers, I believe it is relevant for all lawyers, no matter how specialist or expert they perceive themselves to be. I am often amused and bemused when, after presenting to a group of lawyers, I am approached by a small number who purport to be in violent agreement with what I have said. Such lawyers will say that they

accept a shake-up in the legal profession is long overdue and that my ideas about the transformation of legal services apply across the board, except for one vital area of legal practice—their own. There follows a stream of rationalizations, clarifying why their corner of the legal universe is and should be immune from change. My scepticism here should be plain. No lawyers should feel exempt from assessing whether at least some of their current workload might be undertaken differently in years to come. And no lawyers should shirk from the challenge of identifying their distinctive capabilities.

Lawyers can learn from the corporate world in this context. At the peak of the dotcom era, Jack Welch, for twenty years the CEO of General Electric (GE), set up a group of teams to analyse whether the Internet could do to businesses within GE what Amazon was achieving in bookselling. In the spirit of the times, they were called ‘destroyyourbusiness.com’ teams. Before long, however, these were re-designated ‘growyourbusiness’ teams. They had concluded that the Internet offered more opportunities than threats and so they moved from being defensive to proactive in responding to the new technology.¹ And so it should be with lawyers, or so I argue in this book. The challenge is not to assess how commoditization and IT might threaten the current work of lawyers, so that the traditional ways can be protected and change avoided. It is to find *and embrace* better, quicker, less costly, more convenient, and publicly valued ways of working.

To return to the disconcerting message of this book for much of the legal profession—for those lawyers who cannot identify or develop the distinctive capabilities to which I refer, I certainly do predict that their days are numbered. The market, in ways I discuss, will determine that the legal world is inefficiently resourced (under-resourced in the consumer sector and over-resourced at the high end); it will increasingly drive out excesses and unnecessary friction and, in turn, we will indeed witness the end of outdated legal practice and the end of outdated lawyers.

1.2 Four thoughts

The origins of this book lie in four thoughts and a journey. Let me start with the four thoughts.

¹ J Welch, *Jack* (London: Headline, 2001) 346–349.

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The first sprung to mind when I sat, in great comfort, in early 2006, in the ancient and splendid surroundings of the dark wood panelled main hall of the Mercers' Company, in Ironmongers Lane in London. Founded in 1394, the Mercers is the longest established instance of a great tradition in the City of London, that of 'livery companies'. With origins in ancient trade guilds and, in the early days, very much focused on regulating their trades, there are now over a hundred of these bodies. Mercers were traders in fine cloths and silks. But the last mercer to become an apprentice with the Mercers did so in 1888; since then, like many other livery companies, the Mercers have supported innumerable charitable causes and educational initiatives. It was probably the fine food and wine that emboldened me and fuelled my imagination. I wondered to myself, in an entirely untutored way, about the fate of mercers. I thought about improvements in transport and communications, the impact of machinery on craftsmen and cottage industries, the emergence of synthetic fibres, the advent of mass-market retailing, and the impact of an ever more influential fashion industry. And I then thought about other ancient trades and craftsmen, now remembered in London largely because of the livery companies that bear their names—for example tallow chandlers (who rendered animal fat as candles), cordwainers (who worked with fine leather), and wheelwrights (makers of wheels). It occurred to me that the fundamental demand for the products of these trades (cloths, candles, wheels) had not diminished; indeed it had often increased. But new technologies, methods of production, and innovations had served to displace most of the associated craftsmen. I reflected upon the legal world and the possible impact of information technology. And I wondered then—and this first thought inspired the title of the book—whether *lawyers might fade from society as other craftsmen have done over the centuries*.

Perhaps a hundred years from now—maybe more or maybe much less—people might sit in fine comfort in some vestige of today's legal world (perhaps an ancient courtroom refurbished as a restaurant, as some of London's banks have been repurposed) and, appropriately nourished, speculate in a leisurely manner about solicitors and barristers and advocates and attorneys, in much the same way as I had been musing about various craftsmen of centuries past. Who exactly were these people, these lawyers? What was their craft? They were involved with the law, of course, but what did they actually *do*? Why did we need them? How did they contribute? And why do we not have them any more? What brought about the end of lawyers? It was just a thought.

The second thought that led to my embarking on this book crystallized after many years of talking with a wide variety of lawyers. Increasingly, I have

found that many lawyers seem to have one thing in common—they seem to want to deny that they are lawyers. They downplay the legal content of their jobs.

Private client lawyers (for example those who advise on divorces or draft wills) tell me that their job is not really about the law; rather, they insist, they are experienced counsellors, confidantes, or therapists even, in whom their clients have unwavering faith in relation to their personal problems. In similar vein, litigators say that their primary role in life is that of project manager rather than provider of legal advice, corporate lawyers claim to be deal-makers and negotiators much more than legal draftsmen, in-house lawyers maintain that they are risk managers as opposed to legal counsellors, banking lawyers assert their clients come to them not for legal advice but for their market knowledge, and high street solicitors insist that they rarely undertake legal research. Even judges say that they are becoming case managers.

Where have all the lawyers gone? Why are lawyers not devoting themselves to the rarefied legal work that our law schools led us to expect (and many still do)? My second thought was that *lawyers are denying that they are lawyers because they recognize they need to change and diversify in response to shifts in the market.*

Of course, a variety of reasons might be advanced for lawyers denying they are lawyers. One response might be that being a lawyer is, bluntly, not the coolest of jobs, and perhaps not as prestigious as once it was. There may even be a stigma of sorts attached to being a lawyer (hence the wealth of lawyer jokes). And so, in response, lawyers might be holding themselves out as belonging, at least in part, to another discipline. I do not accept this line of thought. It may be that the ill-informed and the disconnected will trash the legal profession but, in most walks of life, lawyers remain well respected. In any event, I cannot imagine according to what scale it is cooler or more prestigious to be, say, a project manager than a lawyer (with all due respect to project managers).

It may be that lawyers often genuinely forget how much they know about the law and so do not regard themselves as especially lawyerly. Or perhaps they do not feel that it is their legal knowledge that differentiates them in the marketplace and so they point to complementary skills of which they are proud. There is something different here, I believe, from yesteryear's traditional role of the lawyer as the 'man of affairs', the all-purpose rock of an adviser upon whom clients could unfailingly rely. That old boy (and these chaps were invariably male) regarded the law, in contemporary jargon, as their core competence, around which they built more general business acumen.

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In contrast, the modern lawyer, who is in denial of being lawyerly, seems to want to argue that they have some different core competence and relegate their legal ability to the background or periphery. I believe this is an indicator of profound forces at play, forces that are lessening the need for the traditional black letter lawyer. When it becomes possible to standardize and computerize the law and legal work, the need for the traditional bespoke handling by the conventional lawyer lessens considerably. Once legal practice is demystified, it becomes feasible to decompose many legal tasks into work parcels that can then be sourced in different ways (for example by outsourcing, off-shoring, and home-sourcing), leaving much less for the traditional lawyer to do. And when legal service is systematized, legal knowledge and legal solutions, in turn, can be shared and embedded in business practices. All of these ideas are explained in this book. For now, I suggest that lawyers' denial of their lawyerliness is an early and yet crucial pointer toward shifts in the legal market—lawyers are adapting to a world in which much conventional legal work is routine and can be handled differently and by others, and in which clients require actionable and practical advice that extends well beyond legal analysis and word-smithing. There is a hint here too of a confession from lawyers—they know that there is room for change and improvement and client satisfaction is not always sky high.

Whether consciously or not, in order to survive, many lawyers are widening their range of skills, broadening their sphere of impact, and are anxious that the world does not pigeon-hole them as detached scribes who sit in ivory towers. Many lawyers, in other words, can no longer eke a living from the law alone.

Lawyers, like the rest of humanity, face the threat of disintermediation (broadly, being cut out of some supply chain) by advanced systems; and, as in other sectors, if they want to survive, their focus should be on re-intermediating, that is, on finding new ways of invaluablely inserting themselves in these supply chains. This will lead, I claim, to the emergence of what I call 'legal hybrids', individuals of multi-disciplinary background, whose training in law will have evolved and will dovetail with a formal education in one or more other disciplines. The formality is important. When most lawyers claim today that they are, say, project managers or counsellors, they are nothing of the sort. Too often, they but dabble. They are dilettantes, who have read an article or two and attended a few seminars or intensive courses. We would not dare to call someone a lawyer on the strength of similar schooling. If lawyers want to reinvent themselves and carve out new multi-disciplinary roles that allow them to deliver new value, then their commitment to these neighbouring areas of expertise must be deep and our law schools should be

gearing up accordingly. In this way, we will also formally be equipping lawyers of the future with the tools and knowledge to solve business and social problems and not just legal problems.

I am not suggesting that there will be no call for the traditional legal expert. I am saying there will be less call for these individuals, because new ways of satisfying legal demand will evolve and old inefficiencies will be eliminated. On top of this smaller group of genuine legal specialists and this growing cadre of hybrids, I also envisage the emergence of a further grouping of professionals—the legal knowledge engineers. These are the highly skilled individuals who will be engaged in the jobs of standardizing, systematizing, and packaging the law. They will be the analysts who reorganize and restructure legal knowledge in a form that can be embodied in advanced systems, whether for use by lawyers, paralegals, or lay people.

The third thought that urged me to write this book came into focus over the last two years or so, when I have been informally asked to advise the friends of my teenage sons about possible careers in the law. I cannot pretend to these enthusiastic youngsters that what they have seen in movies or read in novels or even experienced through work placements will bear any relation to the legal world a generation hence. Can any responsible lawyer sensibly state with confidence that legal work in 2030 will be much the same as today? While major oil companies have plans in place for the next fifty years, very few lawyers look beyond the next five. In fact, when honest lawyers are really pushed, most confess to being clueless about how their profession is likely to unfold in the long run. And yet, in England alone, around 15,000 students each year are now being accepted by our universities to study law as undergraduates. Even if we concede that many never intend to practise, we are nonetheless left with very large numbers (perhaps a quarter of a million in the next generation, at current rates) emerging from undergraduate law schools, institutions that, generally, seem to assume and project a model of legal practice that held firm in the mid to late twentieth century but may well bear little relation to lawyering of the twenty-first.

I give lectures regularly at law schools and to legal academics. These talks often provoke interesting discussion but I fear I am regarded by mainstream law professors as an interesting but ultimately misguided sophist, and that trends such as commoditization and IT are looked upon as marginal side-shows. Disconcertingly, undergraduate law students are also sceptical. My ideas on the future of legal services may resonate with many General Counsel in the world's largest financial institutions and companies and I may be asked to advise many of the world's leading law firms on possible futures, but most law schools, by and large, seem much less willing to engage and are

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comfortable in assuming that it will be legal business as usual for the foreseeable future. It is clear to me that few undergraduate law schools, in the UK at least, are exposing their students even to the possibility that legal service may be radically different in the future and well within the span of their careers.

What, then, are we training our undergraduate law students to become? What should we say to young, aspiring legal eagles about the landscape of the world they are interested in entering? To what reports or publications should we be directing them? In all my travels, I have found only one, and even that is of limited scope, being of interest largely to major US law firms.²

For more than fifteen years, I have been a general editor of the *International Journal of Law and Information Technology*; not once in that period have we received a submission on the subject of the nature of legal practice in the long term. If law schools and legal academics are reluctant to express a long view about the future of law, are others stepping up to the plate? Remarkably, they do not seem to be. For example, professional bodies in England, such as the Law Society and the Bar Council, may currently be discussing or supporting or effecting changes that will substantially affect the future of lawyers but I can find no statement of an underpinning vision for the future of legal service. Similarly, the UK government is unquestionably reforming the legal profession and legal system at a rate of knots but in none of the white papers, consultation documents, or speeches by ministers can I locate a clear articulation of the distant end game, taking account of the phenomena that most long-range strategic planners are wrestling with—such as the impact of outsourcing or of Web 2.0 (two phenomena that are disrupting and reconfiguring most sectors) on legal practice. Nor has the Law Commission focused its lens on the future of legal practice. Even major law firms, which invest substantially in technology, very rarely look beyond the likely terms of office of their senior and managing partners, which tend to be between three and five years.³ My third thought, then, is that no-one who might be thought to be in the driving seat of the legal system is thinking systematically, rigorously, and in a sustained way about the long-term future of legal service. *No-one seems to be worrying about the fate of the next generation of lawyers.*

² J Seidl *et al* (eds), *Legal Transformation Study: Your 2020 Vision of the Future* (Minneapolis: DSI and LRC, 2008).

³ A recent exception is the law firm, Eversheds, who commissioned and published a study in 2008—*Law firm of the 21st Century*. See <<http://www.eversheds.com>>.

All that can be discerned in relation to the long term is a common assumption—whether on the part of scholars, professional bodies, government agencies, or leading law firms—that legal service of tomorrow will be quite similar to that of today; perhaps more efficient and more business-like but not fundamentally different in nature. It is assumed, I perceive, that legal guidance will continue to be dispensed by skilled professionals as a one-to-one, consultative advisory service. By and large, no discontinuities, transformations, upheavals, disruptions, or revolutions in the nature of legal service are being contemplated.

One possible exception here is the legal publishing community, a market that has changed markedly in the last decade, in its widespread adoption of online techniques. I have found that many legal publishers, from the large and multi-jurisdictional to the small and entrepreneurial, do have a long-term view, although it is not one they tend to publicize, for fear, perhaps, of agitating the law firms (of swallowing the hand that feeds them).

The fourth and final thought that urged me to write this book came quickly one afternoon, in the autumn of 2006, in a penthouse flat overlooking the River Thames. This was the unlikely venue for a seminar on the possible impact of the controversial Legal Services Bill and the liberalization of the legal marketplace. In the event, the Bill was introduced to Parliament in November 2006 and given Royal Assent in October 2007. The Bill had been inspired in large part by the findings and recommendations of an important independent review by Sir David Clementi, who reported in December 2004.⁴ Clementi had been appointed, in July 2003, by the Secretary of State for Constitutional Affairs (referred to by most lawyers as the Lord Chancellor) to review the regulatory framework for legal services in England and Wales. His report covered much ground; and it shaped much of the Bill before Parliament. In the first instance, Clementi proposed a new regime for regulating legal services. And it was this that seemed to capture the attention of most practising lawyers and legal policy-makers. He also recommended much-debated new mechanisms for the handling of complaints against lawyers.

But there was a third major stream of thought—in response to concerns about restrictive practices in the legal marketplace, new legal structures for legal businesses should be permitted. The focal point of the seminar that day was this third and controversial proposed reform, followed by the government

⁴ 'Report of the Review of the Regulatory Framework for Legal Services in England and Wales' (Final Report, December 2004). See <<http://www.legal-services-review.org.uk>>.

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in its inclusion in the Bill, of ‘alternative business structures’. This departure was being mirrored in a few other jurisdictions and anticipated for many more. For the first time in England, there was a strong possibility that, broadly speaking, it would be open to non-lawyers to invest in law firms. During the previous eighteen months, law firms’ responses to this particular development had been mixed. Some had seen it as an irrelevance, doubting on a variety of grounds that anyone other than lawyers would want to invest in law firms. Others regarded this development as yet another indicator of a decline from the professionalism of a partnership into the relative amorality of the limited company.⁵ Still others were rubbing their hands in glee at the thought of being bought out, serving a couple of transitional years under the new management, and then retiring comfortably.

I listened with growing interest to the debate that afternoon. It was a rare experience to hear legal services being discussed as though they were subject to the normal laws of the marketplace and not some kind of special case, sacred cow, or no-go zone. I learned that the value of the market for consumer-based legal services in England is well over £10 billion. We were told of market research, by *Which?*, that suggested almost two-thirds of adults thought it a good idea to obtain legal services from common high street brands (supermarkets and banks, for example).⁶ It was concluded, in a bit of a leap, that at least £6 billion worth of consumer-based legal services was therefore up for grabs. Only a very few of the delegates were lawyers. Most were representatives of these high street behemoths whose remit now seems to know no boundaries. These individuals were not committed to the ways of the past. They were talking about call centres, outsourcing to India, online legal services, the automatic generation of documents, and more. I thought then, with complete conviction, that *the delivery of legal services will be a very different business when financed and managed by non-lawyers*.

I wondered what the legal world would be like if dominated or even strongly influenced by the retail industry, by the management methods and ethos of corporate boards, with the backing of venture capital, private equity, and other forms of external financing? Would this herald a welcome liberalization and demystification of the legal market or a lamentable collapse of its professional underpinnings? I thought how improbable

⁵ In May 2007, Slater & Gordon, an Australian law firm, became the first to float on a public market. See <<http://www.slatergordon.com.au>>.

⁶ This research was conducted in 2004. See <<http://www.which.co.uk>>. Also see the various articles in (2006) 16 (6) *Consumer Policy Review*.

(and have since had this confirmed by specialists in the worlds of venture capital and private equity) that investors would choose to put cash into the traditional business model of most law firms—hourly billing, expensive premises, pyramidal organizational structures, and the rest. If it were possible to start afresh and build legal businesses from the ground up, surely the hard-nosed investors would not replicate traditional legal service models. They might buy a firm for its brand but would no doubt bring to bear a more contemporary suite of tools and techniques for managing the delivery of legal services. The new wave of investors and managers will surely find that individual law firms and the legal profession are inefficiently resourced and often over-resourced. They will quickly recognize that, within and beyond law firms, there is enormous duplication of effort and reinvention of the wheel; and, in turn, that there are too many lawyers and too few advanced systems.

And I reflected further that there would be no reason to suppose that investors would restrict themselves to legal services for consumers. I saw it as wrong-headed to think, as so many lawyers do, that the greatest impact would be felt amongst those who undertake high volume, low margin work. Before long, I thought, the entire legal marketplace will be under scrutiny, so that commercial law firms will also be challenged rather than purchased. I know that clients of such firms are increasingly dissatisfied with the level of fees that they pay, that they are under mounting pressure themselves to reduce their legal spend, and that they are pushing for much greater efficiency. Their attention is focused not only on the discrete high volume work. They are also looking at decomposing high value, big ticket deals and disputes and identifying what parts of these legal matters can be carried out more efficiently. And with around \$65 billion being spent in 2007 on the top 100 US law firms and about £10 billion on the leading 50 UK firms, there is likely to be some scope for a saving or two. The major firms may feel they are beyond the scope of commoditization and systematization and that, on bet-the-ranch deals and disputes, the legal fees represent but pocket change in the grand scheme. But this is not the attitude I find amongst General Counsel of some of the world's largest organizations. These managers are increasingly expected to function as other business managers do: to find ways to improve productivity and to produce more output with less input. In other words, they are under pressure to reduce their legal budgets and spend. And these clients' loyalty to conventional firms will be limited if new legal businesses emerge that offer quicker, more convenient, lower cost alternatives to low and high value work that seem to be more geared to the interests of clients and are more business-like in their constitution.

1.3 A journey

To recap, the four thoughts that contributed to the writing of this book are as follows: (1) lawyers might fade from society as other craftsmen have done over the centuries; (2) lawyers are denying that they are lawyers because they recognize they need to change and diversify in response to shifts in the market; (3) no-one seems to be worrying about the fate of the next generation of lawyers; and (4) the delivery of legal services will be a very different business when financed and managed by non-lawyers.

As I mentioned earlier, however, this book's origins also lie beyond these relatively recent ruminations. A journey has also been fundamental in the writing of this work. I am referring here to a personal journey—my ongoing activities in the field of legal technology. It is a field that I find endlessly fascinating and one with which I hope to be involved for the duration. Indeed, it is my professional passion to help bring the law and the legal system from the nineteenth into the twenty-first century, in one single technology-fuelled bound.

The journey began in 1981, while I was studying law as an undergraduate at the University of Glasgow. IBM had not yet launched their personal computer and it was over a decade before the Web would be invented. Nonetheless, there was a great undercurrent of excitement about the potential of computers and it seemed to me then, as now, that there was no reason why the law should be unaffected by the great changes that were being anticipated. Indeed, it occurred to me that a good deal of the law, with its piles of documents and its libraries of information, would be particularly well-suited to the technologies that were emerging. In my final year of law school, I elected to write a dissertation in place of one of my final examinations and chose computers and the law as the subject matter. I was especially interested in the extent to which computers might solve legal problems and this led me to the field of artificial intelligence (AI) and law. With the help of a friendly librarian in the law library, I set about finding everything that had been written on this subject in the English language. (An aside—the law library was located on the fifth floor of the university library, a building that was perched on top of a hill; legend has it that the entire building is slipping down the hill at a rate of at least 1 millimetre per year, because someone forgot to factor in the weight of the books when designing the edifice; I remember wondering if computer technology might reduce the number of books and so stop the slippage; I now see that, so far, IT has had no such impact on reducing the amount of print on paper; I presume the library is continuing its journey.)