

## Radically Rethinking Relationships, Roles & Resources – Fast Forward to Future Ways of Collaborations of Lawyers and Clients in the Exponential Technologies Age

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The extension of our lives (and as some suggest even of ourselves) into the digital world has forever alter our behaviour, thinking, expectations, our culture.<sup>1</sup> Probably more than we sometimes realize. Had I for example told my grandfather that at some point I would fly into a town on the other side of the world (without having been to a travel agency beforehand or in fact... ever... ) to then order a ride which is not a taxi which I would go on to share with someone I had never seen before to take me to my temporary residence which is not a hotel but rather a private apartment rented from someone I would never see in person, he would likely have ... well ... recommended a good doctor from his little black Smythson notebook (rather than googling him or her). And that is just the tip of the iceberg. We can today instantaneously communicate with more or less everyone anywhere on this planet or access even the most apocryphal or exotic of information in a split-second. We have grown accustomed to being able to source whatever our heart desires in a heartbeat as anything offered anywhere in this globally connected world is literally just a mouse-click away, ready to be conveniently delivered to our doorstep. In fact rather than us having got to hunt for things, they today find us courtesy of algorithms and the use of data, perfectly matching our expectations and desires before we even know they exist. Every time I log into my amazon.com or discogs account I am kindly presented with a book or vinyl record so perfectly suited for me I never feel I am being marketed to but usually just happily embrace the next perfect addition to my collections. This is where I usually go off to recite *Palahniuk* on how Orwell got it all backwards and that Big Brother is not watching but that he is rather singing and dancing and pulling rabbits out of a hat to make sure we are always distracted and our attention always filled as with everyone's imagination atrophied, no one will ever be a threat...<sup>2</sup> but not today. Let's rather take a look at what all of this could mean for the legal world and the future way of collaboration between lawyers and their clients.

Do we really believe that with the digital natives generation socialized around the experience of immediate gratification and moving forward to soon become the defining element of society our current *modus operandi* will continue to cut it? I don't think so. I am convinced that the initial key driver for change is indeed increasing digitization. *IDC* recently predicted that by 2022, 60% of global GDP will be digitized.<sup>3</sup> With this, I guess also in the legal world it will not end with the J-curve of exponential growth of references to emojis in court opinions we have recently seen.<sup>4</sup>

I believe that more or less everything we do will be (and have to be) delivered (almost) in **real time** and with an expectation of **precise prediction**.

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<sup>1</sup> See Philip Brey (2000) *Technology as Extension of Human Faculties* and Wikibooks (2019) *Living in a Connected World/Technology as an Extension of Self*.

<sup>2</sup> Chuck Palahniuk (2002) *Lullaby* pp. 18–19.

<sup>3</sup> See IDC, *IDC FutureScape: Worldwide IT Industry 2019 Predictions* (October 2018).

<sup>4</sup> Nate Robson, *Q&A: Getting Ready for the Emoji Law Revolution*, LAW.COM (legaltech news,) <https://www.law.com/legaltechnews/2019/02/08/qa-getting-ready-for-the-emoji-law-revolution-397-16729/?kw=Q&A:%20Getting%20Ready%20for%20the%20Emoji%20Law%20Revolution> (Feb. 8, 2019) (last visited Feb. 9, 2019).

I still remember that not all that long ago when I liked a song on the radio I had to first figure out what it was and then go somewhere and acquire it in physical form and take it home to listen to. Similarly when I liked a movie in the cinema I had to wait for at least half a year before I could hope to pick it up on video to enjoy it again. So there was always an expectation of delay, of having got to wait. Not so any longer. If I hear a song today I “shazam” it and then stream it. In fact there is a likelihood that this song will simply pop up in the playlist curated for me by the *deus ex machina*-like Spotify algorithms which in return for sacrificing my personal data on their altar is as the name suggest “spot on”. What this means is that I believe that also most work in the future will be based on **absolutes** rather than assumptions and accepted approximations. To illustrate this let’s take an example from an adjacent industry – that of audit. This is today typically performed at the end of the year, i.e., *ex post* and based on a selection of samples and will be delivered with a delay of a yet another couple of weeks or months. In a blockchain-world and with the availability of quantum computing power – both of which appear not to be too far away – an audit can and will likely be real time and based on all the facts and as such may become an instrument of live monitoring and active risk management rather than third party assurance of a dample of historical facts. I expect a similar development for legal. In a quantified-self-world people will also increasingly accept (or have to accept), that also everything around them will be measured and recorded by a gazillion of devises. So if there is a car crash in the future we will not have to establish (and later argue) the facts we will **know exactly** who crashed into whom, when, where, at which speed and under which conditions (if that even happens with self-driving cars that is). In the same fashion, we will in an M&A transactions know all the data in the data room and not rely on samples or summaries. We will also know who works where and how long and whether this moves the workforce into impermissible overtime territory (or whether hours which have not actually been worked or at least not by those presented have been invoiced). In the overtime example, I would in the future expect that an alert would go to the responsible manager or the GC who would then be able to immediately react and correct or at least mitigate and provide for appropriate reactions rather than go to work only once somebody initiates steps against the company.

From a world where we once approached by a client with a question or problem quite often literally pushed a pause button to gather facts and conduct research (despite the fact that the world around us and the client does not pause but indeed continues to evolve and create new facts at an ever increasing speed) and then regularly enter a phase of working in sequence rather than in sync or even together – let’s face it, 99% of lawyers still send around drafts in mark-up rather than collaborate with their clients and other stakeholder – we will have to evolve to *real-time providers of solutions* rather than of delayed theoretical answers.

The typical response I get to this is that this is fiction and completely unrealistic but we already have areas where we see first examples of this. We have for example created regulatory radaring for clients where we have previously mapped their entire organization, can immediately indicate impact (in some instances down to the level of clauses of employment contracts), refine this as the regulation progresses through its evolution and ultimately help those subject to the regulation to get ahead of the curve (or indeed in front of the wave) rather than be caught in reaction mode as currently largely is the case.

I would almost go as far as to say that probably most of what I have outlined above would already be possible today. The big challenge is that the required technical solutions (or at least essential parts thereof) are in the hands of big tech companies or innovative LegalTech's and Alternative Legal Service Providers who currently are limited in deploying them as the legal industry is still in large parts a regulated one with law firms who themselves have neither the know-how nor the funds required to unlock this potential holding the keys and mostly using them to lock tech players out rather than invite them in. This is also why I argue in my latest book that despite the industry being more than ripe for technology-based disruption – in fact even “Big Bang Disruption” – we are more likely to see hyper-evolution. What could dramatically change this dynamic though is if valid “access to justice via technology” arguments will prevail and used to tear down the artificial walls that have been erected around the legal world and where probably not all of them are justified.<sup>5</sup>

I always loved the 1999 remake of the classic Steve McQueen movie *The Thomas Crown Affair*, admittedly even more than the 1968 original which of course also is great. It has a beautiful scene where as the police come to search the house of Thomas Crown, he steps out of his kitchen and asks the police “*Excuse me but what are you doing in my house?*” to which the detective replies “*I am sure it is a mystery to you but your lawyer will be able to explain*” after which Crown calls over his shoulder and his, as he stresses – attorney – appears, wearing an apron just like Crown. In the next scene one can see the police exiting the house again with heads hanging low. The potential problem had obviously been predicted and evaluated well in time and got solved immediately by the lawyer standing next to the client as and when it manifested as the appropriate response had presumably been prepared in advance. In essence, this is target operating model I believe the legal industry should be working towards.

The question now is

- **a**, whether this hypothesis – that the world around us has or will shortly change so fundamentally that we must also fundamentally change the legal modus operandi – is at all correct, and
- **b**, if so whether this would not change the role of the lawyer as the *advocatus* – a third party called upon for help or advice either before or after the fact – to someone directly participating in the facts and hence losing independence and objectivity.

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<sup>5</sup> See DOBRAUZ-SALDAPENNA, GUENTHER & DERUNGS, CORSIN (2019) *Innovation, Disruption or Evolution in the Legal World. Get in the Ring*.

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