

Keeping pace with change

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A summary of what Professor Wilkins told Dominic Carman in conversation about innovation relating to law firms.

Innovation is challenging for lawyers, in large part because of the way in which they have always conceived their jobs. In a common law world, you can't say anything that's new until you definitively prove that somebody has already said it before — that's called precedent. We are trained and socialised to law by working for many years to master our craft. We master it by being taught how the people who did it before us did it: there is a tradition that is handed down. I want to emphasise that has many benefits, but it also makes it more difficult for lawyers to adapt to change and changing circumstances.

For many years, lawyers were insulated from change, in part because lawyers were in control of both the kind of market for legal services — meaning lawyers were the ones who set the terms around which legal services were delivered, they decided who could become a lawyer, they decided what training and education that person would have — and we were pretty much in charge of evaluating the quality of that service, which was evaluated in reference to how well it conformed to the way those kinds of services had always been delivered in the past, according to our own standards of excellence.

Again, lots of good has come out of that. But much of that world is changing and it's changing not just in the legal world. One of the things I would emphasise is that, in the past few years when people have talked about transformation of the legal profession, it has been a really inward focus around lawyers and the legal profession.

But of course, what is happening to lawyers is just part of a much broader set of transformations that are really changing



everything about our world. You could think about these in many different ways but I pick three big-scale forces that are really affecting us:

(1) The globalisation of economic activity and the important shift in that activity from what you might think of as the traditional centres of the North and the West to the new emerging economies of the South and the East. Not completely, not totally, but importantly.

(2) The incredible rise – the speed and the sophistication – of information technology, which is increasing in sophistication at an ever faster pace.

(3) The blurring together of traditional categories of organisation and thought that we have used to define our world – eg public vs private, global vs local, law vs business. It's not that these things don't mean anything anymore but nobody thinks they are as hermetically sealed as they once were.

All of these things are reshaping the entire world, so why wouldn't they reshape the legal profession? The law is a 'lagging', not a leading, indicator of change. Lawyers follow bigger trends in the economy, in society and in politics. That is what is happening now. It's happening in things that are quite tangible to lawyers.

First, there has been a huge reduction in what the economists would call 'information asymmetry' between buyers and sellers, meaning buyers are way more sophisticated about what they want, when they want it and how they want it.

This allows them to take things that used to be all bundled together by the seller – for the seller's own benefit – and to unbundle them and to rearrange these things across increasing global supply chains. We see this in manufacturing, we see it in finance, we are now seeing it in professional services in general, and legal services in particular.

It is being driven by increasingly sophisticated general counsel, who have internalised the kind of knowledge that used to only exist in law firms and now are really driving change in the legal profession. I say all the time that general counsel are the most important people who are going to determine what happens in the legal profession, at least in the corporate sector.

Second, when you don't know very much, you have to evaluate the quality of things by things you can see – often in advance. These are what I would call the 'inputs' of the product, like the credentials of the person who produced it, their reputation in the marketplace, or even how many hours it took to produce – sound familiar?

But the more you know, the less you're interested in the inputs of the product and the more you're interested in the outputs, which we have seen transform the product markets. That's why people can decide, for example, they'd rather take an Uber than

a cab – because they can evaluate the quality of the service, they read consumer reports.

The last time you went to buy a car you didn't ask for the credentials of the chief designer, where it was made, or how many hours it took to produce – you drove it. And if that wasn't good enough, you turned to consumer reports. And if they weren't good enough, you looked at its test results. And if that wasn't good enough, you went to edmunds.com and asked: what does somebody with my driving habits think about this car? You're trying to approximate the value of the car to you, not the cost of producing it. What you find is that perhaps a Kia Optima is as good for you as a Lamborghini or a BMW.

That kind of thinking is now coming into the world of professional services, where people are having more access to information and have a better ability to evaluate the quality of outcomes. It's not perfect and there will always be a factor of trust, and it is still a relationship business – particularly for important work – but the terms of the relationship and what people are looking for and their ability to evaluate outcomes, has now shifted much of the power and authority to the buyer, which we see again in many other parts of our economy.

I don't think we are approaching the end of Big Law, let alone the end of lawyers, and that is because of another phenomenon that we often don't spend enough time on. At the very same time all of those things mentioned earlier are happening, all those things are making the world much more complex, dangerous and difficult for corporate clients. Therefore, their need for sophisticated legal advice is increasing, not least because of cross-border transactions.

You start doing business in Nigeria, with Chinese financing and with a business partner who has got a hedge fund in Kuwait, and you have investors from Germany and France. That is going to create a very complex transaction, which is then going to be regulated by 10 or 20 or 30 different entities, all of which have regulation that is competing and conflicting.

Finally, a couple of things about technology. You can look at technology from an external/macro point of view at the job

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market, or you can look at it from an internal point of view of the legal profession and practitioners. Sticking with the macro point of view – it turns out that technology both reduces jobs and creates new jobs. It has always done that. Just look at the computer or automation in general. Yes, factory automation reduces some manual labour jobs. It also increases the jobs for factory technicians, for service, for people who create the machines. It can also increase demand for people to sell new products.

You will see a similarly mixed effect on the legal market. Sometimes when people ask questions about the employment effects of technology, the assumption is we have too many lawyers. That is both true and false at the same time. We have too many lawyers chasing the same thing – the same kind of work for the same kind of salaries. But we know there is a huge amount of the population completely outside of the legal system – completely underserved by lawyers. Part of the reason why is because our model for the delivery of legal services is way too expensive.

One of the things companies like Legal Zoom are doing, is trying to create a delivery model that uses technology to reduce the cost, which can increase the demand for legal services – and that includes demand that can be satisfied by lawyers. The

lawyers may be on a different kind of pricing structure but it doesn't mean that it is going to eliminate the need for lawyers. There is a fallacy around technology that it is something that only works in one direction – to decrease jobs.

The real question is: what are the legal jobs of the future going to be and how are people going to prepare for them? Richard Susskind, in his various books, has tried to sketch out what some of the future legal jobs are going to be. My guess is that there will be an even broader range than Susskind has suggested. The real question is: how do we train and prepare people for those jobs?

The idea that everybody should – as we currently do in the US – go to four years of undergraduate education plus three years of law school plus a character and fitness review and take a Bar exam for three days, to deliver any kind of services that we might call legal services, is crazy. There is already pressure, and there will be continuing pressure, on the regulatory structure around what it takes to be a lawyer and who can become a lawyer, or a legal service provider that will recalibrate the supply to the demand.

At the other pole, to think about what does technology mean for lawyers. A guy affiliated with MIT, who studied the effect of CAD/CAM on the engineering and architecture professions, came to my class and he said something I will never forget: “Professionals always think technology will allow them to do what they already do cheaper and faster but in fact, what technology does is to fundamentally redefine what it means to be a professional.”

That is what's going to happen in the legal profession. Yes, technology will be used in the service of efficiency at some level. The deeper implication is what it means to be a lawyer, what sort of skills you need to be a good lawyer. How legal services are delivered, how lawyers work and approach their work is going to be reshaped as we move into the next phase of this information revolution, which is doing the same thing, I continue to emphasise, to all of the different parts of our world. That is, what is happening in law is not peculiar to law. It's what is happening to the rest of society being filtered through the prism of law.

