

Reflections on the Future of Legal Services

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Abstract:

The following reflections on the future of legal services were part of an [online symposium](#) on [Prawfsblawg](#). The symposium focused on two books: Richard Susskind & Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* and Gillian Hadfield, *Rules for a Flat World: Why Humans Invented Law and How to Reinvent it for a Complex Global Economy*.

The reflections contain three parts. The first part describes the Susskinds' prediction that technology will drive dramatic changes to the delivery of legal services and concludes that, although the Susskinds' predictions are probably close to the mark, the changes may be more uneven than the Susskinds acknowledge. The second part discusses how law schools should respond to the rapidly evolving legal marketplace and suggests curricular changes that will put law school graduates in a better position to thrive in the 21st century. The final part discusses how the regulatory framework for legal services will need to evolve in light of the rapidly changing legal marketplace.

Predicting the Future of Legal Services

THURSDAY, FEBRUARY 09, 2017

Thanks to Dan Rodriguez for organizing [this symposium](#) and inviting me to participate. As a long-time reader of Prawfsblawg, I'm especially delighted to join the conversation.

It wasn't easy to decide how to contribute to the discussion about two terrific books. They both raise so many important issues and make so many provocative points that it is hard to engage with the ideas adequately in a few posts. I ultimately decided to focus my comments primarily on Richard and Daniel Susskind's [The Future of the Professions: How Technology Will Transform the Work of Human Experts](#). In this first post, I explain why we should take the Susskinds' predictions seriously. In two subsequent posts, I'll explore the implications of the predictions for legal education and legal services regulation, when I will also touch on Gillian Hadfield's book, [Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy](#).

A Disclosure

My views on the future of legal services have been informed by Richard Susskind's [earlier books](#) and my own work on projects where "futures" discussions have been front and center. For example, I recently completed service as the vice chair of the [ABA Commission on the Future of Legal Services](#), which produced [a report](#) describing many "legal futures" issues in great detail. And I am now the chair of the governing council of the just-launched [ABA Center for Innovation](#). Before becoming a dean, I was fortunate to serve as Suffolk Law's inaugural director of our [Institute on Law Practice Technology & Innovation](#) and the related [concentration](#) in the area.

These experiences lead me to believe that we are going to see more significant changes over the next couple of decades than we have seen over the last twenty years (and those recent changes already have been [considerable](#)). That's a long way of disclosing that I read the Susskinds' book expecting to find myself largely in agreement with their predictions, and I wasn't disappointed.

The Essence of the Susskinds' Forecast

The Susskinds' predictions turn in no small part on an important narrative about how people have developed and shared their expertise during different periods of human history. Namely, we have seen an evolution from strictly oral communications, to written work, to modern printing, and (most recently) to a digital age where knowledge is acquired and shared with great ease (pp. 147-53).

The Susskinds observe that, before the current digital age, information was difficult to obtain, giving professionals an important role and advantage. People could not easily find the information they needed about a topic, such as medicine, law, or accounting, so the public had little choice but to consult experts (e.g., doctors, lawyers, accountants, etc.) to answer even routine questions.

The Internet is now leveling that playing field, making the dissemination of expert knowledge considerably easier. (This online symposium is an example.) When combined with technological advances that have facilitated the automated delivery of that knowledge and related services – think the [Mayo Clinic](#) or [WebMD](#) (for medicine), [LegalZoom](#) (for legal services), [TurboTax](#) (for accounting), and [Khan Academy](#) (for education) – the Susskinds argue that we are beginning to see [Clayton](#)

[Christenson](#)-like changes to the professions (though the Susskinds prefer to avoid the language of “disruption”). (pp. 109-10). The Internet is not only making it easier for non-experts to gain access to the information they need; it is driving a gradual expansion of automation from low-cost, routine professional services to more bespoke services, especially as artificial intelligence (AI) becomes more sophisticated (e.g., IBM Watson’s applications to the [healthcare](#) and [legal](#) industries).

The Susskinds do not argue that human-based bespoke services will necessarily disappear (pp. 192, 199), but they contend that we will see a continued transformation of how professional services are delivered and related changes to the basic skillset that future professionals will need. In a nutshell, they conclude that professionals will have to partner with the “machines” rather than try to beat them.

This is a greatly simplified account of a nuanced and well-researched book, but for those of you who have not read it, this is the gist of it.

My experience has been that some lawyers either do not agree with this forecast or have not given the subject a great deal of thought, so in the remainder of this post, I’m going to explain why I believe that we need to take the Susskinds’ forecasts seriously.

Is the Prediction Right?

The quotable baseball manager Yogi Berra once said that “[i]t's tough to make predictions, especially about the future.” Tough, indeed, but [not impossible](#). Richard Susskind’s predictions about the future of legal services [have been prescient for decades](#). Although Richard hasn’t always been on the mark, he’s been right often enough that his ideas deserve careful attention.

One of the primary reasons that I’m convinced that the Susskinds’ forecasts are reasonably accurate is that the predicted future is already taking shape. As with just about any prediction, the odds of getting it right improve considerably with additional data. Take, for example, a prediction that autonomous cars are going to transform transportation within our lifetimes. Twenty years ago, that prediction would have been quite speculative, because the technology needed for such a development was not yet available. But given the technology that [now exists](#), we can predict with a much higher degree of confidence that driverless cars will become ubiquitous and transformative within a couple of decades or so, perhaps considerably sooner.

The analogy between self-driving cars and legal services innovation is not perfect, but it is instructive. Like predictions about the coming ubiquity of self-driving cars, predictions about the likely transformation of professional services are drawn from existing data and technology, not a speculative forecast about future capabilities.

Consider some recent developments in the legal industry. In the context of dispute resolution, online platforms ([online dispute resolution, or ODR](#)), led by [Modria](#), now resolve approximately as many disputes as the [entire U.S. court system combined](#). The technology is now moving into courthouses. Court-annexed ODR platforms are emerging, and more are likely to appear in the near future. Even when disputes are resolved in courts using traditional procedures, technology is changing the landscape. When I started practicing 20 years ago, discovery required associates (and paralegals) to engage in page-by-page reviews of paper documents; today, technology-driven ediscovery is performed by outside vendors. And technology is informing how lawyers do their work. For example, companies

like [Lex Machina](#) (now owned by [LexisNexis](#)) and [Premonition](#) are using data analytics to give lawyers valuable insights about opposing counsel, courts, etc. to craft better arguments and assess the value of cases. [One company](#) offers to scan your opponent's briefs and suggest possible cases to cite in response.

In the context of transactions, LegalZoom now automates the creation of a wide range of basic legal documents and has served millions of consumers. Numerous other companies and organizations offer similar services, either directly to the public or [for law firms, legal departments, courts, and legal services organizations](#). Due diligence and contract management are often outsourced to [legal process outsourcers](#) (LPOs), as are a range of other services.

Law firms and in-house legal departments are responding to these changes in various ways. In addition to making greater use of [document automation](#), they are using [expert system tools](#), creating [legal project management departments](#), hiring [legal solutions architects to design new ways of delivering legal services](#), and establishing research and development departments (e.g., [Dentons' NextLaw Labs](#), [Davis Wright Tremaine's De Novo](#), [Seyfarth Shaw's Seyfarth Lean](#), and [Littler Mendelson's Service Solutions](#)). Law firms are also diversifying their revenue sources by creating ancillary businesses, such as [e-discovery services](#) or [data analytics](#). In-house counsel are placing a greater emphasis on legal operations (e.g., the [Corporate Legal Operations Consortium](#) (CLOC)), and they are making greater use of LPOs and [unconventional lawyer-staffing solutions that include new technology solutions as well](#).

Bar associations are responding too. The ABA recently [issued a report](#) on these developments and has established a [Center for Innovation](#). [State bar](#) associations are examining futures issues, and other associations around the world are engaging in similar efforts (e.g., the U.K.'s [Law Society](#) and the [Canadian Bar Association](#)).

This is all just a sampling. New [legal tech and innovation startups](#) are appearing everywhere and delivering a growing range of services. [Venture capitalists are taking notice](#) as well and increasing their investments into innovative solutions for the legal industry.

At the same time, the available tools are getting more sophisticated, especially as AI itself becomes more capable. There are increasing efforts to apply AI to law (e.g., [ROSS](#)), a development that fits nicely into the Susskinds' predictions that the changes already underway will continue to transform legal services, even at the most sophisticated levels of the industry.

A Caveat: "The future is already here — it's just not very evenly distributed."

This quote is often attributed to author William Gibson, and it offers a pretty good summary of what is happening with professional services. Innovations are transforming those services, but the changes are (and likely will continue to be) uneven.

To be sure, the Susskinds concede this point. They believe that there will not be a "big-bang revolution." Rather they predict "incremental transformation," or a "staggered series of steps and bounds." Nevertheless, the Susskinds conclude that "the eventual impact will be radical and pervasive." (p. 231)

Here is where I may part ways just a bit from the Susskinds. I agree that technology-driven changes to the delivery of professional services will take the form of “incremental transformation,” but I think that the extent and especially the timing of the changes are likely to vary much more than the Susskinds imply. The transformational changes that they predict will vary from one profession to the next (and vary among professional practice areas) by considerable periods of time, perhaps decades. Some practice areas within some professions, including the legal profession, are sufficiently bespoke that the AI necessary to replicate the services or substantially transform how they are delivered is still entirely speculative (much like self-driving cars were twenty years ago). That’s not to say that transformational changes will not eventually emerge in these resistant fields; it is just that the technology necessary to bring about those changes does not yet exist and may not for quite a bit more time.

This is a variant of the objection that the Susskinds confront in their book: “this may be true of everyone else’s practice area, but not mine.” (p. 232) My objection is a little bit different. I’m not suggesting that any particular profession (or practice area within a profession) is immune from these changes. I’m arguing that the changes are likely to be more uneven and difficult to predict in terms of scope and timing than the Susskinds suggest. In other words, nobody is immune from the changes, but some are likely to be more resistant than others.

Consider a recent [McKinsey report](#) (related New York Times story [here](#)), which concludes that automation of industries (including the professions) will vary depending on technical feasibility, the cost of developing and deploying the solutions, labor market dynamics, economic benefits, and regulatory and social acceptance. Assuming these factors are the right ones (and they seem right to me), the pace of change is likely to vary depending on the industry and the specialty. Indeed, the report suggests that the “professions” themselves have among the lowest automation potential of the types of employment surveyed. (See Exhibit E4.) Although I think that claim may underestimate the automation potential in many parts of the legal profession, the point is that the extent and timing of the transformation of professional services is not easy to predict. The report explains that “[o]ur scenarios suggest that half of today’s work activities could be automated by 2055, but this could happen up to 20 years earlier or later depending on the various factors, in addition to other wider economic conditions.” That’s quite a broad window, and it reflects the uncertainties that necessarily exist when venturing predictions across industries, professions, and specialties.

To be clear, I’m not suggesting that the Susskinds’ forecast is wrong. I’m just a bit less confident in the general applicability of their forecast than I am about (say) predicting the coming ubiquity of self-driving cars.

Assuming you’re convinced (as I am) that the Susskinds’ vision of the future is roughly close to the mark, what should we do about it? In my next two posts, I’ll explore what this all means for legal education and legal services regulation.

Legal Education in the 21st Century

TUESDAY, FEBRUARY 21, 2017

I argued in an [earlier post](#) that Richard and Daniel Susskind's predictions in *The Future of the Professions: How Technology Will Transform the Work of Human Experts* are likely to be pretty close to the mark. In that post, I left open the question of how law schools should respond to this emerging new reality. I argue below that we should adapt by updating the law school curriculum to ensure that our graduates are better prepared for professional success in the coming decades.

How many lawyers?

The Susskinds' forecast raises one obvious preliminary question for legal educators that is unrelated to the curriculum: if automation is poised to displace a portion of the work currently performed by lawyers, how many students should law schools be admitting?

There is a robust debate elsewhere about the appropriate size of the lawyer pipeline, and I am not going to resolve it here. I will simply note that, if the Susskinds are right, we may need fewer lawyers per capita in the future than we needed (say) ten years ago. Of course, U.S. law schools are already on pace to graduate far fewer students than in the recent past – nearly 30% fewer students – because of both planned and forced enrollment reductions over the last few years. Whether further reductions will be necessary to ensure that law students have professional and financial outcomes equivalent to the past is still an open question.

Of course, the same could be said about nearly every other form of professional education. As the Susskinds' book makes clear, many professions are seeing (and will continue to see) marked transformations in the coming decades. The point is that it is very difficult to predict with any precision what the size of the legal market will be in 10 or 20 years or determine whether the recent 30% decline in the new-lawyer pipeline is too much, too little, or just right.

What should law students learn?

What *is* clear is that tomorrow's lawyers will need additional skills that law schools traditionally have not taught. This means that, in addition to asking how big the future market for new lawyers will be, we also need to ask a different question: for those who *do* enroll in law school, are they getting the education that they need?

My answer is yes and no. There are many features of the traditional law school curriculum that serve law students quite well in a rapidly changing world. Legal analysis, a close reading of texts, clear writing and thinking, and an ability to discern good arguments from bad are all valuable skills and will continue to be so. Law schools (particularly through experiential education) also help students to develop essential law practice skills in the areas of fact investigation, negotiation, oral and written advocacy, problem solving, document drafting, and client counseling.

These skills are important and necessary, but they are no longer sufficient. If you think the Susskinds' predictions are accurate, students should also be able to identify how technology and other innovative methods can be used to deliver legal services better, faster, and cheaper. Put simply, students will still need to “think like a lawyer,” but they will need to “think like 21st century lawyers.”

What does this mean specifically? The answer varies depending on the school, but at my own school (Suffolk), it means exposing students to concepts like [legal project management and process improvement](#), [legal design](#) (accompanying story [here](#)), [automated legal document assembly, expert system tools](#), [electronic discovery](#), and [other areas as well](#). We're also teaching students how to [innovate the operations of a law practice](#) to make legal services more affordable for currently underserved clients, and we are giving students [paid opportunities to learn about new delivery options](#).

We're certainly not the only ones pushing the envelope. A growing number of law schools (and universities) have developed an expertise in this area and have emphasized a range of related skills, such as legal analytics. Here's a partial list of such schools. (Please feel free to email me I have overlooked a relevant program.)

Columbia Law School – [Lawyering in the Digital Age Clinic](#)

Duke University School of Law – [Law Tech Lab](#)

Georgetown University Law School – [The Program in Legal Technologies](#)

Harvard – [Center on the Legal Profession](#) and [LawLab](#) (housed at Harvard's Berkman Center for Internet & Society, but with many collaborators)

Hofstra University School of Law – [Law, Logic, and Technology Research Laboratory](#)

IIT Chicago Kent College of Law – [Center for Access to Justice & Technology](#) and [The Law Lab](#)

University of Miami School of Law – [Law Without Walls](#)

MIT – [Computational Law Research and Development](#)

Michigan State University College of Law – [Legal RnD](#)

Northeastern University School of Law – [NuLawLab](#)

Northern Kentucky University Chase College of Law – [Lunsford Academy for Law, Business, and Technology](#)

Northwestern Pritzker School of Law – [Technology, Innovation, and Entrepreneurship Concentration](#)

University of Pittsburgh School of Law – [Innovation Practice Institute](#)

Stanford – [CodeX The Stanford Center for Legal Informatics](#) and the [Legal Design Lab](#)

Suffolk University Law School – [Institute on Law Practice Technology & Innovation](#) and [Concentration](#)

Vanderbilt University Law School – [Program on Law & Innovation](#)

Vermont Law School – [Center for Legal Innovation](#)

These innovations are paying off. Students are getting jobs that did not even exist a few years ago, such as in legal project management, knowledge engineering, and legal solutions architecting. For example,

when my law school graduated its first group of students with some coursework in these new areas, employers specifically reached out to recruit them. (See, e.g., [here](#).) Granted, this is hardly an empirical study (the sample size is still small), but the available evidence suggests that legal employers are increasingly looking for students who have learned the skills taught at the schools referenced above.

Anticipating Objections

One objection to updating the curriculum in the way that I have outlined here is that law schools should not try to teach all of the knowledge and skills that students need for professional success. Legal education is premised on the idea that considerable learning takes place on the job, so one could argue that the new areas of study, even though important, should be learned later.

I agree that considerable learning needs to take place on the job, but we should want our students to have learned enough in law school so that, when they see a particular problem or issue in practice, they have a reference point for how to deal with it. They need to be able to “issue spot.” The new skills and knowledge described above are simply giving students the ability to engage in a new kind of issue spotting. That is, students should know these new concepts sufficiently well to identify when they can be deployed to deliver services more effectively and efficiently.

A more important reason to offer this kind of education in law school is that students will not necessarily develop the skills in practice. Although the industry is rapidly evolving, many law school graduates will join practices where few people have these new skills. Put another way, the knowledge that I have described is less likely to be learned on the job than traditional practice skills and doctrinal subjects, because the knowledge is so new and most lawyers are not expert in these areas. In this sense, junior lawyers will not be learning these new concepts on the job; rather, they may be educating their *superiors*.

The flipping of the traditional information flow has another benefit: it increases the relevance of junior lawyers. At a time when the value of a young associate is increasingly questioned, law schools have an opportunity to give their graduates a knowledge base and skillset that clients increasingly demand and that most legal employers lack. In short, teaching these new skills will position law schools and their graduates as leaders of a profession at the cusp of significant change.

A second possible objection to this new curriculum is that the skills will be quickly outdated. This argument, however, proves too much. In law school, we regularly teach students about doctrines that have changed or are likely to change. When we teach an area of law (say an older, but now discarded, doctrine), we do so to convey both a conceptual point and a way to think about an issue. In much the same way, teaching law practice technology and innovation is designed to help students think in new ways about legal services. The technology will change, but the mindset will serve graduates well throughout their careers by giving them the conceptual tools they need to improve how legal services are delivered and accessed. This will make them more competitive and better able to serve their clients and the public. It is hard to think of a better reason to update the law school curriculum than that.

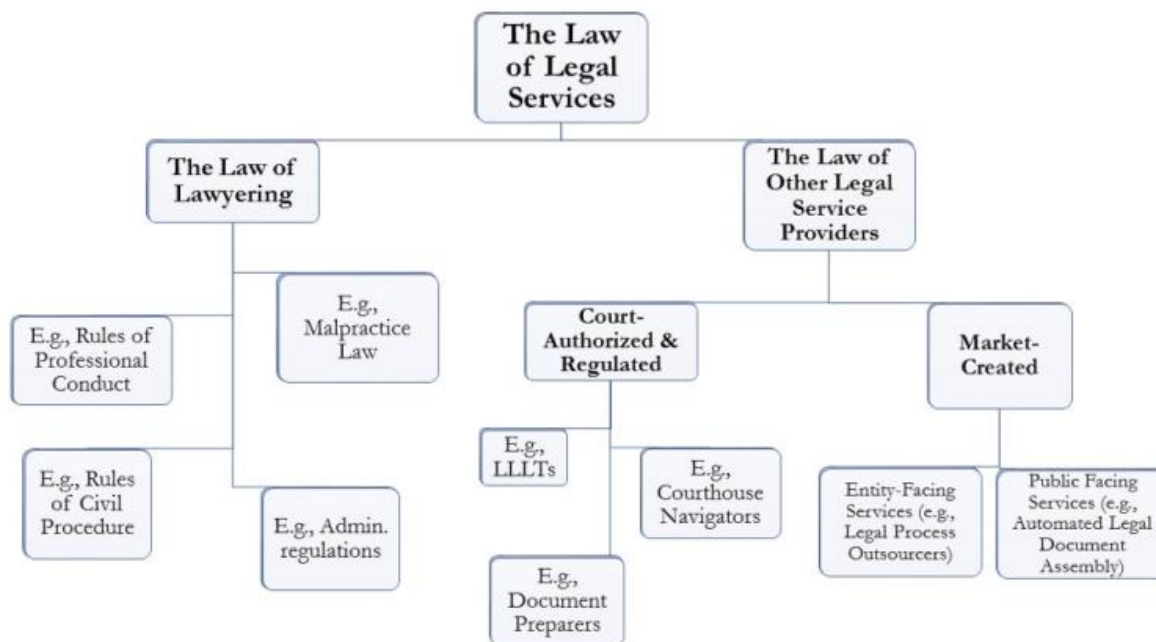
Towards the Law of Legal Services: Reflections on Gillian Hadfield's "Rules for a Flat World"

SUNDAY, FEBRUARY 26, 2017

The public now has access to an increasingly wide array of legal service providers other than lawyers and law firms. I referenced some of those options in an [earlier post](#). These developments require a new way of thinking about the regulation of legal services, and Gillian Hadfield's excellent book, *Rules for a Flat World: Why Humans Invented Law and How to Reinvent It for a Complex Global Economy*, adds an important new conceptual framework for what this approach might look like.

The Inadequacy of the Law of Lawyering

I come to this subject having written a bit about it. In an article, "[Towards the Law of Legal Services](#)," I argued that it is time for us to broaden our thinking about the regulation of legal services. Rather than focusing on the "law of lawyering" – the body of rules and law regulating lawyers – I suggested that we need to develop a broader "law of legal services" that authorizes, but appropriately regulates, the delivery of more legal and law-related assistance by people who do not have a J.D. degree and who do not work alongside lawyers. Here is one way to visualize the point (click on the diagram if you have trouble reading the fine print):



The "law of lawyering" branch of the tree includes the traditional subjects that have occupied legal profession scholars for decades, such as rules of professional conduct, the law of malpractice, and administrative regulations directed at lawyers. Of course, some of these subjects overlap with other doctrinal areas (e.g., civil procedure, SEC regulations, and IRS regulations), but the point is that there is now a fairly robust body of law governing lawyers' work.

In my article, I argued that we need to spend a lot more time thinking about (and growing) the right side of the tree – the law of other legal service providers. This means devoting more attention to the increasing array of legal services professionals who are authorized and regulated by courts, such as Limited License Legal Technicians, Legal Practice Officers, courthouse navigators, and document preparers. (You can read more about these types of providers [here](#).) Other kinds of service providers are emerging in the marketplace and are either public-facing (e.g., LegalZoom) or delivering services to law firms and corporate legal departments (e.g., legal process outsourcers and e-discovery companies).

For the public-facing providers who are not authorized and regulated by courts (the bottom right corner of the diagram), the regulatory framework has not been particularly robust. It has consisted primarily of restrictions on the unauthorized practice of law and consumer protection laws. Put another way, new players are either accused of engaging in the unauthorized practice of law or they are subject to the minimal regulatory constraints of ordinary consumer protection provisions.

I believe that this binary approach is inadequate. Unauthorized practice of law provisions are notoriously vague, have been used in anti-competitive ways, and are stifling competition without any clear public benefit. At the same time, a laissez faire approach is also problematic, because it provides the public with only modest protections when purchasing these services, as if they are no different from (say) purchasing a pair of shoes. A third way is possible and desirable – the development of new kinds of regulations that expressly authorize these emerging providers and subject those providers to more rigorous regulations than currently exist. I sketch out a few such possibilities in my article.

Towards “Right Regulation”

Gillian’s book tackles these and many other broader issues, such as how we might develop more effective legal infrastructure for a modern world. I can’t do justice to the many threads of the book, but Gillian develops two ideas that nicely supplement what I have sketched out above.

First, Gillian describes a concept that she refers to as “right regulation.” For all intents and purposes, it is the “third way” that I think needs to exist when regulating new kinds of legal service providers. She explains:

Challenges to the existing regulation of legal markets by bar associations are sometimes cast as proposals to deregulate legal markets. But the name of the game is not deregulation; it’s what I call right regulation: putting in place intelligent regulations that ensure the markets for legal goods and services are functional and competitive. (p. 244)

Gillian cites the UK’s Legal Services Act of 2007 as an example of such an approach; that is, it liberalizes, but appropriately regulates, the legal services market in the U.K.

“Right regulation” also has some applications to the left side of the tree. For example, Gillian argues that lawyers should be permitted to partner and share fees with people who are not lawyers (currently prohibited in nearly all U.S. jurisdictions under [rule 5.4](#) of the rules of professional conduct), but with appropriate regulatory arrangements, as is the case in the U.K.

Who Does the Regulating?

One of the greatest strengths of Gillian's book is that she provides a conceptual framework for addressing a particularly challenging question: who should be responsible for drafting the relevant "right regulations"? This is not an easy question to answer, and it is one that I have expressly bracketed in my own writing.

One possible answer is that we should leave these issues to the courts, which historically have regulated legal services. Another possible answer is to have legislatures more actively involved, with appropriate delegation to administrative agencies. Both of these answers have benefits and costs, but neither offers an ideal solution.

Gillian's innovative answer, drawing on the U.K. for inspiration, is to have private market-based approaches to regulation and to use government as a so-called "super-regulator" (regulating the regulators). She describes it this way:

Instead of civil servants or the managers of a regulated company designating the details of how to achieve politically set goals..., private for-profit and nonprofit companies could offer this as a service in the market, for a fee. In order to participate in this market, these companies would have to be approved as private regulators by the government. Approval would be based on meeting the policy objectives established by the government for regulation—developing a system that ensures that regulated businesses meet targets [of various kinds related to the industry]. (p. 266)

I came away from the book with a much greater appreciation for the ways in which we might go about creating a more flexible legal infrastructure in the future. Although the approach won't work in every setting (as Gillian concedes), I think there are some interesting implications not just for the law of legal services, but for many other regulatory structures in a rapidly changing world.