

CONVERGENCE:

Assessing the impact of today's changing world

Robert Millard explores some of the changes in today's world and how they might unfold, especially in the case of law firms.

The future is not what it used to be. In this turbulent 21st century, things change quickly and outcomes are too uncertain for static models of strategy and management that evolved in past decades to remain effective. The events of 2008 were not a normal cyclical economic downturn. The world is going through an experience more akin to an earthquake, and assumptions upon which we base our business models are being fundamentally challenged. This article explores some of the changes and how they might unfold, especially for law firms.

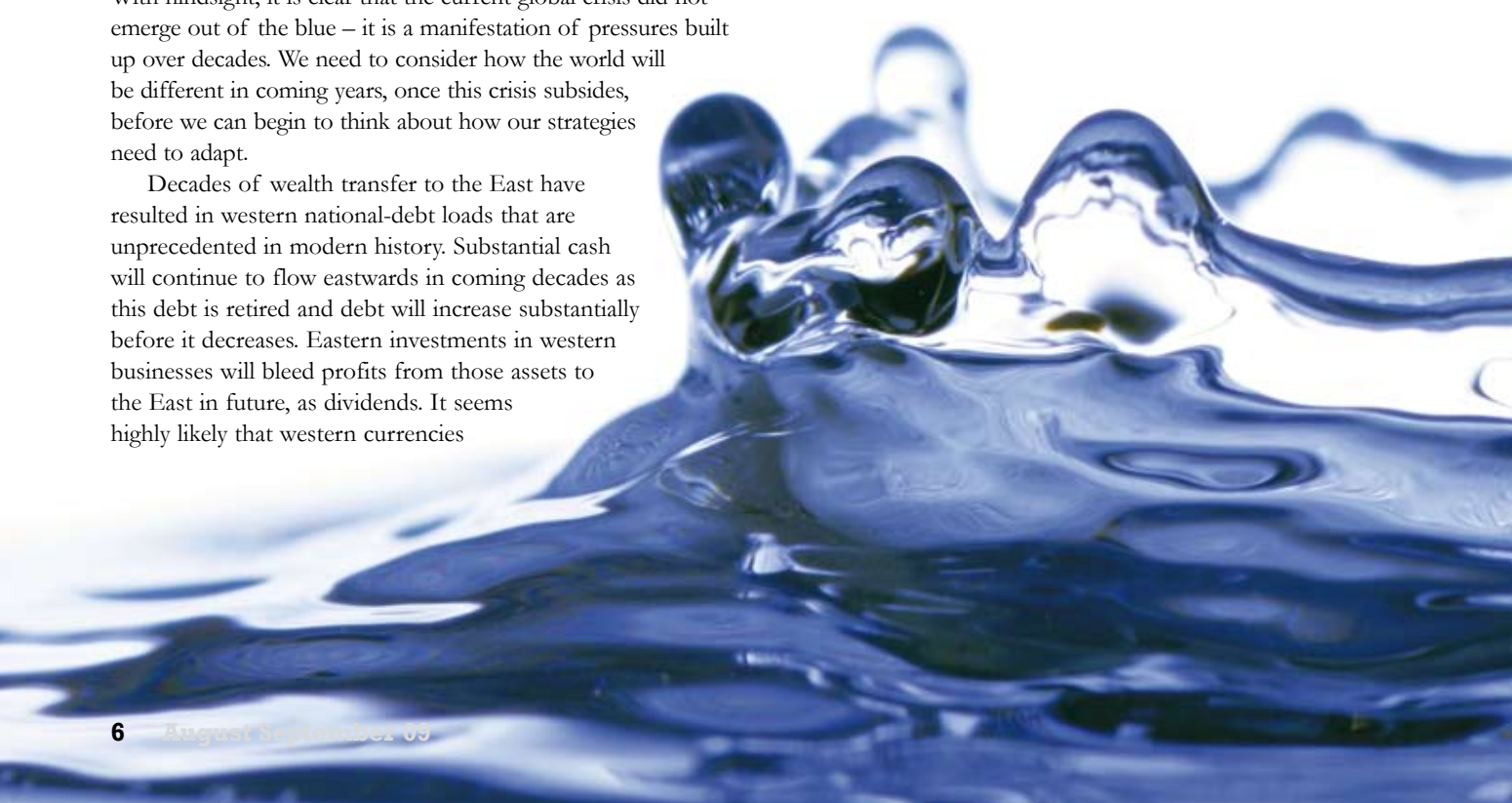
Shifting global economic and socio-political landscapes

With hindsight, it is clear that the current global crisis did not emerge out of the blue – it is a manifestation of pressures 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 to the East have resulted in western national-debt loads that are unprecedented in modern history. Substantial cash will continue to flow eastwards in coming decades as this debt is retired and debt will increase substantially before it decreases. Eastern investments in western businesses will bleed profits from those assets to the East in future, as dividends. It seems highly likely that western currencies

will devalue in coming years as a result, accompanied by a rise in inflation. Simultaneously, investment banking in the West, especially, has changed radically, and the financial services sector will be very heavily regulated in future. Given this combination of vectors, it is difficult to conceive of a return to pre-crisis prosperity in the West anytime soon.

The military balance of power has evened out too. Chinese military strategic-thinking has moved from matching western conventional military forces to a concept called '*shashou jiang*' or the 'assassin's mace'¹. This involves developing the capability to destroy an enemy's battlefield communications and ability to mount precise attacks, while carefully launching their own precise pre-emptive strikes against specific enemy assets.



This may provide greater comfort to China, in years to come, to exert its political will more forcefully on a global scale.

The global economic and socio-political landscape has changed fundamentally since 2005 when Clifford Chance and Oxford Analytica² conducted their ground breaking scenario planning exercise (this exercise considered a Chinese invasion of Taiwan as one of three key global uncertainties). The dynamics that have changed may be relatively subtle at present, but are likely to manifest themselves more obviously in coming years.

It follows that the East is going to impact fundamentally on legal services across the world over the coming decade. The impact will be felt both through the way in which they influence clients and also directly. Western law firms need to get to grips with these changes. For some, this will involve operating directly in China. For all firms, it means keeping changes induced by the East on their clients and in their markets firmly on the strategic radar.

New business models for law practice management

Many readers will already know of Slater & Gordon, the Australian law firm that became the first 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 (ABSs) spawned by the Legal Services Act 2007 lead to new business models for UK law firms that are fundamentally more competitive than those currently in place? This question is of seminal importance to law firms anywhere in the world.

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. This will then join the other vectors that are causing the way that legal services are delivered to clients to evolve away 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 ABSs 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, the result should be a more efficient legal services industry. Of course, this does not detract from the fact that the short-term effects will be traumatic, especially for firms that lag behind the curve.

Some new business practices that firms are already discussing include:

- ◆ Making 'C' level non-lawyer executives into shareholders, so fundamentally altering the relationship between lawyers and 'non-lawyers' in most firms;
- ◆ 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; and,
- ◆ Exit strategies for existing owners wishing to capitalise on their investments.

England and Wales are a crucible in the laboratory of law firm strategy and management practice. The rest of the world is watching the 'Clementi Experiment' intently.

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 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 faster communication, to actual service delivery³. 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) at the Fraunhofer Gesellschaft in Germany⁴, with others claiming even far higher experimental speeds, bandwidth is

Enormously increased levels of 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.

The conclusion is inescapable: technology will fundamentally transform everything. To quote Richard Susskind in *The End of Lawyers*⁵, it will "fundamentally change the face of legal service".

Technology is the one area where the scope for sudden and radical change in the legal profession is greatest. 'Disruptive change', where an emerging new technology rapidly renders an existing technology or practice obsolete, is commonplace in the IT industry⁶. In the legal profession, change is typically regarded as incremental and glacial in pace. Technology-driven change could render established legal management practices suddenly and dramatically obsolete. Governance practices in place in most law firms are not suited to dealing with disruptive change. This offers as many opportunities as threats for those firms with strategic acuity.



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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 to 24 months at no increase in cost, a trend that has held for half a century and is described in the so-called 'Moore's 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 that 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 facile to assume that computers will never be able to move beyond simple computation.

Again, the starting point is to rethink the way that the firm views and crafts its strategy, at the most basic level.

Chinese and other non-western models of jurisprudence

Roman Dutch law, English common law and the *Magna Carta* 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 affect 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 'westernise' it. Following the shift in the balance of influence between East and West, we can expect the Chinese influence in particular to increase in coming years.

Chinese jurisprudence 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 government⁷.

China's accession to the World Trade Organization (WTO) in 2001 triggered further evolution, this time with a strong globalisation imperative and three major goals⁸:

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

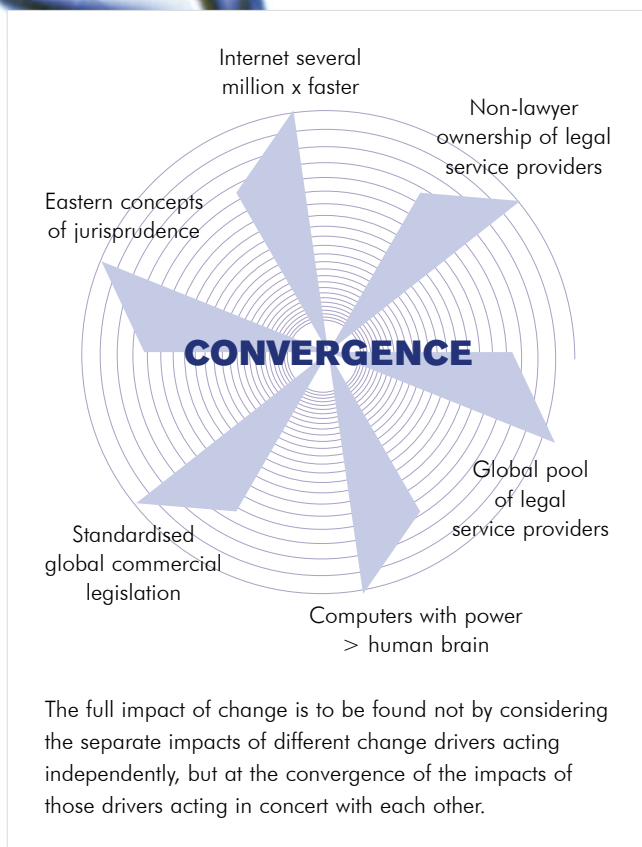
Understanding both the likely impact of Chinese influence on international business and finance, and also the likely Chinese influence on the law that will be associated with it, is the first stage of addressing this issue. The second is to consider what strategic changes are required in order to compete 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."⁹

Emergence of a global market for legal services

Frankly, it would be surprising if a single global market for legal services did not develop over the coming five to ten years at most¹⁰. 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 to this.

India, in particular, has an enormous talent pool in legal services. According to a 2005 *Wall Street Journal* article¹¹, Indian law schools produce over 200,000 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.

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



Convergence

The point when considering these vectors affecting 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 future¹². Yet legal practitioners often ignore it because, in practice, it's so difficult and imprecise to apply. The result is that strategy is crafted on the basis of superficial and often incorrect deductions. An example: 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 revolutionised 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, he would probably have thought about the experimental

CAT scan equipment, but the pictures were very low resolution and the equipment so specialised and expensive as to be limited to research laboratories.

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

The same applies in legal services. It is senseless to ask what the impact of ABSs 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.

In summary

The purpose of this article has been not so much to try to provide a forecast of what the future of the legal profession will be, but to discuss a few key drivers and provide a framework for how law firm leaders need to think about them. 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.

It is also important to realise that such thinking and such strategy-crafting can no longer be a periodic, once-off event. It needs to be an ongoing process, if the firm's direction is to be fine tuned (and sometimes perhaps even radically altered) in response to the constantly changing world.

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. Also, where important information is readily communicated within the firm, to those that need to know it. *FDLegal*

Footnotes

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