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TOMORROW'S LAWYERS

An
Introduction
to Your
Future

RICHARD SUSSKIND

TOMORROW'S LAWYERS

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Richard Susskind

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*I dedicate this book to
Daniel, Jamie, and Ali,
my loving children,
who bring me endless happiness*

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P R E F A C E

I have written this book to provide tomorrow's lawyers and legal educators with an accessible account of the pressing issues that currently face the legal profession and the justice system. We are, I have no doubt, on the brink of fundamental change in the world of law, and my main aim is to encourage wider discussion of the forces at play and their likely impact.

Although originally conceived as a guide to the future for the next generation of lawyers, I expect that the book will also be read by more experienced practitioners. For busy professionals who do not have the time to read lengthy texts, I hope that it serves as a punchier version of my ideas than my previous work. Certainly, it represents a substantially updated version of my views on trends in the legal market.

I do not anticipate that readers will agree with all of what I say. But if the book gives rise to more serious reflection and debate about the future of the law and lawyers, then I have done my job. And yet, because we live in such rapidly shifting times, it is a job that is necessarily incomplete. Each day, I hear fresh tales of innovation in law—a new legal business here, an online facility there, and a regular flow of imaginative ideas for meeting clients' needs in different ways. In citing these innovations, I had to draw the line somewhere, however, and so I have only been able to refer to developments that surfaced before the end of May 2012. I would not be surprised, by the time this book is published, if some important new legal services have been launched in the interim.

I have some people to thank. First of all, there is the team at Oxford University Press. This is the fifth time that OUP has agreed to take on one of my books and, as ever, it has been a privilege to work with such a well-regarded publishing house. I am especially grateful to Ruth Anderson and Sophie Barham in the UK and to Ninell Silberberg in the US for their friendly support and advice. I must also record my thanks to the various referees who anonymously assessed my book proposal and made a wide range of suggestions that led, I believe, to many significant improvements.

Next is Patricia Cato, who helped me with innumerable initial drafts and still comfortably outperforms any speech recognition system in making sense of my rapid Glaswegian.

I have also benefited greatly from the guidance, encouragement, and criticisms of a small group of friends and colleagues who generously spent many hours of their time reading an early draft of the book—Neville Eisenberg, Hazel Genn, Daniel Harris, Laurence Mills, David Morley, Alan Paterson, and Tony Williams. To each, I extend my profound thanks.

Two reviewers deserve separate mention—my sons, Daniel and Jamie. This book would not have been written without their love and encouragement. They enthused when I came up with the idea of a book for aspiring lawyers, they motivated me when other commitments made it difficult to maintain momentum, and they commented extensively on earlier drafts. Their range and clarity of thought amaze me.

The last person but one to thank is Ali, my daughter and friend, to whom, along with her brothers, this book is dedicated. I cherish every one of the many companionable moments we spend together. I could not have a more wonderful daughter.

And finally, as always, I am very grateful to my loving wife, Michelle. For over 30 years now, she has indulgently endured my bouts of obsessive writing. It cannot be easy. Her boundless support for my work and her confidence in my ideas mean so very much to me.

Richard Susskind

June 2012

Radlett, England

When one door closes, another door opens; but we often look so long and so regretfully upon the closed door that we do not see the ones which open for us.

ALEXANDER GRAHAM BELL

Institutions will try to preserve the problem to which they are the solution.

CLAY SHIRKY

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INTRODUCTION

This book is a short introduction to the future for young and aspiring lawyers.

Tomorrow's legal world, as predicted and described here, bears little resemblance to that of the past. Legal institutions and lawyers are at a crossroads, I claim, and are poised to change more radically over the next two decades than they have over the last two centuries. If you are a young lawyer, this revolution will happen on your watch.

'Young' should be construed broadly, applying to students who are contemplating a job in law through to newly promoted partners in firms who are wondering how their careers might unfold. I also write for those who are interested in young legal businesses, such as the high-tech start-ups and the new-look law firms that are already seeking to redefine the legal marketplace.

To elder statesmen in traditional firms, who may feel after a couple of paragraphs that they are excused from reading on, I issue a warning. Although it may appear that the future, and particularly the topic of IT, is of interest primarily to the next generation, some of the transformations that I discuss here are coming in the next few years. Unless retirement is imminent, what I say here will directly affect older lawyers too. More than this, leaders in the legal profession today should be concerned not just about hanging on until their pensions click in, but about their long-term legacy as well.

‘My call is to the young in heart, regardless of age,’ John F. Kennedy once said, and I say this again now. I write primarily for the youthful of spirit, for the energetic, for the optimistic—for those who join me in recognizing that we can and should modernize our legal and justice systems.

Discontinuity in the Legal Profession

This book comes at a time of great debate in the legal world over an array of vital issues. There is deep concern, for example, about cuts in public legal funding that may reduce ‘access to justice’. There are worries about law schools that seem to be offering places to students in greater numbers than there are job opportunities. And there is unease about the disproportionate cost of pursuing claims in the courts.

I offer remedies for these and many other ills, but I do not provide the same kinds of answer as those offered by most careers advisers, parents, professors, and legal practitioners. To give a flavour: while most lawyers are arguing for smaller cuts in legal aid, I argue we should be exploring and implementing alternative ways of providing legal guidance, not least through online legal services; while commentators agitate about over-recruitment into law schools, I identify a whole set of exciting new occupations for tomorrow’s lawyers, although I am troubled that we are not preparing students and young practitioners for these jobs; and while judges and litigators are seeking to control the costs of litigation, I believe we should be introducing virtual hearings and online dispute resolution.

Most inhabitants of today's legal world tend to look for solutions by extrapolating from the past and on the assumption of continuity in the legal profession. In contrast, I foresee discontinuity over time and the emergence of a legal industry that will be quite alien to the current legal establishment. The future of legal service is neither Grisham nor Rumpole. Nor is it wigs, wood-panelled courtrooms, leather-bound tomes, or arcane legal jargon. It will not even be the now dominant model of lawyering, which is face-to-face, consultative professional service by advisers who meet clients in their offices, whether glitzy or dusty, and dispense tailored counsel. To meet the needs of clients, we will need instead to dispense with much of our current cottage industry and re-invent the way in which legal services are delivered. Just as other professions are undergoing massive upheaval, then the same must now happen in law. Indeed, it is already happening. The bespoke specialist who handcrafts solutions for clients will be challenged by new working methods, characterized by lower labour costs, mass customization, recyclable legal knowledge, pervasive use of IT, and more.

When I was at law school, in the late 1970s and early 1980s, few students gave much thought to what the future might hold for the legal profession. We took it for granted that the work of lawyers in, say, 25 years' time, would be much as it was in our time. It transpired that we were right to expect little change. In contrast, in looking 25 years ahead from now, I argue it would be absurd to expect lawyers and courts to carry on operating as they do now. If only because of the inexorable rise in the power and uptake of IT—to pick one of several drivers of change—we must surely expect something manifestly more than modest adjustment.

So Why Listen to Me?

You might think that hordes of senior people in the legal profession are currently thinking deeply about the long-term prospects for lawyers and the legal system. But almost no one you might expect to be at the helm—politicians, senior partners in law firms, policymakers, law professors, top judges, leaders of professional bodies—is looking much beyond the next few years. In these difficult economic times, the here-and-now seems to be providing headache enough.

In truth, in the legal community there are only a few dozen lawyers and professors around the world who are devoting their working lives to theorizing about and planning for the long term (most of their works are referenced in the Further Reading section of this book). I am one of them and have been writing, speaking, and advising on the future for longer than most. I started my journey in 1981, as a third-year undergraduate law student at the University of Glasgow. Since then, I have written a doctorate in law and computers at Oxford University, and worked for several years with one of the ‘Big 4’ accounting firms, and then for much of the 1990s with an international law firm, on whose board I sat for three years. I have been a law professor for over 20 years, and, for 15 years, an independent adviser to law firms, in-house legal departments, governments, and judiciaries around the world.

Even my fiercest critics will concede that in my numerous books and newspaper columns over the last 25 years I have been right more often than wrong in my predictions. So, I say this: if there is a better than even chance that the radically transformed legal world I predict will come to be, then it should be worth

spending a few hours contemplating its implications. If my winning run continues—and my confidence in my predictions is greater now than in the 1990s—then it might pay dividends to read on. And my hope is that readers will not respond defensively (‘how can we stop this happening?’) but will find exciting new options and opportunities in these pages (‘I want to be one of the pioneers’).

How the Book is Organized

The book is divided into three main parts. The first is an updated, simplified restatement of my views on the future of legal services, as presented in three previous works—*The Future of Law* (1996), *Transforming the Law* (2000), and, especially, *The End of Lawyers?* (2008). I have tried to pick out and highlight, for young and aspiring lawyers, the key themes of these books. I introduce the main drivers of change in the legal market and explain why and how these will lead lawyers to work differently and will encourage new providers to enter the market with novel approaches to legal service. I also outline a large range of technologies that I believe will disrupt the traditional working practices of lawyers. My focus here, as throughout, is largely, but not exclusively, on civil work in commercial law firms. For readers who are already familiar with my ideas from my 2008 work, I urge you not to skip Part One, because there have been significant developments in the market and in my thinking since I wrote *The End of Lawyers?*

Next, in Part Two, I sketch out the new legal landscape, as I expect it to be. I discuss the future for law firms, the challenges facing in-house lawyers, and the likely progression of the shifts

I anticipate. I also lay out some of the ways in which 'access to justice' problems will be overcome through a variety of online legal services. And I offer some predictions too about the work of judges and the courts, and the promise of virtual hearings and online dispute resolution.

Finally, in the third part of the book, I focus more specifically on the prospects for young lawyers. I ask what new jobs and employers there will be and for what and how the next generation of lawyers will be trained. I provide optimistic and encouraging answers to these questions. I also equip young lawyers with some penetrating questions to put to their current and prospective employers. And I conclude by looking to the long term and putting down a challenge for young (in heart) lawyers everywhere.

Wayne Gretzky, perhaps the finest ice hockey player of all time, famously advised to 'skate where the puck's going, not where it's been'. Similarly, when lawyers are thinking about the future, whether about their law firms or law schools, they should be planning for the legal market as it will be and not as it once was. In ice hockey terms, however, most lawyers are currently skating to where the puck used to be. My purpose, then, is to show where that puck is most likely to end up.

PART ONE

Radical Changes in the
Legal Market

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1 | Three Drivers of Change

The legal market is in an unprecedented state of flux. Over the next two decades, the way in which lawyers work will change radically. Entirely new ways of delivering legal services will emerge, new providers will enter the market, and the workings of our courts will be transformed. Unless they adapt, many traditional legal businesses will fail. On the other hand, a whole set of fresh opportunities will present themselves to entrepreneurial and creative young lawyers.

I believe there will be three main drivers of change: the 'more-for-less' challenge, liberalization, and information technology. Other commentators may point to different factors, such as shifting demography and increasing globalization. I do not deny that such factors are significant but my specific focus here is on the changes that we will see in the way in which legal services are delivered; and all my research and advisory work, as well as what I have seen in other professions, lead me to the conviction that my three drivers are the ones to watch for. Let me introduce each in turn.

The ‘More-for-Less’ Challenge

Clients of lawyers come in many different forms. There are in-house lawyers, who work within large organizations and who spend mightily on legal advice when they have major disputes to resolve or large deals to conclude. There are managers within small or medium-sized businesses, who have properties to rent, employees to engage, and all manner of regulations with which to comply. And there are individual citizens, who may need legal help with such matters as moving house, coping with debt, or pursuing some personal injury claim. Although diverse in nature, these clients currently share a big challenge—generally, they cannot afford legal services when delivered in the traditional way.

General Counsel, the individuals who run in-house legal departments, invariably say that they face three problems. First of all, because of today’s difficult economic conditions, they are under pressure to reduce the number of lawyers in their teams. Second, they are being asked by their chief executives, chief finance officers, and boards to reduce the amount they spend on external law firms. And yet, at the same time, third, they say they have more legal and compliance work to undertake than ever before; and that the work is riskier too. Many General Counsel confess that they are being required to reduce their overall legal budgets by between 30 per cent and 50 per cent. On the face of it, this is unsustainable. These clients from major companies and financial institutions are facing the prospect of an increasing workload and yet diminishing legal resources. Something surely has to give here. I call this problem the ‘more-for-less’ challenge—how can clients, working with their external law firms, deliver more legal services at less cost?

The more-for-less challenge is not just a conundrum for in-house lawyers. Small businesses face a similar dilemma. These traders do not have their own specialist in-house lawyers, and whenever they are in need of serious legal help, they must currently turn to external law firms. In these demanding times, however, many business people confess that they cannot afford lawyers and often have to run the risk of working without legal guidance. As for the consumer, although the law is central to all of our lives, dramatic decreases in public legal aid mean, effectively, that only the very rich or the very poor any longer have the means to afford the services of lawyers. Citizens face the more-for-less challenge too.

I believe the more-for-less challenge, above all others, will underpin and define the next decade of legal service. The more-for-less challenge will, I expect, irreversibly change the way that lawyers work.

Liberalization

The second main driver of change is liberalization. A little background should help here. In most countries, historically and generally speaking, only qualified lawyers have been permitted to provide legal services to clients, and, even then, only from specific types of organization (typically from partnerships). Laws and regulations have stipulated who can be a lawyer, who can run and own a legal business, and what services they can provide. Different countries have drawn lines in different places, so that, in England and Wales, what is known as 'reserved' legal business (work that only qualified lawyers are permitted to undertake) is

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