

Thinking about the 21st Century
and how it will unfold for law firms
over the coming decade

Robert Millard



CONVERGENCE



The year 2010 finds us in the final year of the first decade of the third millennium, in the western calendar at any rate. One thing is abundantly clear: the future is not what it used to be. If there ever was a time when one could rely heavily on forecasts in crafting strategy, then that time is past. Today's leaders of law firms need to be able to simultaneously juggle three seemingly incompatible goals:

1. To define and execute a strategy in order to sustain and maximize the value that the firm delivers to its owners into the future, based on the capabilities and resources that it has and that it can reasonably achieve or realize; and
2. To ensure that the firm is agile, robust and resilient enough not only to withstand unexpected and unforeseen changes in the market but to capitalize upon them; and
3. To deliver sufficient short-term profitability to be able to meet owner expectations and compete effectively for talent.

Never before has this been more difficult, nor the way forward so uncertain.

Change has always been with us. It is not change but our reaction to it that defines its effect on our firms. As Marcus Aurelius (Emperor of Rome from A.D. 161 to 180) wrote:

"Universum est change; nostrum vita est quis nostrum sententia planto is." ("The universe is change; our life is what our thoughts make it.")

This holds as true today as then. Different today, even from the 20th Century in which most of us developed our world-view, is the pace and scope and the level of complexity of the change. As we emerge from the worst

“

As we emerge from the worst recession in (for most) living memory, the realignments that are taking place in the world seem more akin to an earthquake than the simple economic corrections that we are used to.

recession in (for most) living memory, the realignments taking place in the world seem akin to an earthquake. In its aftermath, assumptions upon which we have based the business models of our firms lie in ruins. Almost as a knee-jerk to drive performance harder, many compensation systems are being radically overhauled. Client relationships are evolving rapidly as client demands reach new heights and fees come under pressure at exactly the time that many kinds of matters become more complex and sophisticated. Other kinds of matters, previously profitable, have become commodities or even disappeared. Alternative fee arrangements are nearing a tipping point that makes the survival of the billable hour as the

This article is intended to provoke law firm leaders into challenging the way that they think about strategy and the future of their firms.



primary billing model most unlikely over a five to ten year timeframe. Firms that have never before thought of globalization in the context of their own business models are being challenged by this reality too. How will all this unfold over the next few years? What does a prudent law firm managing partner or executive director need to do? What should be discarded? What should be kept unchanged?

In this turbulent 21st Century, it is critical for many law firm leaders to radically rethink their role in their firms, and especially how they and their firms approach strategy. A clear sense of direction is imperative. As in the popular CBS TV series Survivor, strategy is a matter of “outplaying” and “outlasting” (and yes, sometimes even “outwitting”) one’s competitors for as long as the firm is in business. It is critical for today’s leaders to get really good at “thinking strategically,” every single day. Strategy is no longer something that can be adequately dealt with as a periodic event. It must become an ongoing process in the firm. It is also everybody’s responsibility, rather than something that can be left to an individual or a committee.

This article is intended to provoke law firm leaders into challenging the way that they think about strategy and the future of their firms, by exploring some of the changes that are taking place in the world and how they might unfold especially in western law firms.

1. SHIFTING GLOBAL ECONOMIC AND SOCIO-POLITICAL LANDSCAPES

With hindsight, it is clear that the current global crisis did not emerge solely from the housing bubble that developed in the USA and some European countries. It built up over decades. We need to consider how the world will be different in coming years, once this crisis subsides, before we can begin to think about how our strategies need to adapt.

Decades of wealth transfer from the West to the East have resulted in national debt loads in the West that are unprecedented in history. Cash will continue to flow eastwards in coming decades as this debt is retired. Eastern investments in western businesses will lead to westward flowing capital, but dividends from those assets will flow back to the East. It seems likely that western currencies will devalue in coming years as a result, probably accompanied by a rise in inflation. Simultaneously, the face of investment banking has changed radically and it seems inevitable that the financial services sector in the west will be far more heavily regulated in future. Applying “cause-and-effect,” this will most likely shift competitiveness in this area and hence business to less regulated Eastern markets. It is therefore difficult to conceive of a return to pre-crisis prosperity in the West anytime soon. Financial pressures on many law firms are probably also here for a good few years yet. Financial conservatism is advisable.

It is clear that the global economic and socio-political landscape has changed fundamentally since 2005 when Clifford Chance and Oxford Analytica conducted their groundbreaking scenario planning exercise. This exercise considered a Chinese invasion of Taiwan as one of three key global uncertainties (see Armistead, 2005.) The dynamics that have changed may be relatively subtle and unapparent at present, but are likely to manifest themselves more obviously in coming years, as Chinese investment into and trade with the world grows further.

It therefore seems reasonable to assume that China will also impact fundamentally on legal services across the world over the coming decade, at least in jurisdictions that are significant targets for Chinese investment. The impact will be felt both through the way in which these changes influence clients and also directly. Western law firms need to get to grips with these changes and their implications. For some, this

will involve operating directly in China. For all firms, it means keeping changes induced by China’s evolving role in world affairs, on their clients and in their markets generally, firmly on their strategic radar. For many, it will involve courting Chinese corporations as clients themselves. This picture is as much of opportunities as of threats.

2. NEW BUSINESS MODELS FOR LAW PRACTICE OWNERSHIP AND MANAGEMENT

Many readers will already know of Slater & Gordon, the Australian law firm that became the first law firm in history to list on a stock exchange. Although Slater & Gordon is known primarily for its plaintiffs’ personal injury practice, according to its 2007/08 annual report it is accelerating *“the growth of non-personal injury practices through marketing, recruitment and the acquisition of other practices” and developing “the commercial advisory and transactions practice area.”*

Will the *“alternative business structures”* spawned by the Legal Services Act lead to new business models for law firms that are fundamentally more competitive than those currently in place? This question is of seminal importance to law firms anywhere.

Some seemingly attractive initiatives will fail and may even drag firms down with them. If others do yield real advantage, they will evolve and spread through the market. They will then join the other vectors that are causing the way that legal services are delivered to clients to evolve away

The market is as brutal a “natural selector” as the law of the jungle. Only practices that yield sustainable competitive advantage will survive.

“

from the business models to which we are used. Whether or not these models spread to other jurisdictions will depend on the degree of competitive advantage that they yield for the companies that use them, in the global market. Pessimists argue that alternative business structures will harm the UK legal profession. I disagree. The market is as brutal a “natural selector” as the law of the jungle. Only practices that yield sustainable competitive advantage will survive. In the long term, therefore, the result should be a more efficient legal

services industry. Of course, this does not detract from the fact that the short-term impacts will be traumatic, especially for firms that lag behind the curve.

Some new business practices that firms are already discussing and in some cases executing include:

- Making “C” level non-lawyer executives into shareholders, so fundamentally altering the relationship between lawyers and “non-lawyers” in most firms. This is already in play in England and Wales, in that from 2009 non-lawyer managers can become owners of law firms so long as at least 75% of ownership remains in the hands of lawyers. This limit will decrease over coming years.
- Development of multi-disciplinary practices to provide a wider range of services to clients.
- Securing equity finance either through listing on a stock exchange or through private equity, to fund growth either geographically or through recruitment incentives to attract talent.
- Exit strategies for existing owners wishing to capitalize their investments, although this will only be able to sensibly be applied to firms where the business is divorced from the persons of the current owners, for instance “process factories.”
- England and Wales is a crucible in the laboratory of law firm strategy and management practice. The rest of the world is watching the “Clementi Experiment” intently.

3. EXPONENTIAL ADVANCES IN TECHNOLOGY

There are two schools of thought about the ultimate impact of technology on law firm management. The first holds that technology will never be more than a support tool for lawyers. The second holds that technology will fundamentally displace lawyers from many of the services that they currently provide. The first view is myopic. Technology has moved far

The trend towards
fundamental
transformation is
inexorable...and
exponential.

“

beyond being just a means of producing documents faster; managing the firm's finances more effectively; storing and improving access to data and better and communicating faster, to actual service delivery (Mayson, 2007.) The trend towards fundamental transformation is inexorable...and exponential.

Limitations cited by those arguing that the impact of technology will be limited include the current inability to transmit large amounts of data quickly and securely across the internet; inability of computers and software to “reason” rather than simply compute; and assumptions that clients will always want to work face-to-face with an actual person.

With proven internet speeds already exceeding the equivalent of 60 DVDs per second (2.56 terabits per second) by the Fraunhofer Gesellschaft across the German countryside, with others subsequently claiming even far higher experimental speeds, bandwidth is not likely to be a limitation for much longer. Data security is also already at a point where advancing this as an unavoidable limitation is a little dubious.

Computers continue to double in power every 18 – 24 months at no increase in cost, a trend that has held for half a century and is described in the so-called Moores Law. This is likely to continue for about another decade until the transistors with which we are familiar as building blocks of computational ability shrink to the molecular level and are replaced by something entirely new, much as transistors replaced vacuum tubes. At point, Moore's Law may accelerate. A computer's performance is measured in what are called FLOPS (“FLOating Point Operations Per Second.”) Presently, computers are able to achieve about 40 teraflops. (40,000,000,000,000 FLOPS.) Scientists predict that supercomputers with the computational ability of the human brain are just a few years away and are already talking about computers with performance that will be measured in zettaflops (1,000,000,000,000,000,000 FLOPS.) That is, computers that are 25 million times more powerful than today. If one adds to this current and likely future advances in artificial intelligence, it becomes utterly facile to assume that computers will never be able to move beyond simple computation.

Enormously increased bandwidth will go a long way to solving the final limitation, namely the preference of clients to deal with humans rather than machines. Holographic video-conferencing tools such as Cisco's 'Telepresence' are early indicators of how this trend might unfold. Automatic translation will give people the ability to communicate in whatever language they choose. Web 2.0 tools such as social networking are making it far easier for people to communicate and platforms like Legal OnRamp are at the cutting edge of this in the legal profession. To quote Richard Susskind in *"The End of Lawyers"* (2008,) technology will *"fundamentally change the face of legal service."* It is already.

The pace of change in legal services has been traditionally (and often proudly) described as "glacial." Technology could radically change that. In the IT industry, "disruptive change" or "killer apps" (Downes & Mui, 2000) are where emerging new technologies or applications render their predecessors obsolete. They are commonplace in IT. Are we on the brink of seeing something similar emerging in legal practice? Governance practices in most law firms are not suited to dealing with disruptive change. Again, this offers as many opportunities as threats for those firms with strategic acuity and the ability to develop the resilience and agility to thrive on such change.

4. CHINESE AND OTHER NON-WESTERN MODELS OF JURISPRUDENCE

English common law and the Magna Carta, the Code Napoléon and other western systems of jurisprudence are historically irrelevant in the East. In the Middle East, Sharia Law and Fiqh (Islamic jurisprudence) are based on the tenets of Islam. In China and several other Far eastern nations, the roots are even further back in history, in Confucianism. Other parts of the world also have regional flavours that differ from the West. The ramifications of an "east meets west" collision in law at its most fundamental, philosophical level should not be underestimated. This too could impact how law firms are governed and legal services are delivered to clients.

For the past few decades, the western approach to Eastern jurisprudence and the practice of law insofar as it pertains to international trade and investment has been to seek to "westernize" it. Following the shift in the

balance of influence between east and west, though, we can expect the Chinese influence in particular to increase in coming years.

Chinese jurisprudence itself has also been evolving quite fundamentally. Under Deng Xiaoping, China moved away from Mao's instrumentalist view of law and also eradicated the "rule of persons." Law replaced political policy as the basic framework for government (Lo, 1995.)

China's accession to the WTO in 2001 triggered further evolution, this time with a strong globalization imperative and three major goals (Killion, 2004) :

1. Bringing China's legislation in line with its obligations under the WTO;
2. Enhancing the competitive power of Chinese enterprises in international markets;
3. Protecting domestic enterprises and ensuring industrial safety.

Understanding both the likely impact of Chinese influence on international business and finance and also the likely Chinese influence on the law that will be associated with it, is the first stage of addressing this issue. The second is to consider what strategic changes are required in order to compete in a world where these changes are in effect. Traditionally, western law has not been good at this:

"The tendency in the West too often is to pay little tribute to the existence of other legal traditions, largely because [the other legal traditions] do not have the hallmarks of the Rule of Law approach that developed in the West." (Hager, 2000.)

5. EMERGENCE OF A GLOBAL MARKET FOR LEGAL SERVICES

Frankly, it would be surprising if a single global market for a wide range of legal services did not develop over the coming five to ten years at most. Protectionist jurisdictional barriers may stubbornly persist in some markets, but for the most part they will have been inexorably eroded away by the market's ability to source goods and services anywhere in the world through the Internet. Markets abhor artificial barriers. They

circumvent them whenever this is of economic benefit and achievable. Legal services are not immune from this.

India in particular has an enormous talent pool in legal services. Extrapolating a 2005 Wall Street Journal article, Indian law schools now produce approximately 250,000 graduates each year. The number of firms providing “front office” functions in western countries with “back office” functions in India is increasing. As the demand for legal services in relatively under-lawyered eastern countries increases, western firms may find themselves at a disadvantage in attracting this work over firms in India and other cheaper emerging markets. A separate article by my colleague Juhi Garg on the current status of this topic appears elsewhere in this edition of Edge International Review.

World Trade Organization initiatives against unfair trade practices and trade barriers in services are also a pressure that has hardly even begun to exert itself. We have seen over the past decades how trade barriers in products have been steadily eroded. Why not too in services, including legal services? International standardization of legal terminology and commercial legislation, too, will accelerate this.

“

Frankly, it would be surprising if a single global market for most legal services did not develop over the coming five to ten years at most.

CONVERGENCE

The point, when considering these vectors impacting the legal profession, is that they cannot be viewed in isolation of each other. In order to even begin to understand their implications for law firm strategy and management in the next few years, one has to consider what their combined impact is likely to be, acting in concert with each other.

This practice, called “convergence,” is an essential element of making strategic sense of the future. Yet legal practitioners often ignore it because it is, in practice, so difficult and imprecise to apply. The result is that strategy is crafted on the basis of superficial and often incorrect deductions. An example: Stanley Schmidt describes in his book *“The Coming Convergence – the surprising ways diverse technologies interact to*

shape our world and change the future” (Prometheus, 2008,) how it took a convergence of advances in computers, X-ray technology, microsurgery and the success of the Beatles to produce the modern CAT scans that revolutionized brain surgery.

If one had asked a neurosurgeon in the early 1970s what impact computers would have on his practice, the response would have been very limited. The 1971 prototype CAT scan (called an “EMI-scanner” and funded largely with profits from the sale of Beatles records) took many hours to execute the scans and process the results. Mobile phones with greater computing power than computers of his day would have been unforeseeable.

If you had asked the surgeon what impact X-rays might have, then again he would probably have thought about the experimental CAT scan equipment, but the pictures were very low resolution and the equipment so specialized and expensive as to be limited to research laboratories.

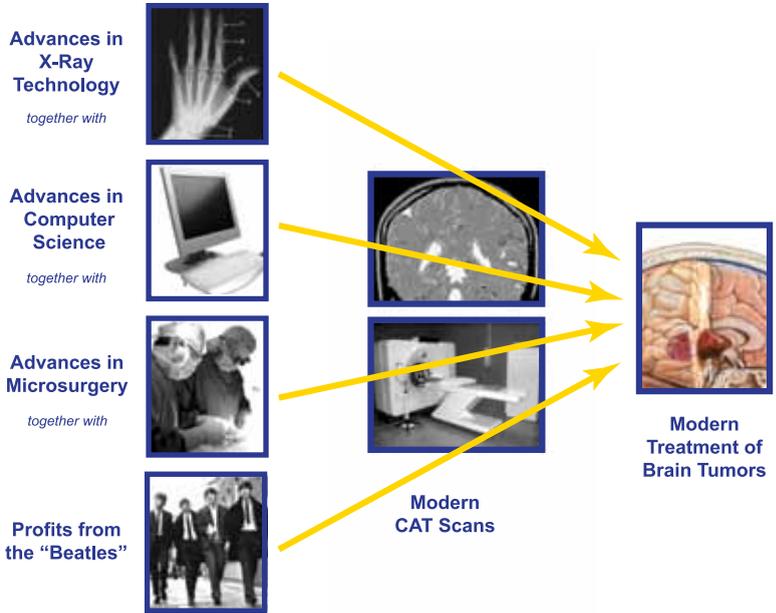


Figure 1: *It was the convergence of advances in X-Ray technology and computer science, with funding from sale of music by the “Beatles” that led to the development of CAT scanning equipment, and simultaneous advances in anesthesiology and microsurgery, that revolutionized brain surgery. Considering the impact of each of these drivers on neurosurgery is nonsensical ... it took the simultaneous convergence of ALL of them.*

It was the combination of advances in X-ray scanning, and computers, and microsurgery and anesthesiology, all acting in concert, that led to modern neurosurgery as we know it.

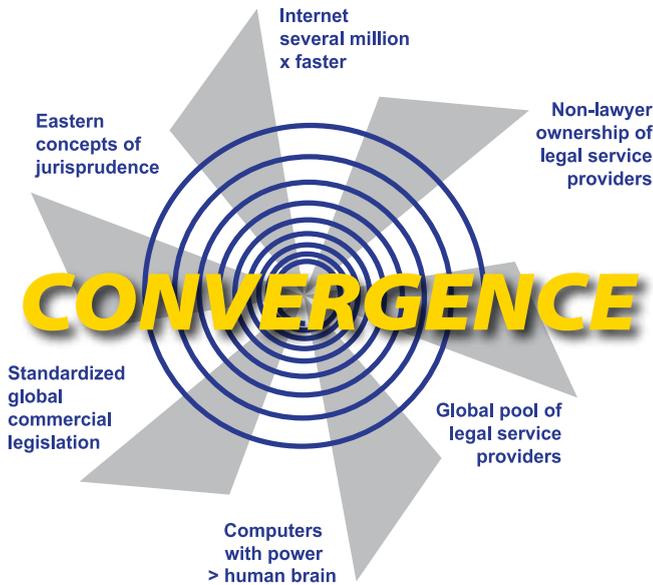


Figure 2: The full impact of changes that will be wrought on the practice of law and the strategic direction of western law firms is to be found also not by considering the separate impacts of different change drivers acting independently, but at the convergence of the impacts of those drivers acting in concert with each other.

The same applies with legal services. It is senseless to ask what the impact of alternative business structures in England and Wales might have on law firm management practices, without asking what their impact might be when considered together with exponential growth in technology, emergence of a global market in legal services and the changes in the global economic and socio-political landscape, all acting simultaneously and in concert. This leads to a far more complex discussion but, almost inevitably, to a different set of conclusions to when the issues are considered in isolation of each other.

“

Balancing all these long-term issues with the intense demands of challenging economic priorities is perhaps the most difficult balancing act for law firm leaders today.

CONCLUSION

The purpose of this article has been not so much as to try to provide a forecast of what the future legal profession will be like, as to discuss a few key drivers and provide a framework for how law firm leaders need to think about them and, more importantly, how they impact their strategy. I hope that the point is made that it is dangerous to think too simplistically about these drivers, or (especially) to try to think about them in isolation of their interrelated impacts on each other. Most importantly, I hope the point has been driven home that these are issues that firms ignore at their peril.

Balancing all these long-term issues with the intense demands of challenging economic priorities is perhaps the most difficult balancing act for law firm leaders today. In my experience, the only way is to create a culture where strategic conversations are a constant undercurrent, and where important information is readily communicated within the firm, to those that need to know it. As always, I'd welcome the opportunity to discuss any aspect of this article with anybody interested in exploring the issues further.



Rob Millard is a partner with Edge International and a business strategist, specializing in law firms. In 2009, he served law firm clients in ten countries on four continents. He is an acknowledged thought-leader in how emerging global trends are impacting the practice of law and law firm strategy. Contact him at rob.millard@edge-international.com.

REFERENCES

Armistead, L., 2005. Law firm arms itself so it can handle worst case scenario. The Times online, 2 October 2005

Downes, L. and Mui, C., 2000. Unleashing the Killer App: Digital strategies for market dominance. Harvard Business School Press.

Fraunhofer Institute for Telecommunications, 2006. Quoted on physorg.com at <http://www.physorg.com/news62776076.html>.

Friedman, T.L., 2007. The World is Flat 3.0 : A brief history of the 21st Century. Picador.

- Hager, B.M., 2000. The Rule of Law: A lexicon for policy makers 13 (2000)
- Killion, M.U., 2004. Post-WTO China and Independent Judicial Review. *Houston Journal of International Law*, Spring 2004.
- Krepinevich, A.F., 2009. The Pentagon's Wasting Assets: The eroding foundations of American power. *Foreign Affairs*, July/August 2009.
- Lo, C.W., 1995. *China's Legal Awakening: Legal theory and criminal justice in Deng's era*. Hong Kong University Press.
- Mayson, S., 2007. *Law Firm Strategy: Competitive advantage and valuation*. Oxford University Press.
- Millard, R.F. 2007. Unwrapping the Strategy Process. Presentation to the Managing Partners Forum at White & Case, New York, August 2007 on the results of a global research survey on how firms approach strategic planning.
- Raine, S., 2009. *China's African Challenges*. International Institute for Strategic Studies, Washington DC.
- Schmidt, S., 2008. *The Coming Convergence*. Prometheus Books.
- Slater & Gordon, 2008. *Annual Report of the Company for 2007/08*. Sydney, Australia.
- Susskind, R., 2008. *The End of Lawyers? Rethinking the nature of legal services*. Oxford University Press.
- Wall Street Journal, 2005. More U.S. Legal Work Moves to India's Low-Cost Lawyers. *Wall Street Journal*, 28 Sept 2005. Dow Jones & Co, Inc.