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Access to Law and to Justice

Much of this book is devoted to the transformation of legal services that are delivered to a particular type of client—the substantial enterprise that is of sufficient scale and complexity to merit its own in-house legal department. But what about citizens, individuals, voters, consumers, regular people, who have no special access today to lawyers and legal services? Forget, for a while, the General Counsel with his or her team of perhaps hundreds of in-house lawyers. We may sympathize with their everyday workload and their growing legal risk burden. The challenge for these organizations is how best to allocate their often very considerable but nonetheless finite legal resources. In contrast, the challenge for citizens who are not lawyers is often more daunting, because these lay people have no legal resources whatsoever and, unless they are uncommonly wealthy or sufficiently impecunious to qualify for state funding, they seldom have the wherewithal to engage lawyers. Franz Kafka, in a haunting short story, 'Before the Law', sets the scene for us: 'Before the law stands a gatekeeper. A man from the country comes to this gatekeeper and requests admittance into the law. But the gatekeeper says that he cannot grant him admittance right now . . . The man from the country had not expected such difficulties; after all, he thinks, the law should be accessible to everyone at all times.'[1]

[1] F Kafka, *A Country Doctor* (Prague: Twisted Spoon Press, 1997), 29–33. This story is analysed at length by the prison chaplain and Joseph K, in F Kafka, *The Trial* (Harmondsworth: Penguin, 1983), 235–43.

It should indeed. But is it? To grasp the scale of the 'difficulties' in England and Wales, consider various observations made by the formidably credentialled Public Legal Education and Support (PLEAS)Task Force, in the opening pages of an important report published in July 2007:

> One-third of the population has experienced a civil justice problem, but many do nothing about it – often because they think, wrongly, that there is nothing they can do or that there is no local legal advice provider who might help . . . around one million civil justice problems go unresolved every year. This is legal exclusion on a massive scale . . . the cost of managing legal problems is staggering. Ministry of Justice economists estimate that over a three-and-a-half year research period, unresolved law-related problems cost individuals and the public purse £13 billion.[2]

This alarming snapshot succinctly captures the problem of 'inaccess' to justice in England and Wales. And this problem is the subject matter of the current chapter.

7.1 Redefining access to justice

It has been fashionable for some time now, amongst policy-makers, law reformers, and commentators, to speak of increasing 'access to justice'. While everyone seems to agree that access to justice is a fine thing, there is less unanimity over what this actually involves in practice. As a term of art, 'access to justice' perhaps peaked in popularity in the mid-1990s, when Lord Woolf's seminal reports bore the phrase as their title.[3] His emphasis was consistent with much theorizing and policy-making that has followed—on providing easier access to improved, cheaper, and fairer means of resolving legal disputes. While I emphatically welcome any initiatives that improve the accessibility and efficiency of our courts and of other methods of resolving disputes, and I remain a strong supporter of Lord Woolf's work, I do not think we should be satisfied that improving dispute resolution will be sufficient to achieve justice under the law. To be wholly or even largely focused on disputes

[2] 'Developing capable citizens: the role of public legal education' (July 2007) 7–8, at <http://www.pleas.org.uk>. These conclusions are drawn in large part from H Genn, *Paths to Justice* (Oxford: Hart, 1999) and P Pleasence, N Balmer, and A Buck, *Causes of Action: Civil Law and Social Justice*, LSRC Research Paper No 14 (Norwich: The Stationery Office, 2nd edn, 2006), available at <http://www.lsrc.org.uk>.

[3] See Section 6.1 and notes 4 and 5 to Ch 6.

in our pursuit of justice is, I submit, to miss much that we should expect of our legal systems.

A richer analysis is needed. I could turn here, as I have done in the past, to a fairly philosophical approach to justice and look in turn at categories such as formal justice, substantive justice, and distributive justice.[4] But I do not think these are the right tools for the job. Much as I enjoy legal theory, the discussion would run the risk of being too abstract. Instead, I prefer to draw a simple analogy—from the world of health care. In law, as in medicine, I believe that prevention is better than cure. Most people would surely prefer to avoid legal problems altogether than to have them well resolved. As I say in relation to clients in Section 6.7, most people would surely prefer a fence at the top of the cliff rather than an ambulance at the bottom (no matter how swift or well-equipped). If this is so, then access to justice is as much about *dispute avoidance* as it is about dispute resolution. Just as lawyers are themselves able, because of their training and experience, to recognize and avoid legal pitfalls, in a just society (one in which legal insight is an evenly distributed resource) we should want non-lawyers to be similarly forewarned. In large part, this will involve introducing novel ways of putting legal insight at everyone's fingertips; and to an extent that has not been possible in the past. This readier, cheaper, and more widespread access to legal guidance should give rise to a more just society in the same way that immunization leads to a healthier community. Another effect is also likely—more widespread understanding of the law and access to legal remedies may deter unscrupulous individuals (such as some landlords) from pursuing unlawful or exploitative courses of action. In the past, they may have behaved as they wished regardless of the law, secure in the knowledge that those to whom they were causing suffering were deterred from taking action precisely because of the complexity or inaccessibility of the law and the courts.

The medical analogy also helps identify a third sense of access to justice. I am thinking here of relatively recent work on health promotion—we are advised today to exercise aerobically for at least 20 minutes, three times a week, not just because this will reduce our chances of, for example, coronary heart disease but because it will make us a feel a whole lot better. The idea is not only to prevent ill-health but to promote our physical and mental well-being. Similarly, the law can also provide us with ways in which we can improve our general well-being; and not simply by helping to resolve or

[4] R Susskind, *Transforming the Law* (Oxford: Oxford University Press, 2000; paperback edition, 2003) ix–x.

avoid problems. Instead, there are many benefits, improvements, and advantages that the law can confer, even when there is no perceived problem or difficulty. And yet, many people are lamentably unaware of the full range of facilities available today—from welfare benefits through tax planning to making a will. In contrast, I look forward to the day when we will be committed to *legal health promotion* underpinned by community legal services that are akin perhaps to community medicine programmes. Providing access to justice, in this third sense, will mean offering access to the opportunities that the law creates. This underlies one of the themes of *The Future of Law*—that in legal systems of tomorrow, the law will come to be seen as empowering and not simply restrictive.[5]

To summarize this line of argument so far—when I speak of improving access to justice, I mean more than providing access to speedier, cheaper, and less combative mechanisms for resolving disputes. I am also referring to the introduction of techniques that help all members of society to avoid disputes in the first place and, further, to have greater insight into the benefits that the law can confer.

To translate this aspiration into reality, however, we must to go further than simply re-scoping the term, 'access to justice'. We need to assess, more systematically than we have been inclined to in the past, the facilities and techniques that will help to bring about this extended access to justice. My starting point here is a model that I developed some years ago—the Client Service Chain.[6] A simple variant of this is presented in Figure 7.1.

This model proposes that the activity of obtaining legal guidance can be represented along a simple life cycle, made up of three basic processes. The first is *recognition*, which is the process by which citizens or clients recognize, in respect of their particular circumstances, that they would benefit from legal guidance. Second is *selection*, the process by which citizens or clients select the particular source of legal guidance to help them in their given circumstances. And the third is *service*, the process by which legal guidance is received.

Each of these elements raises access to justice issues. The first, the process of recognition, is characterized today by what I call the 'blatant trigger'. By this I mean that the client is urged to seek legal guidance on the occurrence of some event, or in a set of circumstances, that quite patently call for formal legal input. It is at the client's instigation, therefore, that the legal machine

[5] R Susskind, *The Future of* Law (Oxford: Oxford University Press, 1996; paperback edition, 1998) 288.
[6] Susskind (n 4 above) Ch 2.

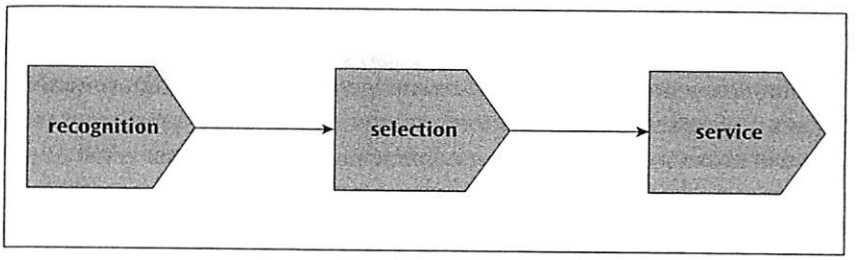

Fig. 7.1 The Client Service Chain

rolls into action. It is in this context, in *The Future of Law*, that I characterize traditional legal service as being 'reactive' in nature.[7] The blatant trigger (perhaps the receipt of a claim, the death of a relative, the commencement of negotiations on some major deal, or some similar such occurrence which clearly demands proper legal help) leads a client of today to instruct his or her lawyer. In other words, the lawyer *reacts* to the client's call for help. All too often, and unhelpfully, the lawyer responds in the first instance (accompanied by an irritating intake of breath) by saying that it would have been better if the client had come along earlier. This is the basis of what I have called the 'paradox of traditional reactive legal service'—you need to know rather a lot about the law to recognize not just that you need legal help but when best to seek such counsel. The net result is that clients are often disadvantaged, either because they look for legal guidance too late or because they miss altogether an opportunity to assert their entitlements. In a society in which there is genuine access to justice, there should be facilities in place to help non-lawyers to recognize, at the most propitious time, that the law impacts on them (whether to empower or inhibit them).

As for the selection process, currently this remains rather hit-and-miss. Traditionally, a variety of factors have brought a lawyer's capability to the attention of potential clients, including advertising, local physical presence, recommendations, and general reputation. Sometimes non-lawyers will instruct a law firm, not with any knowledge that the legal business has relevant skills but simply in the comfort that that same firm has undertaken legal work satisfactorily for them in the past. Even for the most sophisticated users of legal service, like the General Counsel in charge of a substantial in-house legal department, the full range of law firms in practice gives rise to a bewildering selection process, given the diversity, complexity, and sheer numbers

[7] Susskind (n 5 above) 23–6.

of apparently qualified legal providers. If we are sensibly to claim that our legal system affords access to justice, we must surely have processes in place that enable clients with no legal knowledge to find appropriately qualified lawyers who will offer a competitively priced legal service. And similar assistance will also soon be needed to help citizens to make sense of what may appear to be a bewildering array of online legal tools.

What about the third element in today's client service chain? This is the service element. Today, the dominant means of imparting legal guidance is through the delivery of advice by lawyers, invariably reduced at some stage to writing, usually after face-to-face consultation, and normally invoiced on an hourly billing basis. More, the advice tendered is packaged for the direct consumption of one particular client; rarely is it intended that that guidance should be re-used by others (even the client themselves). If we are to increase access to justice, I submit that we must continually be exploring and introducing methods of legal service that are less costly, time-consuming, emotionally-draining, and forbidding than the time-honoured consultative, advisory approach. Much that is said in Section 2.5, about the multi-sourcing of legal service, can therefore be applied in the context of the citizen.

Improving access to justice, therefore, will require much improved facilities in place to support clients: to recognize that they need or would benefit from guidance on dispute resolution, dispute avoidance, and legal health promotion; to help them to identify and select the most appropriate source of guidance (under all three headings); and to ensure that a wide range of sources are indeed available.

Improving access to justice, on this more ambitious scale, should also help us to liberate what I call 'the latent legal market'.[8] I am alluding here to the innumerable situations, in the domestic and working lives of all non-lawyers, in which they need and would benefit from legal guidance (or earlier, more timely, or empowering insight) but obtaining that legal input today seems to be too costly, excessively time consuming, too cumbersome and convoluted, or just plain scary. I believe this market will be liberated by the availability of straightforward, no-nonsense, online legal guidance systems and by other methods of sourcing legal service. They will not always replace conventional legal service, but they will provide affordable, easy access to legal guidance where this may have been unaffordable or impractical in the past. I have often been asked if my latent legal market is just a fancy term for

[8] Susskind (n 5 above) 27.

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the rather more earthy concept of 'unmet legal need'. In a sense it is, in that they are two sides of the same coin. The underpinning fact here is that specialist legal help is needed today far more extensively that it can be offered and taken. From the point of view of society generally, this is well characterized as unmet legal need; whereas from the lawyers' perspective, I regard this as a large untapped market, happily not an opportunity for exploitation or monopoly but the chance to contribute, at a fair rate of return, to the grave problem of inaccess to justice. In law, as elsewhere, there seems to be a 'long tail' of demand that has not been satisfied by the working practices of the past.[9]

7.2 The building blocks of access to justice

With this analysis of access to justice to hand, we can now pin down the fundamental social challenge. The standard rendition of the problem proceeds along these lines—insofar as lawyers and (sometimes) the courts are involved, solving legal problems and resolving disputes is affordable, in practice, only to the very rich or those who are eligible for some kind of state support. And the standard question that follows this bleak peroration runs something like this—how can we extend the availability of legal services so they are not confined to the poles of the financial spectrum?

If my thesis of the previous section is accepted, this standard analysis understates the dilemma. The broader reality is that it is not just legal problem-solving and dispute resolution that require legal experience and knowledge that most citizens do not possess and cannot afford. Also beyond their ken and wallet are problem recognition, adviser selection, dispute avoidance, and legal health promotion. How on earth, at affordable cost, can we deliver this full range of legal tools and facilities and, in turn, access to justice?

The options are limited. One possibility is to increase state funding of legal services. In most jurisdictions with which I am familiar, this looks very unlikely to happen, not least because justice (especially civil justice) tends to compete poorly with other demands on the public purse, most notably health, defence, education, and transport. We can argue with conviction,

[9] See C Anderson, *The Long Tail* (London: Random House, 2006).

along with Lord Neuberger, the Law Lord, that civil justice and the preservation of civil society (through enforceable contracts and property rights, for example) are the foundations upon which nation states are built and so should have a first call on public funding.[10] I fear, however, and for reasons too numerous to itemize, that this line of thought does not resonate with today's policy-makers and politicians. I have seen inside the workings of government for long enough now to hazard instead that there will be less rather than more funding made available to promote access to justice in the foreseeable future.

This situation is in many ways similar to that facing in-house lawyers who are strapped for resources. Like General Counsel, citizens who hanker after greater access to justice want more for less. If this is so, they should pursue the two basic strategies that I put forward in Section 5.7,—the efficiency strategy and the collaboration strategy. Using the former, we can *cut the costs* of providing access to justice—for example radical efficiency gains and cost savings should be achieved within law firms through standardization and computerization, while various other sources of legal counsel can also be brought into play, often using different channels for delivery, such as call centres and video calling. Or, following the latter strategy, we can *share the costs* of providing access to justice amongst the participants involved—for example through legal open-sourcing or closed legal communities that enable the burden to be shared across large communities of those in legal need (see Sections 4.6 and 4.7).

In seeking to meet the grave social and economic challenge of providing greater access to justice at less cost to the public purse and the citizen, I therefore hope we can draw on the thinking and practical suggestions made elsewhere in this book in relation to commercial clients. Even if the legal problems of the citizen are quite different from those of the in-house lawyer, the more general theme—that of providing more for less—is remarkably similar. In the pages that follow, then, I point once again to the wide range of disruptive legal technologies, as discussed in Chapter 4 and Section 6.6. As ever, while these systems may be unattractive and threatening to conventional legal businesses, the changes they bring will often deliver direct benefits (especially cost savings and quality improvements) to the client. And, once again, those legal businesses that choose to embrace disruptive technologies ahead of later adopters, may in so doing secure some kind of advantage in the marketplace. More generally, though, the challenge of increasing access

[10] Lord Neuberger, unpublished speech at Property Litigation Association Dinner, 2 October 2007.

to justice can be met, at least in part, by using the techniques of decomposing and multi-sourcing, as introduced in Section 2.5. If we are serious about reducing the costs of legal service, we should be decomposing legal work that has been, or should be undertaken, for citizens, into constituent tasks and allocating these to the least costly sources of service that we can find, so long as this multi-sourcing and mass customization (Section 2.5) does not fail to deliver the requisite quality of guidance that the non-lawyer needs.

We can look at the future in another way—in terms of the evolutionary path that I lay out in Section 2.1. On this model, I am anticipating a move away from an arbitrary few citizens receiving traditional bespoke legal advice to many more members of society benefiting from the efficiencies and savings that can be achieved across the justice system, along my evolutionary path, through standardization and computerization. In a more efficient justice system, when there is mass customization, the unit cost of individual bits of legal service will reduce and, in turn, there should be greater access to legal services and to justice. We will get more punch from our pound.

In practice, assuming that there is no radical change (up or down) to the level of public funding made available for legal services, and in parallel with the improvements to the court system that I recommend in Sections 6.4 and 6.5, I propose that improved access to justice can be achieved in the future by a combination of six building blocks, as follows. First of all, citizens themselves must be appropriately empowered, so that they can take care of some legal affairs on their own and work more productively with those who advise them, if guidance from others is needed. The second building block is a streamlined legal profession with law firms that multi-source, embrace technology, progress towards commoditization, and offer pro bono services that dovetail sensibly with other sources of legal guidance. The third is a healthy third sector; recognizing that many citizens who are in need of legal assistance want a kind, empathetic ear with only a light sprinkling of legal expertise. Fourth, a new wave of imaginative, entrepreneurial, and market-driven alternative providers of legal service are vital to the mix, bringing new ways of making state funding go further, keeping law firms on their toes, and delivering service in a manner with which consumers are comfortable. Penultimately, to support all who need to wade their way through the law, statutory source materials and case law should be easily accessible and digestible through no-cost (to users) legal information systems. In turn and finally, there must be in place and in practice an enlightened set of government policies relating to the availability of public sector information. In the remainder of this chapter, I look at each of the six in turn.

7.3 The empowered citizen

In economic terms, lawyers are a scarce resource; and they are a resource that is distributed unevenly across society. When most private citizens seek legal advice, they cannot afford to retain lawyers for anything but a very few consultations; and those who wish to resolve disputes are often deterred by the prohibitive cost of litigation. However, and I hope I can take all readers with me on this fundamental point, even if lawyers are a scarce resource, we cannot allow justice to be similarly pigeon-holed.

The social challenge here, one of forbidding complexity, is to provide those who lack the funds to engage lawyers in the traditional manner with alternative and complementary sources of legal help. Part of the answer is to blend the work of new-look law firms with contributions from the third sector and from alternative providers. But even this more imaginative sourcing will not be enough. In the end, citizens themselves will need to bear much of the burden. In prosaic terms, we are in the realms of DIY law and legal self-service. In the lexicon of the day, we need to empower citizens to sort out some of their own legal issues.

How do we actually go about empowering citizens? I suggest there are two principal techniques: the first is what I call 'legal awareness raising' and the second is information technology (IT) in various shapes and forms.

With regard to awareness-raising, I draw a distinction between this notion and the apparently broader idea of 'public legal education' (PLE), as defined, for example, by the PLEAS Task Force.[11] My ambition for legal awareness-raising is to enable citizens to be sufficiently familiar with the law and the legal system to *recognize* when they need some kind of legal help. I take the Task Force to be more ambitious. As I interpret their view of PLE, this seems to extend to educating citizens so that they actually know and understand various substantive legal issues.

When I speak of legal awareness, I am reminded of the knack that most lawyers have, of sensing when certain circumstances give rise to a legal concern, even if they are not really familiar with the particular area of law. Just as alarm bells ring in their ears, I want citizens to have sufficient awareness of the law to have the same in-built early warning systems. I do not think we need to take the further educational step of teaching citizens in any depth about their civil rights and duties. All that we need do is equip them with

[11] 'Developing capable citizens: the role of public legal education' (July 2007) 9, at <http://www.pleas.org.uk>.

knowledge of where and how to look up the law and so determine these entitlements and obligations. In the same spirit, this is what many professors say to their students about undergraduate legal studies—that the object is not to learn the law but to know where and how to find it. Likewise with citizens. They should be coached so that they know when they need legal assistance and what resources are available.

In terms of my Client Service Chain (see Section 7.1), I am therefore inclined to restrict awareness-raising to the *recognition* element, so that citizens can tell when legal guidance will help them to solve a problem, avoid a difficulty, or even promote their legal health. I see a much more modest role for awareness-raising in respect of the *selection* and *service* components, where guidance from human advisers or smart systems is more practicable than educating citizens.

As for channels for the delivery of legal awareness-raising, there are many options. Public bodies, law firms, third sector bodies, and others can produce handy leaflets, magazines, information packs, and websites. Newspaper articles and TV coverage should also work well. And here, too, is a wonderful opportunity to unleash e-learning in earnest (see Section 4.4). There can be little doubt that a web-cast, or even a simple voice-only podcast, presented by a friendly and articulate person in ordinary language and not legal jargon, will be easier for many citizens to assimilate than inviting them to plough through text.

I turn now to the ways in which IT, more widely, can complement legal awareness-raising. This is the second technique for empowering the citizen. In the past, most discussions of increasing access to justice through advanced IT have focused on online self-help facilities that offer guidance on questions of substantive law. In terms of my Client Service Chain, the focus has therefore been on the *service* component. This has been appropriate but we can and should go further and give thought to the ways in which citizens can be supported by IT in *recognizing* when legal help would be beneficial and in *selecting* the most appropriate sources of legal help for their purposes (although, in practice, these two processes often blend into one).

So, what kinds of systems might make it fairly easy for citizens to recognize that legal assistance would be beneficial? On analysis, it emerges that there are two problems of *recognition*. The first is where citizens already sense that legal input of some sort would be useful but need help in understanding and classifying their situation, so that they then know what kind of help or solution to pursue. This sense that they have might be the result of some successful legal awareness-raising or it may be triggered by some self-evidently legally charged event (an aggressive letter from a solicitor perhaps).

In either case, are there online systems that might offer the navigational help they require?

I think we should again borrow and computerize a technique that seems to work well in health care. The technique is known as 'triage'. When resources are scarce and all patients cannot be treated at once, this is a process for assessing and prioritizing needs according to the seriousness of patients' conditions. The idea is to optimize the deployment of available professionals and facilities, so that more patients can be seen than would be on a 'first come first served' approach. Vitally, top clinicians only see severe or complex cases and the most straightforward conditions are dealt with by the most junior medics or nurses. By analogy, I envisage a form of legal triage and I discuss this in more detail in Section 7.4. For now, though, I propose the idea of online legal triage. This would provide citizens with guidance on the type of legal help they require (a law firm or third sector provider, for example). One version of this could be entirely IT-based; perhaps an interactive, diagnostic expert system that would ask a series of questions and then make recommendations. The system may confirm that it would be wise to secure legal guidance of a particular kind or it may suggest that their problem is not really a legal one. Another online tool could be a facility that invited citizens to explain their circumstances through e-mails; and these messages could be assessed by human lawyers or advice workers who, again, might confirm (or not) that legal guidance would be appropriate or beneficial. An impressive variant of this approach is found in LawHelp, a US-based system that allows citizens to interact with specialists through a type of instant messaging (a real-time chat facility). The specialists do not answer the questions put to them but point the user to promising online resources.[12] This to some extent combines both the recognition and selection elements of the Client Service Chain.

I now see that I had a type of online legal triage lurking in my head when I was an adviser, in 2000 and 2001, to Sir Andrew Leggatt on his *Review of Tribunals*.[13] I suggested then that there was a pressing need for some kind of facility which would help citizens and organizations to identify the most appropriate forums for the resolution of their differences and difficulties. Again, I envisaged a web-based expert diagnostic system—a citizen would answer a series of online questions about his or her grievance and, in turn, the system would identify the court, tribunal, ombudsman, complaints

[12] <http://www.lawhelp.org>.

[13] <http://www.tribunals-review.org.uk>.

procedure, or other method of resolution that seemed best suited to the dilemma at hand. This idea remains unimplemented; but I still like it, because I do know that many citizens are bamboozled by the wide range of options that seem to confront them when they seek to solve a problem through official channels.

The second problem of recognition is more challenging—this is when citizens have no sense at all that the law bears directly on their circumstances. More accurately, it is a problem of non-recognition. This most commonly prevails when there is no blatant trigger—such as personal injury or a pugnacious letter from a solicitor—to alert the citizen and set alarm bells ringing. Often, the consequence is an opportunity lost. Without legal insight, a chance is missed, perhaps to take steps to avoid some impending legal problem or to take advantage of some benefit that the law would confer. Aside from legal awareness-raising, whose focal point, I argue, is in widening recognition, how can IT help? Drawing on my arguments of Section 4.9, this is surely a job for what I call embedded legal knowledge. There is scope, for example, for the more widespread introduction of personalized alerting which will result in citizens being notified of new legal developments that affect their lives. Once an individual builds up a profile of his or her activities, or joins communities, whether open or closed, of people with shared interests, then distilled, relevant, and tailored briefings will be sent to them. In this way, citizens may be urged to be proactive. Personalized alerting will function like a lawyer who calls up periodically and suggests, because a client works in a given trade or business, then he or she should take a particular precaution or might like to take advantage of some opportunity. I say more about this in Section 7.7. Document assembly technology (Section 4.1) can also help here—in enabling lay people to create robust legal documents that will protect them in the future. Consider RiskRemedy from NatWest—this online service helps lay people to prepare legal documents (for example employment contracts) without, as it is claimed, 'resorting to expensive solicitors'.[14]

What about the *selection* element of the Client Service Chain? If we assume that a citizen has recognized that he or she would benefit from legal guidance, what kinds of systems might guide that person, for example, to the most appropriate lawyer or advice worker or online service in the circumstances? I have high hopes here for the emergence of the electronic legal marketplace that I discuss in Section 4.3. Using techniques with which citizens will be

[14] <http://www.natwestriskremedy.co.uk>.

familiar from their other online activities, I predict there will soon be many websites that will actually help clients to identify suitable lawyers or other sources of help (much as systems can help patients to find appropriate doctors); and they will help clients to secure services at highly competitive prices. Such systems already exist and I provide examples of them in Section 4.3. In due course, citizens will even benefit from online legal auctions, akin to eBay. These sites will drive prices down. And facilities will also be available to offer better insight into what legal fees to expect, and to hear from others about their legal experiences. This will give the comfort of knowing that the lawyers they choose have given satisfaction to others.

Still on the question of selection, citizens should also be able to consult the Web when contemplating whether to pursue formal action in the courts. Online help, perhaps using e-learning techniques, on how to pursue or defend a claim should be readily available, in punchy and graphical form. This could be designed for those who are already involved in a dispute as well as those contemplating action. A basic system could be provided by the court service but feedback, observations, insights, and tips from court users could also be encouraged, thereby helping citizens make informed decisions about how or whether to proceed.

Turning now to the *service* element of the Client Service Chain, I also expect that citizens will increasingly turn to the Web, as their first port of call, whenever they have a legal problem, or they have recognized a risk that needs to be managed, or they are pursuing some way to enhance their legal health (exploring their eligibility for some tax rebate, for example). Whether through primitive FAQs (frequently asked questions) or artificial intelligence-based, diagnostic expert systems, many legal issues on the minds of citizens will be handled through consultation with some online legal service. No longer will it be assumed that the citizen always needs to consult a qualified lawyer or third sector adviser.

Once again, my disruptive legal technologies (Chapter 4) will come into play: automatic document assembly systems will enable citizens to generate (at fixed or no cost) reliable and robust letters and agreements simply by responding to online questionnaires; online legal services will actually provide guidance and answers to legal problems; online communities will burgeon, where useful materials are made available in open source spirit and built up using wiki techniques; citizens will record their legal experiences on blogs, for others to examine; and they will pose and answer questions on discussion forums.

That citizens may come to be guided by unofficial sources rather than authoritative law itself raises interesting issues about the nature of law.

This guidance itself may come to be regarded by many as the law itself and not just a representation of it. This would be a poweful illustration of what the legal sociologist, Eugen Ehrlich, once called the 'living law'—the law which actually reflects and conditions behaviour in society.[15] This new genre of legal help may also introduce a further dimension to what has been called the 'delegalization of law'.[16]

In any event, these new facilities will not be organized under conventional legal headings, such as contract, tort, or agency. Nor will they be subdivided into legislation and case law. Instead, the resources will be presented and categorized as life events that citizens will immediately recognize as matching their position or predicament. Beneath self-evident headings—such as 'I have been fired', 'I want to start my own business', 'I want to write a will', 'I am in dispute with my landlord'—will lie the resources that I describe. This idea of organizing online legal information in terms that non-lawyers will immediately grasp is well illustrated by a fairly simple website that helps motorists who fall foul of the increasingly draconian road traffic laws in the UK.[17] The site provides a wealth of information on road traffic offences, including guidance on speed cameras, motor accidents, mobile phone usage, seat belts, and car insurance. A handy table of driving offences is presented, indicating for each the likely penalties, and whether or not disqualification or fixed penalty options are possible. A free 'road reckoner' is available to answer that age-old query—'what will I get?'

Finally, in relation to online facilities for citizens that may complement or displace conventional service, there is online dispute resolution, as I describe in Section 6.6. Systems such as Money Claim Online allow non-lawyers to prepare their own claims and to pursue legal action without directly involving anyone from the legal profession.

These various suggestions for securing legal service and guidance online will no doubt be frowned upon by technophobes and legal reactionaries alike. In concluding my discussion about the empowerment of citizens, I want to address some likely objections.

One important concern is that not all websites with legal content will be accurate or reliable. This clearly is a legitimate worry. Part of the challenge here will be to raise awareness amongst citizens about which online legal

[15] E Ehrlich, *Fundamental Principles of the Sociology of Law* (New York: Arno Press, reprint edition, 1975).

[16] See F Schauer and VJ Wise, 'Nonlegal information and the delegalization of law' (2000) 29(1) *Journal of Legal Studies* 495.

[17] <http://www.road-law.co.uk>.

brands are robust and perhaps officially endorsed. I see this as an important role for government. Once again, there is an interesting analogy to be found in medicine. Some doctors have major misgivings about the volumes of medical information that are now available online. They agitate about the accuracy of the guidance offered and harbour the more general fear that, when it comes to medical health, a little knowledge can be a dangerous, if not fatal, thing. On the other hand, other doctors welcome online medical resources, less perhaps for their accuracy but more for the way in which they encourage patients, as is said, to take greater responsibility for their own illnesses. On this argument, patients come to their doctors if not fully informed then certainly more engaged than has been possible in the past. Similarly, in law, even if the provision of online legal service, whatever its manifestation, may not always definitively resolve or dispose of a legal issue, it may nevertheless engender a greater willingness amongst deserving citizens to seek further help where, in the past, they might have felt deterred.

Another understandable concern that I expect to be voiced is that online service is rarely as good as the real thing. There is no substitute, it will be said, for seeing an experienced lawyer face-to-face. In many (but not all) circumstances, I agree. I return to this question in the following section. For now, though, I want to stress a harsh reality—given the extent to which legal expertise is a scarce resource, one-to-one consultative advisory guidance is a service we cannot always resource or afford. So, I respond, as I have for many years, by saying that the judicious use of IT can sometimes help to provide legal guidance to individuals who would otherwise go without any counsel whatsoever. And those who reject IT-based services because, in an ideal world, human service of a higher standard would be available, are allowing, as Voltaire would have said, the best to be the enemy of the good.

A further well intentioned objection to all of this technology, I know, is that some citizens do not have access to the Internet. This problem is known in the trade as the 'digital divide'. This refers to a new partition in society, between those who have access to the Internet and those who do not. In fact, around two-thirds of households in the UK have Internet access.[18] My guess is that this figure will rise in the next few years but it may well plateau at around three-quarters. Whatever the fraction, the percentage is significant (although not nearly as significant, I cannot resist saying, as the number of homes whose information seeking habits have been transformed by the Internet).

[18] See the Oxford Internet Surveys—W Dutton and EJ Helsper, *The Internet in Britain* 2007 (Oxford: Oxford Internet Institute, 2007), available at <http://www.oii.ox.ac.uk>.

To be blunt, I think that the impact of the digital divide on access to justice can be overstated, and sometimes disingenuously so. In the first instance, when we look at the research more closely, we find relatively lower levels of usage amongst the elderly and the less well-off. The cynical might say we should not be too worried, from an access to justice perspective, about the less well-off not having Internet access, because many of those who are least likely to afford technology will, by definition, be eligible for Legal Aid. Whether or not this is convincing, it is unquestionably the case that some Internet-deprived citizens can be described as secondary or proxy users, which means that they do not themselves sit down and put finger to keyboard but have someone else sit in the driving seat on their behalf. They can be said to be indirect beneficiaries of the legal resources on the Web. Many elderly people fall into this category—they delegate Web browsing to their children and grandchildren. Another class of indirect beneficiary, of course, are citizens who are guided by advisers (not least in third sector) who themselves are productive Internet users. All of which is to say that the number of people who are actually disadvantaged by being non-users is appreciably less than at first blush.

In any event, to rehearse another running theme of my work since the 1990s, even if we concede that some individuals do not have direct or indirect access to technology, I maintain that a higher percentage of members of our society have access to the Internet today than have access to justice. In 2000, I wrote, with some regret: 'I would bet that more people (of all social classes) will have access to the Internet (and so to the law, on my theory) in five years' time than have access to justice today.'[19] Sadly, I think I was right.

7.4 Streamlined law firms

With all kinds of Internet-based services available to the citizen, where does that leave lawyers? To pinpoint the role of lawyers and law firms in the new world of consumer legal services, we should return to first principles. In the first chapter of this book, I challenge lawyers to introspect and ask themselves honestly what parts of their current workload might be undertaken differently (more quickly, cheaply, efficiently, or to a higher quality) using

[19] Susskind (n 4 above) 158.

different methods of working. I say that the market is increasingly unlikely to tolerate costly lawyers for jobs that can equally or better be undertaken by less expensive workers or through smart systems and processes. This same thinking should be brought to bear in the context of access to justice for the individual citizen.

We should expect, following the arguments of section 3.5, that some tasks (for example those requiring deep expertise or inter-personal communication) will still require the traditional lawyer. But firms that are keen to survive must nevertheless be willing to decompose and multi-source across their practices, in the manner laid out in Section 2.5. Far more internal delegation to more junior lawyers will be needed, as will 'de-lawyering', that is, passing work to paralegals and legal executives, or intelligent lay people; where to use legally qualified individuals would be to over-egg the pudding. Outsourcing, subcontracting, relocating, and the various other means of sourcing that I identify should also be deployed. In this new world, if law firms wish to remain centre stage in the production of legal service, they will also need to develop their project management skills so that they can be responsible for managing a multi-sourced service and delivering it to clients (see Section 2.5).

At the same time, computerization should always at least be an option for consideration. This will involve systematizing, packaging, or commoditizing, as I explain these terms in Chapter 2; and will inevitably require some investment in those technologies that I dub 'disruptive' (see Chapter 4). For instance, the far greater use of automated document assembly (Section 4.1) and workflow systems (Section 4.8) should become standard practice amongst firms that aspire to the efficient disposal of relatively routine work. Another example—the advent of social networking, instant messaging, video conferencing, and telepresence will change the way that lawyers and citizens communicate with one another, removing much of the unnecessary noise and friction that characterizes conventional legal service and gives rise to unnecessary expense (see Section 4.2). And with the emergence of electronic markets, where legal work can be auctioned, details about reputation and performance can be recorded and maintained, and where directories of lawyers are available, citizens will be able to secure legal services at far lower and transparent cost than in the past (see Section 4.3).

In other words, law firms that serve citizens will be as deeply affected by the arguments of this book as their commercial cousins. And the tools and techniques that I have identified for larger firms can and should similarly be put to service in support of smaller practices.

Whether law firms can survive in this market will depend on the extent to which traditional lawyers are genuinely needed, when they are frankly and dispassionately compared with their emerging competition in the broadest

sense, which includes a healthy third sector, entrepreneurial alternative providers, online self-help, and the various other sources of legal guidance that are and will become commonplace. Survival will also rest to some degree, therefore, on whether law firms can reinvent themselves, embrace new skills, and so provide newly competitive legal services. My expectation is that law firms will adapt but within limits. I predict that they will be most active in relation to the 'service' component rather than 'recognition' and 'selection' elements of my Client Service Chain (see Section 7.1). And the service itself, I suspect, will be largely dispute resolution and problem solving rather than dispute avoidance or legal health promotion.

Within these limits, lawyers who advise citizens will probably come to think that they have two classes of new 'competitor': lay people who are armed with packaged or commoditized self-help online legal tools, or less costly legal or quasi-legal workers supported by smart systems and often operating from low cost areas. However, following the arguments of Section 4.6, there is another threat; if not a distinct threat, then a development that will bolster the two threats already in play. I have in mind legal open-sourcing. Just as citizens can go online today and obtain punchy and effective help on how to fix their computers and on medical matters, then so too a rich body of open source legal material (standard documents, commentaries, personal experiences, and more) will appear on the Web. These will radically enhance the self-service experience and greatly assist the less costly and quasi-legal workers. As I suggest a little later in this section, lawyers could have a role in contributing to this body of knowledge. More generally, entrepreneurial law firms will not see threats in all of these developments—some will find promise and business in the latent legal market, for example.

Some lawyers will be quick to respond to much that is said above in words of the following sort—most clients, when they are in life-changing or career-threatening circumstances, will want to sit face-to-face with a proper lawyer and will not want to go online or speak to a paralegal. This is an important challenge that must be addressed squarely. I start with a concession—I have little doubt that some people today, as a matter of fact, do indeed prefer to consult a lawyer when a major personal or work-related issue arises. That said, we also know from the research of *Which?* and others that satisfaction levels with lawyers are not compellingly high and many are sympathetic to alternative providers.[20] In any event, aside from what *is* the case today, I am more concerned with how we *ought* to configure and provide legal services

[20] The research in question was conducted in 2004—see <http://www.which.co.uk>. Also see the various articles in (2000) 16(6) *Consumer Policy Review*.

in the future. I am focusing here, incidentally, in terms of the Client Service Chain (Section 7.1), on the 'selection' and 'service' elements.

I think it helpful now to introduce a new concept—the idea of 'legal triage'. For a lay person to visit a lawyer directly whenever he or she deems it appropriate may be as wrong-headed as a patient with a mildly grazed knee going directly to an accident and emergency consultant without being reviewed by a nurse. A sensible first step, for clients and patients alike, is an initial appraisal of their circumstances to determine the most sensible course of action. In law, I call this legal triage—whether by human or online triage (see Section 7.3), the citizen's situation can be assessed and the best type and source of guidance can be determined. This assessment need not involve a lawyer. It might be the province of a suitably trained paralegal. The client might be directed to a lawyer in the first instance but, on many occasions, their situation and profile may lead to a different referral—to an advice worker, to a website, or perhaps to an alternative provider. This form of human legal triage can straddle the recognition and the selection elements of the Client Service Chain.

Lawyers should only be engaged when their distinctive skills and expertise are needed. And here is the crux. The lawyer might feel, because of the gravity of the circumstances, that he or she is the person for the job. Legal triage may suggest otherwise—a marriage counsellor or a social psychologist, for example, might be a better first port of call. And even if a lawyer is thought to be necessary in the first instance, this does not mean that this adviser should be personally engaged throughout the life cycle of the client's episode. Triage may suggest, for instance, an initial consultation with a lawyer, but followed thereafter by a supervised, multi-sourced service.

Looking some years into the future, and following what I say in Section 3.4, I do not think we can, in any event, simply assume that our children will find it as natural as their parents to meet face-to-face with those who advise them. Mere assertion today by lawyers that clients like to look them in the eyes will not bind future generations.

The net result of all of this is that, in years to come, legal triage, multi-sourcing, and IT will combine to diminish the direct involvement of lawyers in the legal affairs of citizens. In fact, there are many areas of legal service delivery (for example social welfare law), where lawyers are already much less involved than they were in the past. When lawyers are engaged in the future, they will bring to bear deep expertise or the specific inter-personal skills that are called for; and this service will be underpinned by newly fashioned and more sustainable business models.

For those law firms that continue to trade, pro bono work will continue to be important but it will change in scope. The next generation of pro bono

activity will extend beyond volunteer (or volunteered) lawyers sitting in advice centres, dispensing guidance at no cost. Lawyers who are prepared to work on a pro bono basis should be encouraged to contribute in ways that reach beyond conventional advisory service to citizens. One possibility here is for lawyers to participate in well facilitated and orderly online discussions and to offer direct help to citizens through this medium. Another is to become active contributors to the online communities that I recommend (in Section 7.5) should be set up for third sector workers. Yet another option is for lawyers and their firms to provide resources (standard documents or suitably anonymized letters of advice, for example) to the banks of open source legal materials that I predict will evolve on the Web (Section 4.6). Lawyers may indeed have a crucial role in promoting legal open-sourcing. In turn, one way in which law firms may be judged in the future to be fulfilling their social responsibilities will be in relation to their contributions to online communities and resources. The support of professional bodies could be invaluable here, with a view perhaps to committing every firm, in due course, to providing a minimum number of contributions each year.

There is a further dimension to pro bono work that needs more thought. In a multi-sourced environment, pro bono work will be one amongst many components that contribute to legal service. In practice, this might mean that lawyers or legal executives[21] who make themselves available for pro bono work, may be allocated discrete, modular tasks (perhaps some research or drafting) that will be submitted by them and then integrated as part of a multi-sourced service being coordinated by another. This might come about when third sector organizations invite lawyers, in their pro bono capacity, to undertake particular slices of work that require lawyers' skills or expertise but for which no funds are available.

7.5 A healthy third sector

A vital contribution to our justice system today is made by what is increasingly referred to as the 'third sector'. Bodies belonging to the third sector are third in the sense that they belong neither to the public sector nor to the

[21] See 'The extent and value of pro bono work provided by legal executives' (Ministry of Justice Research Series 2/08, February 2008), available at <http://www.justice.gov.uk>.

private sector. The term includes charities, voluntary organizations, community bodies, and social enterprises of various sorts. Generally, then, these are non-governmental, not-for-profit entities. According to the UK government: 'Since 1997 the third sector has grown in scale and impact. There are more organizations than ever before. Overall income has increased. More people are volunteering. More people are setting up social enterprises. The sector is playing a greater role in supporting communities and tackling inequalities, in creating opportunity and enterprise, and in designing and supplying public services'.[22] To champion third sector interests across government, an Office of the Third Sector has been set up within the Cabinet Office.

I am afraid it is easy to be rather cynical about the government's support for the third sector, because this 'thriving' sector is, arguably, undertaking tasks and delivering services that might be expected to be the province of government itself and so paid for through our taxes; rather than the responsibility of an army of admirable volunteers and, in effect, paid for out of the pockets of a few. On the other hand, charitable work and social enterprises do of themselves serve important social functions, for example they help to promote coherence and purpose within given communities; and many third sector workers find the work satisfying and fulfilling.

In any event, it is absolutely clear to me that a wide range of third sector bodies, as a matter of fact, do play a pivotal role in helping to achieve access to justice in the UK. A glance at the website of the Advice Services Alliance (ASA, the umbrella body for independent advice services in the UK) lists a formidable collection of not-for-profit organizations that offer advice and help on the law.[23] These include Citizens Advice, Law Centres and Shelter.[24] ASA's main website is impressive, providing information on a wide range of legal issues in England and Wales.[25] The government complements this on an online basis through Community Legal Advice, the website of the Community Legal Service in England and Wales.[26] (This started life, in April 2000, as the ambitious and award-winning website known as 'Just Ask'.)

In combination, the websites and physical centres of the third sector provide citizens with a remarkable service; and, to some extent, in all three components (recognition, selection, and service) of my Client Service Chain

[22] 'Third Sector Strategy for Communities and Local Government', Discussion Paper (Department for Communities and Local Government, London, June 2007), see <http://www.communities.gov.uk>.

[23] <http://www.asauk.org.uk>.

[24] <http://www.citizensadvice.org.uk> and <http://www.shelter.co.uk>.

[25] <http://www.advicenow.org.uk>. Also see <http://www.plenet.org.uk>, which was launched as the manuscript of this book was being completed.

[26] <http://www.clsdirect.org.uk>.

(see Section 7.1). On the ground, however, I understand from people who work on legal matters in the third sector that they feel badly under-resourced. Further, my impression is that the advice that is offered today focuses very largely on solving legal problems that have arisen and there is precious little capacity for extending these services to the avoidance of legal problems; still less to the promotion of legal health.

The funding of the third sector in law raises difficult policy issues. I can see, on the one hand, that the government must be wary of requests from the third sector in law, fearing it to be a potentially bottomless pit; and recognizing too that there is stiff competition—analogous calls on cash from, say, the worlds of health and education. On the other hand, my sense is that a modest increase in investment could greatly enhance the efforts of the third sector.

Looking ahead, and following the arguments in this book, I can see that a core challenge for the future of this corner of the justice system is coordination—not simply amongst the many and various third sector bodies that provide legal guidance (in person and online) but also so that the third sector's contributions can be taken as part of the multi-sourced approach to increasing access to justice. On the first point, not least in building know-how and online resources, there is always the danger of duplicating effort. Such duplication happens in relatively well run single-site bodies, and so presents particular challenges for dispersed organizations. On the question of multi-sourcing, again the issue is that legal work should be divided and allocated, in the circumstances, to the most efficient potential provider. Workers in the third sector, as much as lawyers, must continually challenge themselves and check that the work they do justifies their specific skills and talents, and could not be undertaken in different ways. Once again, a wide range of technologies present themselves as possible tools for this trade.

Some of these tools are disruptive (in the sense discussed in Chapter 4) and threaten to disintermediate the adviser (that is, remove them from the process). There is an interesting contrast here, though, between lawyers and third sector advisers. Many lawyers, who make money, after all, from practising law, are unsurprisingly nervous about being disintermediated. Their livelihoods are threatened. Voluntary legal workers, on the other hand, should welcome the introduction of systems that can enhance or replace the work that they conduct manually, so they can be released to undertake more challenging or fulfilling jobs.

What technologies might be relevant for the third sector? Automated document assembly (see Section 4.1) is clearly one—workers in the third sector might have considerable insight into legal issues but not necessarily the legal experience to draft watertight legal documents or letters. If there are certain

types of documents or parts of documents that are used very frequently, then with the assistance of lawyers (perhaps acting on a pro bono basis), systems could be built that could reduce time spent on drafting and increase the quality and consistency of the paperwork. Third sector workers will also benefit from the improved systems that I predict will come to be used regularly for identifying and selecting lawyers. It will surely help voluntary workers to be able to pinpoint easily lawyers who have the right experience, of whom past clients speak highly, and whose rates compare favourably (see Section 4.3). There is ample scope also for the use of e-learning systems to keep third sector workers up to date, well briefed, and confident about legal issues (see Section 4.4). While some such systems might be developed specifically for them, it might also be possible to have permission to use and access systems that have been developed commercially by law firms and legal publishers. A further technique that might be welcomed is personalized alerting (see Section 4.9). For advisers who have special interest or involvement in particular areas of law or wish to keep abreast of a range of legal developments, Web alerts and automatic updates will be invaluable.

Of all possible legal technologies that might be embraced by the third sector, I believe the most exciting to be closed legal communities for advisers. I envisage a facility that could be similar in many ways to Sermo, the online community for US medical practitioners. As I explain in Section 4.7, there are over 50,000 doctors now using Sermo. The system is a cross between a social networking system, such as Facebook, and a collaboration environment, like Wikipedia. Doctors can pose questions to one another and answer queries themselves. An impressive body of medical knowledge and experience is quickly building there. At modest expense, a similar resource could be developed by and for third sector workers. They would be able to keep in regular contact with one another, share experiences and insights, build up a collective body of expertise, capture best practice, extend their fields of competence, access standard documents, retrieve useful opinions, and in so doing have more confidence in the advice they dispense and feel part of a coherent team of advisers gathered under the one virtual roof. There could also be links to legal information systems that contain further source materials (see Section 7.7). More, the facility could be extended to practising lawyers, who could make themselves available to advise workers to help them with specialist legal issues.

The development and implementation of an online community need not be costly. And yet its impact, alongside the other technologies I mention, could be profound. It is here, in legal technologies, that government investment in the third sector might most usefully be directed.

7.6 Entrepreneurial alternative providers

Even with streamlined law firms and a well resourced third sector in place, there may also be scope for new businesses to enter the market. In England and Wales, the Legal Services Act 2007 enables, in due course, the establishment of 'alternative business structures' for legal service organizations and for the investment in law firms by individuals and organizations other than lawyers. (It was agreed in May 2008 that analogous arrangements will be introduced in my native Scotland.) In terms of the Client Service Chain (see Section 7.1), like law firms, I expect alternative providers will be most active in relation to the 'service' element rather than 'recognition' and 'selection'. Further, and again like law firms, the emphasis is likely to be on dispute resolution and problem-solving over dispute avoidance and legal health promotion.

The untutored intuition of many lawyers and legal commentators is that so-called 'low-end' legal service, such as consumer law and Legal Aid work, will not be attractive to external investors or entrepreneurs who are thinking about building new-look legal businesses. However, from my recent work as an adviser to a private equity firm, I can now see why this common view may be mistaken. In the first instance, consumer law and Legal Aid work together have a value in England well in excess of £10 billion. If we also take into account the likely 'latent legal market', depending on the elasticity of demand, this figure may be substantially larger when legal services become more easily accessible and affordable. In any event, where value is being counted in billions and the current working practices seem antiquated or inefficient, I have found a clear interest from potential investors. Where some lawyers might dismiss work as uninteresting because it is high volume and low margin, external investors may be attracted precisely because of this profile. If there is a large turnaround of routine legal activity, investors immediately see scope for more rigorous processes and the introduction of systems that can radically overhaul the conventional ways of operating. On one model, then, Legal Aid work would not be undertaken by myriad sole practitioners and small law firms across the land; rather, bulk legal processing capabilities would be built and they may not always be wholly located in England. In fact, the Legal Services Commission has already begun to encourage working practices that achieve economies of scale.

As the legal market is liberated and non-lawyers are able to invest and participate in the provision of legal services, I have little doubt that the entrepreneurially minded will find new and improved ways of delivering conventional services and will create novel markets and opportunities where none had

been recognized before. That most lawyers (and I, for that matter) are not sufficiently imaginative to identify exactly how this might unfold in practice does not kill the idea. Indeed, it is precisely when there is an absence of such entrepreneurial insight from the legal fraternity that canny investors find great possibilities. Many lawyers are too risk averse and immersed in practices of the past to make the leap into the next generation of legal solution providers. Just as librarians did not invent Google, lawyers may not create tomorrow's innovations in legal practice.

One likelihood is the establishment of new-look legal businesses that are entirely devoted to the legal market. However, these will bear little resemblance to the pyramidic, hourly billing partnerships of today. Some may bear the brand of well-regarded law firms whose operations, on acquisition, will be overhauled beyond recognition. Others will be entirely new businesses, built from scratch and driven by what is sustainable and profitable for the future rather than what has worked in the past.

Another strong possibility will be the setting up of legal departments or divisions of existing consumer businesses, such as supermarkets, high street banks, and other commercial organizations that are used to dealing directly with the retail market.

Both of these categories of twenty-first century legal service provider will no doubt design and build disruptive legal systems of the sort I discuss in Chapter 4, including, for example, document assembly and workflow systems. And they will implement these alongside other well-tested techniques, such as telephone call centres. At the same time, there will also be those who strive to attract and build human capital—lawyers and law firms will no doubt be recruited and absorbed as part of these organizations, taken on board to undertake specialist legal work, but only when human legal expertise is genuinely required. By analogy, those supermarkets today that sell spectacles have recruited qualified optometrists to test the eyes of customers and to prescribe accordingly. But the selling of frames is undertaken in the spirit and using the techniques of the mainstream business. While many lawyers will shudder at the very prospect of being a mere cog in a consumer service machine, many citizens will find it more convenient and less forbidding to take their legal concerns to the supermarket rather than the law firm. I do appreciate that, culturally, many traditional legal advisers would find it difficult to relocate to a supermarket or a bank, although some will no doubt be attracted by more flexible working arrangements. But it will be a very different working environment. I expect that professional and regulatory bodies around the world will, in any event, soften the blow somewhat, by requiring that lawyers who come to work in retail and other environments

will still be governed and supported by well established professional rules and values. These will include regulations that determine whether specific retail outfits are indeed fit to own and run legal businesses.

A further dimension to this scenario that is threatening for conventional law firms is that we may find some retail organizations (banks or building societies, for example) that will offer legal services not to profit from these directly but as a way of building other businesses or enhancing their brands. The result here would be a service that might undercut that of traditional lawyers, both because more efficient processes and systems are used and also because there will be no profit margin built into their pricing. It is hard to compete with businesses that are not trying to make money.

7.7 Accessible legal information systems

I come now to the question of access to the law itself. For lawyers and advice workers at least, ready access to primary legal sources (legislation and case law) and to various secondary sources (commentaries, texts and analysis) is fundamental. These are basic tools of the trade of lawyering. We cannot have access to justice if our lawyers and legal advisers do not have access to the law.

Today, it might seem blindingly obvious that primary sources should be freely available on the Web. But this was a matter of great contention in the mid to late 1990s. And the story surrounding the debate of the time is worth relating. My focus here, incidentally, is very largely on legislation.

Traditionally, which for current purposes can be taken to mean 'before the Web', to gain sight of statutory material, a reader had to visit a library, or purchase a hard copy of the instrument in question, or perhaps buy a textbook in which the law in question had been reproduced (by permission of the Crown). This state of affairs attracted all sorts of criticisms. It was frequently asked—how can citizens be presumed to know all of the law, if its contents are not accessible? And when the Web came along—why is statutory material not available on the 'information superhighway' (as it was then called)? I ranted about this at some length in *The Future of Law*, railing both against the way legislation was published electronically (it was perceived at the time that the government was seeking to make a profit from selling the law) and in opposition to the way in which the law was promulgated or, more accurately, not being promulgated (this term refers to the mechanism for letting

the public know when a new law is enacted). I went as far as to say that the State was failing to 'legislate meaningfully'.[27] These were heady days.

But I had to qualify my words almost immediately. At proof stage, I inserted a footnote that ran as follows: 'As this book went to press, however, the government announced (on 9th February 1996) what appears to be a sensible change in policy in relation to the electronic reproduction of legislation, although it is too early to know what the practical effects might be'.[28] The gist of this Ministerial statement seemed to be that the government would be permitting the free re-publication of statutory material on the Internet.

Nonetheless, progress was slow and an active and articulate group of lawyers and legal technologists ran a campaign under the banner, 'Free the Law'. Their aim was to bring about the free availability of legislation *and* case law on the Internet. They pointed to the formidable Australian system, AustLII (the Australasian Legal Information Institute) in support of their claim that it was both possible and desirable for a modern jurisdiction to have all of its primary source materials online.[29] The applicability of the AustLII approach to England became the focal point of what transpired to be a seminal meeting, itself entitled 'Free the Law', held at Chatham House in London, on 8 November 1999.[30] Professor Graham Greenleaf, one of the original developers of AustLII, enthused the assembled audience and helped to galvanize the community in question into further action. I had the good fortune to chair the debate that followed, although I was far less involved in the initiative than Laurie West-Knights (now QC) and Lord Justice Brooke, who were great champions of the cause and spoke so compellingly that evening.

As a direct result of that meeting, a pilot website offering free access to an integrated body of British and Irish legislation and case law was launched in March 2000. Christened BAILII (British and Irish Legal Information Institute) the pilot held 75,000 searchable documents, taken from the five jurisdictions, and was bound together by 2 million hyperlinks. The system was developed with the assistance, along with the software and the methods, of AustLII.

Just eights years later, we now take so many online resources for granted. But, at the time, two features of the BAILII were remarkable, ground-breaking, and even breath-taking for the legal communities of Britain and Ireland.

[27] Susskind (n 5 above) 20.

[28] ibid 20, footnote 1.

[29] <http://www.austlii.edu.au>.

[30] The transcript of that meeting is available at <http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2000_1/free_the_law/transcript>.

The first was the sheer quantity of materials: to have such a rich body of legislation *and* case law at the fingertips of Internet users at no cost to them was invaluable and almost unbelievable. Second, was the usability of the service—many of the documents were connected to one another by hyperlinks, enabling users to jump, for example, from law reports that referred to legislation into the specific sections being cited. This ability to browse around and between the materials was perhaps the cleverest aspect of the AustLII toolkit. When documents are loaded into the system, the software automatically detects citations and references and then inserts the links between materials. A huge network is created, but manual intervention is minimal.

Today, BAILII is thriving. Run as a modestly funded charity, it provides the largest, free-of-charge online collection of British and Irish primary legal materials (legislation and case law). The service now contains approximately seventy-six databases, covering seven jurisdictions and holding 200,000 searchable documents with about fifteen million internal hypertext links. BAILII continues to use the Australian technology, as contributed originally by AustLII.[31] The databases on BAILII are drawn from a variety of sources. Some are taken from existing websites; others are from databases that are on published and unpublished CD-ROMs; and still others are direct or indirect feeds from relevant courts, government bodies, and other organizations. All of the data is converted into a consistent format and a set of search and hypertext facilities are added.

While BAILII has flourished, the government has been far from idle. For example, vast quantities of UK legislation (primary and secondary) are now made available online, at no cost to users. This is now a key public service, provided by Her Majesty's Stationery Office (HMSO) through the much-used website of the Office of Public Sector Information (OPSI).[32] Amongst other materials, the site provides the full text of all UK Parliament Public General Acts from 1988 onwards, of all UK Local Acts from 1991 onwards, and all published Statutory Instruments from 1987 onwards. Usefully, these are available in HTML and PDF formats. HMSO aims to publish these documents on the OPSI website simultaneously or least within twenty-four hours of their publication in printed form. At the same time, Bills that are current before the UK Parliament are also available online, at the website of the UK Parliament.[33]

[31] The AustLII team has gone on to champion WorldLII <http://www.worldlii.org>, which provides a single search facility that operates across an international family of legal information institutes. WorldLII embraces 270 databases from 48 jurisdictions in 20 countries.

[32] <http://www.opsi.gov.uk>.

[33] <http://www.parliament.uk>.

In practice and in terms of policy, the progress that has been made since the mid-1990s in 'freeing the law' has been staggering. However, it would be wrong to assume that we now live in some legislative utopia and that access to justice has been secured by putting statutory material online. Daniel Greenberg, Parliamentary Counsel, a legislative draftsman of considerable experience, expresses the current position in the following terms:

> for most practical purposes the access afforded by Queen's Printer's copies or the OPSI website is utterly useless. This is because of the fact that an enormous amount of new legislation, both primary and subordinate, operates by referential amendment of old legislation; the result is that the text of an Act as passed ten years ago is of no help at all in telling me the state of the law now . . . Every time I access an Act or an instrument which amends an earlier one I am forced also to obtain the text of the earlier one and to construct a revised version reflecting what will often turn out to be a complicated multilayered set of amendments. Difficult and time-consuming, but arguably not impossible: more problematically, however, I will have no practicable way of knowing that the Act or instrument I am reading has not itself now been amended by a later one.[34]

If an experienced legislative draftsman finds it challenging to use the HMSO/OPSI website to find what law is in force at any given moment, what hope can there be for the citizen? Having all published legislation available in electronic form is a wonderful facility but it is a first step rather than the last word in providing access to justice. Non-lawyers could not hope to determine their legal rights and obligations simply by browsing through archives of legislation.

Interestingly, the government is working towards a more powerful tool that would meet Daniel Greenberg's concerns. It has developed and delivered the UK Statute Law Database (SLD). And when it launched the service in December 2006, the Department for Constitutional Affairs (now the Ministry of Justice) expressly said that this database was a contribution to the Department's aim of improving access to justice.[35]

I first heard that the SLD was in the pipeline in June 1991. Lord Mackay of Clashfern, then the Lord Chancellor, told me about the project when we met at a conference in Oxford. He was rightly enthused. I was too. Now, I concede that you should not rush into major IT projects in the law, but fifteen years

[34] 'The Volume and Complexity of United Kingdom Legislation Today' in S Hetherington (ed), *Halsbury's Laws of England Centenary Essays* 2007 (London: LexisNexis, 2007) 58–9.

[35] The system can now be found at <http://www.statutelaw.gov.uk>—it was developed and is maintained by the Statutory Publications Offices in London and Belfast (themselves part of the Ministry of Justice).

for completion was deeply disturbing. The development of the SLD seemed to be fettered by an unholy and endless series of delays and problems. And between conception and birth, a great deal happened—for instance the Web was invented, BAILII was introduced, and HMSO transitioned from selling printed legislation at a profit to providing a powerful database of legislation at no charge for Internet users.

Nonetheless, SLD has brought features that neither BAILII nor HMSO offer and goes some considerable way to meeting Daniel Greenberg's objections. Impressively, and again at no charge, users can view amended legislation as it has changed over time; examine the way in which legislation will be affected by amendments that are not yet in force; see how legislation has been changed for different jurisdictions (say, Scotland as compared with England and Wales); and browse across links between affecting and affected legislation. A key feature of the system is that it can offer a historical view of the legislation that was in force on any specific day.[36]

There is one wrinkle, however, and it is not trivial. The SLD is not yet up to date. When launched, the database held over 30,000 items of primary legislation that were in force at 1 February 1991 and primary and secondary legislation that has been produced since then. Today, according to the SLD website, the service carries most (but not all) types of primary and secondary legislation, most primary legislation is held in 'revised' form but most secondary legislation is not revised, and all legislation that is in revised form has been updated at least to the end of 2001.[37] The truth is, it is not quite finished; although what is there is very promising.

Until the SLD is up to date, for both primary legislation and for statutory instruments (and the latter, as Daniel Greenberg points out, 'account for an increasingly important part of the practical legal burdens on the citizen'),[38]

[36] Other jurisdictions have been even more ambitious. For example, from 2000 to 2005, the Jersey Legal Information Board <http://www.jerseylaw.je>, under the chairmanship of Sir Philip Bailhache, the Bailiff and Chief Justice of Jersey, undertook a project that involved not simply a consolidation of all statutory laws enacted in the Island since 1771 but an entire revision as well. This meant that all legislation in force, together with countless amendments, was gathered together and restated as a new, coherent body of law. This has now been put online at <http://www.jerseylaw.je/law/lawsinforce> as searchable text and in a print version that corresponds to the authorized text. To help further, the revised law is organized intuitively under a series of 26 chapters, covering topics such as family law, crime and sentencing, and financial services. This initiative is part of a broader strategy to make the law more accessible in Jersey.

[37] <http://www.statutelaw.gov.uk> under 'Frequently Asked Questions'.

[38] 'The Volume and Complexity of United Kingdom Legislation Today' (n 34 above) 59. According to research recently conducted by Sweet & Maxwell, 87% of legislation introduced in 2007 was in the form of statutory instruments—<http://www.sweetandmaxwell.thomson.com>.

and until this is integrated with a similarly up-to-date body of case law (perhaps in the manner of BAILII), those who want to undertake up-to-date research still have to rely on the publications and online services of various commercial providers.[39] While these services are powerful and comprehensive and may be affordable for those who are in the business of law, their subscription fees are beyond the pockets of most citizens.

Before I talk about the implications of this current state of affairs, I feel impelled to throw down a gauntlet for those who aspire to developing the next generation of legal information systems. I would like to see the evolution of a Wikipedia-like service covering the UK legal systems. This online resource could be established and maintained collectively by the legal profession; by practitioners, judges, academics, and voluntary workers. If current leaders in the UK legal world are serious about promoting our jurisdictions as world class, here is a genuine opportunity to pioneer, to excel, to provide a wonderful social service, and to leave a substantial legacy. The initiative would evolve a corpus of UK law like no other: a resource readily available to lawyers and lay people; a free web of inter-linked materials; packed with scholarly analysis and commentary, supplemented by useful guidance and procedure; rendered intensely practical by the addition of action points and standard documents; and underpinned by direct access to legislation and case law, made available by the government, perhaps through BAILII. And we should not stop at text. We should add video and audio clips as well—perhaps of seminal lectures of the day or even of our senior judges delivering judgments (how marvellous would it be if we could watch and listen to, say, Lord Atkin read his judgment in *Donoghue v Stevenson*?). A Wikipedia of UK law could be an evolving, interactive, multi-media legal resource of unprecedented scale and utility.

Let me turn back now to the problem of the day—that we do not have an easily accessible, authoritative, no-charge, comprehensive, fully up-to-date and maintained legal information system. I do see this is a cause for concern and I know that many commentators believe this lack of free access to all law in force as an outrage. But I think, in relation to citizens, there is a far larger worry that should exercise us more. I have no doubt that lawyers and legal advice workers, alongside law students, legal academics, many professional service providers and public sector workers, need easy access to primary sources of law (legislation and case law). And I can see that the readier is this access, then the greater is the likelihood of improving the quality and reducing

[39] eg <http://www.lexisnexis.co.uk> and <http://www.westlaw.co.uk>.

the cost of services provided to citizens. In other words, accessible legal information systems that hold primary sources will directly benefit lawyers and those who work with the law but will only indirectly benefit the citizen.[40]

I simply cannot see and never have seen the attraction or the wisdom of citizens ploughing their way through, say, a fifty-page statutory instrument. Even if he or she had ready access to such a document, the average citizen would (a) be bored senseless reading it and (b) not be sufficiently familiar with the legal jargon and the broader legal context to figure out its full implications. If one of my children has a disease of some sort, I do not want to read some paper in medical-speak about the epidemiology or the pathology of the disorder. I want to know what to do. I want advice. I want to take practical steps. If I have a problem with my computer, I do not wish to subject myself to some learned treatise on the shortcomings or idiosyncrasies of the underlying programming language. I want it fixed. I want it not to happen again. I want to be told what to do next. So too in law. As I have said for years, citizens have little interest in the canons of statutory interpretation or in determining the *ratio decidendi* of binding precedents. Instead, they want quick, cheap, punchy, practical, and jargon-free guidance. Citizens who have legal issues also want to be told what to do.

This, for me, helps us to define the next generation of legal information systems for citizens (as opposed to those for law workers). The challenge of having accessible legal information systems in place will not be met when SLD is up to date and integrated with a similar system for case law. No. This battle will only have been won when citizens can go online and, through a second generation of legal information system, secure digestible and actionable guidance that helps them in their own precise circumstances. Databases of statutes and cases will not do this job for citizens. Instead, we will need different tools, ones that actually give help rather than point to potentially relevant legal sources. Some of these are identified in Chapter 4 and are discussed in Section 7.3: automatic document assembly, online legal services, legal open-sourcing and online communities. Simpler aids will also be effective—decision trees, flowcharts, and FAQs (frequently asked questions), for example.

In the broader context of my analysis of the access to justice (in Section 7.1), these second generation legal information systems should help not just

[40] For an extended and more sophisticated discussion of the needs of different categories of user of legal information systems, see Philip Leith and Karen McCullagh, 'Developing European Legal Information Markets based on Government Information' (2004) 12(3) *International Journal of Law and Information Technology*.

in solving legal problems but in avoiding problems and even also in promoting the legal health of users. However, in relation to my Client Service Chain (also in Section 7.1), these systems will tend to contribute much more to the service element (providing affordable and accessible help) than to the selection and recognition elements. They will be less useful, that is, in helping citizens to select the best source of guidance and to recognize the optimum point at which they would benefit from legal guidance.

If legal information systems are of comparatively little help to citizens in helping them recognize if and when they need legal guidance, does this then scupper any hopes that IT can crack the problem of promulgation? This problem, to recap, is that we do not have systematic and effective techniques for bringing to citizens' attention when there are new developments in the law, or changes in old law. As many commentators and scholars have pointed out, it is bizarre at best that citizens are presumed to know the content of the law and yet the State takes no responsibility for actually informing the general public about new or changed law. Jeremy Bentham, the great nineteenth-century legal theorist and social reformer, put it more forcefully when he said that: 'The notoriety of every law ought to be as extensive as its binding force. It ought indeed to be much more extensive . . . No axiom could be more self-evident: none more important: none more universally disregarded'.[41] Some legal philosophers have gone further and argued that laws that are not promulgated are not laws at all.[42] Even if we stop short of this position, it is hard to see how genuine access to justice can be achieved without effective promulgation.

Contrast today with the past. In years gone by, all Acts of the Scottish Parliament (the previous one) were published at the market cross of Edinburgh, while sheriffs in England were once required to proclaim all new statutes throughout their bailiwicks. The people of the land could scrutinize the law when it came down from on high. Today, however, new laws come into force and old laws are repealed, and no-one has any clue what is going on. Even lawyers. Part of the problem here is that we are suffering from hyper-regulation, the term I use to bemoan the reality that we are all governed today by rules and laws that are so complex and so extensive that no-one can pretend to have mastery of them all. Recent research by the legal information providers, Sweet & Maxwell, suggested that 3,071 new laws were

[41] HLA Hart (ed), *Of Laws In General* (London: The Athlone Press, 1970) 71.

[42] See L Fuller, *The Morality of Law* (New Haven, Conn: Yale University Press, revised edn, 1964).

introduced in 2007 (as compared with 2,702 in 2006).[43] We are running, therefore, at about eight new laws every day. Who on earth could hope to cope with that influx?

Yet, in larger part, the problem of promulgation is about defects in communication. As the statute book and common law have grown, we have not had workable channels through which to keep people up to date with new and changing law. However, I can see a new type of service emerging that might just provide the mechanisms we need to overcome this age-old shortcoming in modern justice systems. I am thinking here of personalized alerting—as I explain in Section 4.9, this is an Internet-based technique for delivering legal updates, briefings, and alerts automatically and proactively to the desktops of citizens. Whether supported by the government or delivered by some intermediary, this would allow citizens to register topics in which they are interested (supplemented perhaps by profiles of their interests that could be derived automatically from their click-streams and online movements) and they would be notified of every new regulation, every rule, and every judgment that affects them directly; or impacts on members of online communities of which they are members. If supplemented by the gloss that Web 2.0 methods can provide—blogs, personal commentaries, guidance through discussion forums, all built up in wiki-like manner—then we can begin to imagine a world where citizens are informed in a digestible way when there is a new law that directly affects them. This can be anyone, from a chiropractor to a carpenter; from a brain surgeon to a tree surgeon.

In the future, on the strength of such techniques, we may come to regard as entirely antiquated the notion that the law-making process ends with the published articulation of legal provisions. An indispensable component of law-making will be that of bringing new law to the attention of the people.

7.8 Enlightened public information policy

If we are serious about radically increasing access to justice, I believe there is a broader challenge than making legislation, case law, and other quasi-legal resources available through online legal information systems. I am thinking

[43] <http://www.sweetandmaxwell.thomson.com>.

here about the role and responsibility of public bodies in promoting understanding of legal and regulatory issues. The rules and laws that govern us all are invariably originated, administered, or enforced by public bodies, in central government, local government, and beyond. In total, in the UK, there are over 100,000 public bodies. Although most are intimately involved with the law, very few regard it as part of their public task to raise public awareness of legal matters, to educate on or clarify issues of law, or to alert citizens to legal developments that might affect them. This is a huge opportunity missed. Enlightened public information policy would encourage or even require public bodies to take on the job of drawing attention to the laws, regulations, and rules that are so central to their daily work and ensuring they are made more accessible and digestible to the citizenry.

To grasp the scale of the challenge here requires my final detour of the book; this time into the fairly arcane world of public information policy. Governments and public bodies have, of course, always been in the business of managing information—as creators, controllers, distributors, and more. Looking back, though, as a holder of information, until a decade ago, the State really had only two main roles in relation to information. First, there was the responsibility to ensure that information on matters of national security was held securely and beyond the reach of potential miscreants. Second, there was the job of ensuring that full records of public affairs were maintained, archived, and accessible to authorized persons.

Over the past decade, there has been a clear shift in UK government policy in relation to information generated from within or on behalf of the public sector. In summary, the UK government has shown a commitment to making official information more easily accessible. There are two main strands of thinking here. One is that government should be more open: this has given rise to the freedom of information (FOI) regime. This is about providing *access* to information. The other strand is that public sector information (PSI) can and should be *re-used* where benefits can accrue. FOI and PSI re-use together are the fundamental building blocks of what many call 'information age government'. This is not merely about making formal government publications available online. It is about capturing, nurturing, and maintaining much of the information generated by public sector bodies as a common and easily accessible good for all of society. At a policy level, these developments will combine to bring about an entirely new landscape for the management and control of information in the public sector. It is far from clear, however, that most senior officials and politicians are yet alive to the cumulative shift in policy and practice. Nor is there evidence of analysis of the long-term implications of these changes.

That said, the last decade has undeniably witnessed enormous change, to a large extent catalysed by the advent of the Internet which is steadily, fundamentally, and globally changing the relationship between the individual and the State. Before the 1990s, most government was closed government—official information was made available largely on a need-to-know basis. Restricting the flow of information was clearly central to totalitarian rule, for example. But benevolent democracies also held back, adopting a paternalist posture, releasing information sparingly. Perhaps it was not in people's interests to know too much. Anti-paternalists claim the problem was, rather, that there were no effective channels for fuller information flows between citizen and government. But this changed in the 1990s with the coming of the Internet. Suddenly, information could be shared widely and cheaply. And, in 1996 and 1997, the Conservative and Labour governments stated their commitment to providing official information on the Web. Why? Was it that the Internet made it all but impossible for government to resist greater openness? Or was there, coincidentally, some new political will to make public affairs more transparent? Either way, open government arrived.[44]

I argue that there are two types of open government. A reactive open government, when faced with a request for access to official information, will respond favourably. Request leads to access. In contrast, a proactive open government believes that an integral part of the job is to make all information created in the process of governing available to the people. Proactive open government is much more than meeting, more or less willingly, a request for access. Instead, it is regarding the provision, usually online, of all official information as part of the very business of government. Withholding information is looked upon as exceptional and requiring justification. The UK government is currently moving from being reactively to proactively open. One sign of this is the drive to provide more useful and better stocked websites. Another is that, under freedom of information legislation, all public authorities must maintain publication schemes which indicate what information will be made available proactively. However, full-scale proactivity will require a positive effort on the part of public authorities actually to maximize the value of their information, not just in terms of financial return but in terms also of social utility. A vital step in this direction was the adoption, at the end of 2003, of the EU Directive on the Re-use of Public Sector Information.[44] After extensive consultation, the government decided to implement this Directive through the Re-use of Public Sector Information

[44] (2003/98).

Regulations 2005, which came into force on 1 July 2005. It was also decided that there was a need for a dedicated body to be the principal focal point for advising on and regulating the operation of public sector information re-use. The Office of Public Sector Information was established for that purpose,[45] a body that is itself assisted by the Advisory Panel on Public Sector Information (APPSI), of which I was Chair from 2003 until 2008.[46] The Panel is a Non-Departmental Public Body, established by the Cabinet Office in April 2003 and now attached to the Ministry of Justice. Informally, its strap-line is 'realising the value of public sector information'. This intentionally trades on two different meanings of 'realising'. The Panel's focus is on identifying, articulating, and raising awareness of the value of PSI as well as on encouraging its exploitation.

APPSI has found, in relation to the re-use of PSI, that there are two broad challenges. The first is to ensure that core public sector information is made available, under appropriate conditions, to intermediaries who can add value to it. The second challenge is more radical—it is about information management and knowledge management on a grand scale. It is about making sure that the valuable collective knowledge and experience (the intellectual capital) of public sector workers is captured and re-used. Today it is barely managed and is under-exploited. In a sense, knowledge has become disposable. I submit that systematic recycling is instead required.

There are vital lessons here for those who are committed to promoting greater access to justice. Swilling around our public sector, substantially unmanaged, are legal resources and other data that could be invaluable for intermediaries (academics, charities, businesses, and others) who are trying to repurpose this raw material and develop systems that provide legal information and guidance. There seem to be no limits to the ingenuity of people who work with the Web. My strong intuition, from years in the field, and this is the first lesson, is that if we make legal and regulatory information readily available and easily accessible, then exciting developments will follow. BAILII is one clear illustration of this. BAILII indeed is an early and fine example of the re-use of PSI. The raw material, in the form of statutes and law reports, was brought together and subjected to remarkable technology that was developed by Australian academics. A new, extremely valuable information resource was thereby created and is now available to all. More than this, where BAILII has been of immense significance, the service has actually

[45] <http://www.opsi.gov.uk>.
[46] <http://www.appsi.gov.uk>.

brought about a shift in the government's approach to statutory material and law reports—a shift from being reactive to being proactive. Source materials for inclusion in BAILII, whether legislation or law reports, are now provided *as a matter of course*; it is part of the process of government (of the Ministry of Justice and OPSI). BAILII is not just about making legal information available to lawyers and citizens, which in itself is of great note. More than this, it is a very early example of a fundamental shift in the nature of government, a shift towards thoroughgoing proactivity.

In the spirit of BAILII, and following the discussion of the previous section, I can easily imagine a wide range of wiki-like, open source services sprouting across the Web, each underpinned by the core legal data that have been released and organized not according to the traditional categories of the legal textbook but built around the life events of citizens (job loss, house moving, borrowing money, setting up pensions, divorce, and so forth).

The second lesson we can learn from experience in the world of PSI relates to knowledge management. And the opportunity here may be even greater. In their everyday work, public sector workers deal with legal and regulatory matters all the time. In so doing, invaluable insight, analysis, and research are produced. If we could capture just a fraction of this collective knowledge and make it available to citizens in a digestible form, then we might contribute immensely to the promotion of access to justice. In terms of my Client Service Chain (see Section 7.1), I can see that this knowledge, if made available via the Web, could be of particular help to citizens in helping them to recognize that they need or would benefit from legal guidance and in sorting out their own legal challenges on an online self-service basis.

Gathering and providing this public sector knowledge would be a huge step towards proactive open government. But it would require a seismic shift in culture in the public sector workplace. Officials and civil servants, amongst many others, would now be asked to view their work in a new way. Beyond the discharge of their daily work in the normal manner, we would be asking them, as a by-product of this work, to identify, capture, and nurture knowledge that they think could be of use to the citizen. I am not sure whether this is too much to ask. I am suggesting that it should be incumbent on all public bodies to promote greater understanding of the legal and regulatory issues with which they deal, to explain and shed light on complex issues and, vitally, to strive to alert citizens to developments in the law that might be relevant for them.

Legal knowledge and experience, as generated in the course of public work, should not be secreted and locked in heads, filing cabinets, or databases; instead, it should be shared with tax-payers; with the citizens in whose

interests the law is created in the first place. The purpose of this sharing is not simply to give citizens sight of more documents. Rather, in the spirit of Web 2.0, it is to make public information available as a raw material that citizens, entrepreneurs, charitable bodies and many others can fashion, re-organize, and supplement for their own purposes. Public bodies will be providing the raw information upon which communities of interest and citizen-generated content will be built.

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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 pyramidic 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 pyramidic 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 in 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.