

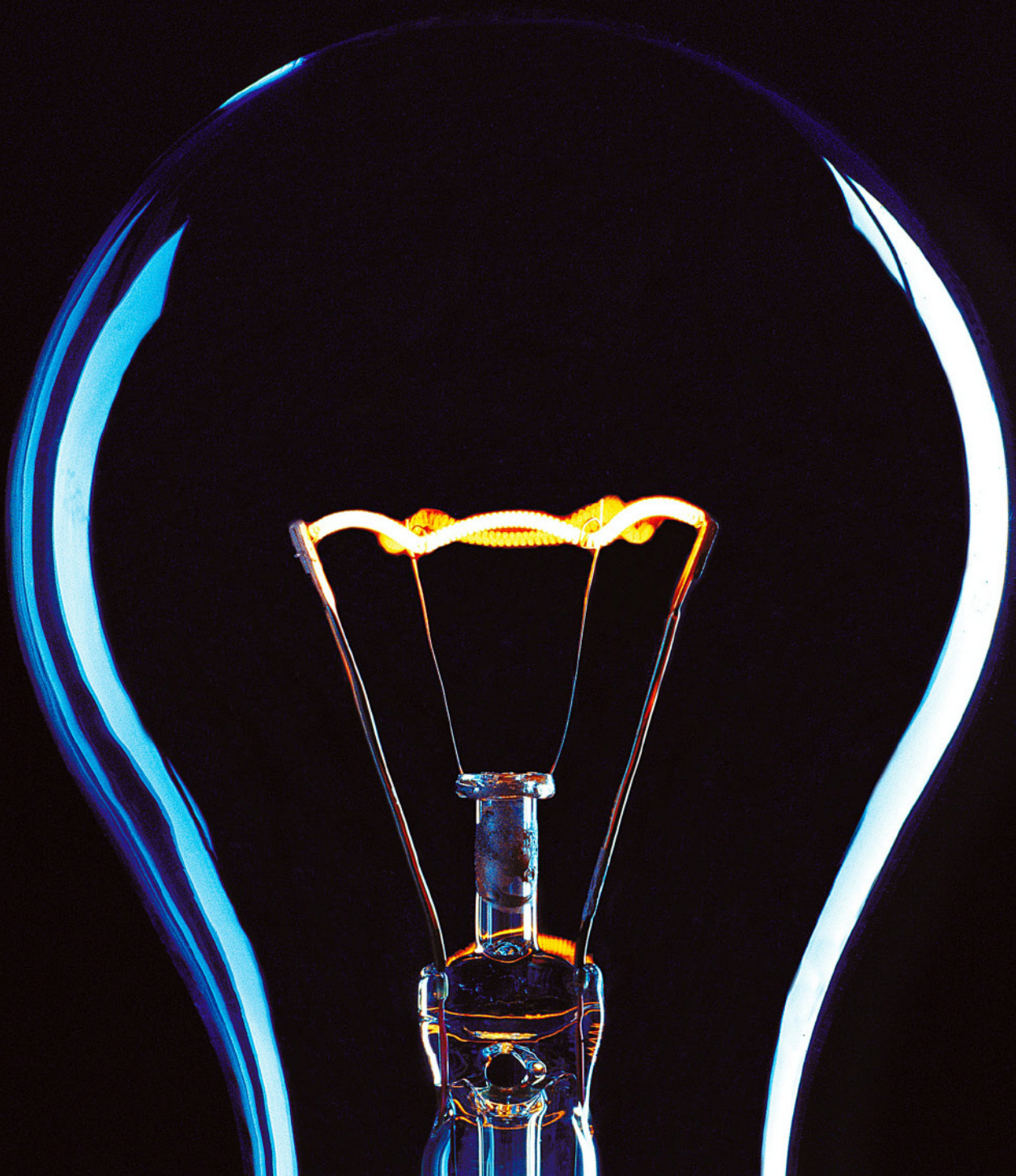


Brave New Law

“Jobs to Be Done” and “Leading in Extremity”

The key lessons from the first two topics in our Brave New Law series

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Brave New Law

Foreword – Hilary Ross, Head of Clients & Markets

No matter which industry sector you are in, many of the challenges GCs face are the same. And they're not all new. The challenge of doing different with less, of recruiting and motivating talent, of gaining a voice at the boardroom table, pressures to innovate and unravel the best legal tech solutions whilst running strategic projects for the company – are all issues that have been here for some time. The solutions to these issues can be solved by collaboration and co-creation.

I certainly don't have all the answers to these issues, but I am passionate about working with others to find solutions. I am therefore delighted to play a role in DWF's new GC series. Working with our GC colleagues, and Dr Catherine McGregor, we are exploring what's needed to imagine the future of law. We think the key to this is being bold and an ability to embrace the new. We need to be creative, to bring new ideas in and make connections from outside of traditional

legal practice. What we will also need is the expertise and insights from a wide range of subject matter experts, not just lawyers.

We are exploring the future of law over a series of interactive workshops, roundtables and webinars – virtual and physical, articles and interviews. Through our workshops and events, we are creating a safe space and time for GCs to collaborate and create toolkits that can help you navigate some of the challenges of the future.

In the words of Simon Sinek, "we'll start with why; why we need to do things differently, followed by how and what we need, step by step, to make that happen."



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Introduction – Dr Catherine McGregor

Recent events have plunged us all into a brave new world and made the title of this series of events and content that we at DWF have been exploring, a stringent reality. Now we are forced to confront a new normal in how we work and how we live.

We have heard about the effects of digitisation on professional life for some time and changes have been slowly encroaching on how we do things for the last twenty years. It hasn't been a jarring overnight epiphany where we wake up in some new digital reality. For many the blending of 'business as usual' enhanced by some additional digital tools such as email, smartphones, video conferencing, may have made it seem that any discussion of the future of law is very much for other people and not for them.

However, one thing that the Covid-19 crisis has shown is just how different the future might be if we need to work in

different ways on a large scale and how unprepared in reality many organisations have been. It's not just being unprepared in terms of actual technology but also in mind set.

What recent events have brought to the forefront is the most significant challenge in the future of the legal profession: **how we blend the human and the digital to best effect.**

Our first two topics in the Brave New Law series have covered 'Jobs To Be Done' theory and 'Leading in Extremity'. This report details some of our key findings and insights.



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"Brave New Law should be congratulated for exploring important questions for our industry, with an expansive frame of reference. Grounded in the practical, we have explored topics that are pressing – from the allostatic load building in our teams in a time of disruption, to using leadership skills to drive innovation."

Rob Booth,
General Counsel & Company Secretary, The Crown Estate



Jobs to Be Done

Our first Brave New Law sessions were based on understanding the key job to be done in a particular situation and how that can be used to craft solutions and even innovations. What was significant here was the need to look at problems in a holistic manner.

Why might Jobs to Be Done be important for lawyers? The theory was the work of Clayton Christensen, whose name has become synonymous with understanding and applying theories of innovation across many industries. His ideas are equally relevant to innovation in legal departments and in law firms.

Christensen is primarily associated with the notion of Disruptive Innovation, which

he wrote about in the early 90s. Disruptive innovation became a popular idea and was, he felt, applied too widely and often incorrectly to any new mover in a market.

As innovation became more ubiquitous as an idea and a desire, Christensen became interested in why some innovations succeeded whilst many failed. What was the secret sauce?

Clayton Christiansen developed the 'Jobs to Be Done' theory (JTBD). The theory was first outlined in a 2005 article in Harvard Business Review co-authored with Scott Cook, CEO of Intuit and Taddy Hall. Christensen and Hall would go on to collaborate with Karen Dillon and David S. Duncan on the 2016 book, *Competing Against Luck*, which further extended JTBD theory and aimed to understand

why some innovations worked and others didn't. This book also provided a more thorough examination of the use and application of JTBD theory.

Why innovations might sometimes catch on might often seem like a case of complete randomness, literally luck. But Christensen et al believed that what was really at stake was whether companies really understood what customers or end users needed and wanted: what job were they hiring the innovation to do?

Jobs theory literally aimed to take the notion of disruption to the next stage by adding in why and how, not just what.

There are two key points to remember here:

Emotions

A key element is understanding the range of issues we're finding a solution for. As the Harvard Business School Professor Theodore Levitt famously wrote, people want a quarter inch hole not a quarter inch drill.

But ultimately, what people really want is an emotional need filled. As Seth Godin writes in *This is Marketing*, the hole is actually needed to hang the picture hook, to then hang the family photo in the wall. So, the actual 'job to be done' is satisfying the need to remind us of our family; that's an emotional human need. And connecting the purpose of change to the emotional part of our brains will always have more success.

Asking the Right Question

What's significant in Christensen's thinking and in that of many others who focus on how to innovate is it's a focus not so much on the what, but asking the right questions and understanding the situation. Karen Dillon, the former Editor of Harvard Business Review and frequent collaborator with Christensen, shares that,

"To Clay, a great question was worth more than a great answer. Because without the great question, we would never get to the right answer. In an era of "add-water-and-stir" solutions to problems, Clay provided something

much more enduring. He wanted to help people understand the causal mechanism of those problems, because until you understand what caused your problem, its solution is, at best, hit or miss in its success."

This is an issue at the heart of understanding innovation and making it work; to be truly effective it has to have an idea, which is the product of understanding what needs to change and where the opportunities are.

Brave New Law

Suggested reading



Clayton M. Christensen
The Innovator's Dilemma
(Harvard Business School Press, 1997)

Clayton M. Christensen, Karen Dillon,
Taddy Hall, David S. Duncan Competing
Against Luck (Harper Business 2016)

Seth Godin This is Marketing
(Penguin, 2018)

Applying Jobs to Be Done theory

A Job to Be Done:

- Is solution-agnostic.
- Results in progress when completed.
- Is relatively stable across time.

A Job to Be Done doesn't know what products or solutions have existed, currently exist, or might exist. It's just framing some area of life where your customer is at the centre of a struggle, and they want some help solving the problem. A common challenge for companies trying to innovate is second guessing what they think customers want and trying to apply solutions before they fully understand all the issues and the context in which the customer is making their decisions.

For example:

"Help me sign more contracts with a digital signature during the Covid -19 lockdown."

This is not a good example of a JTBD question as it is situation specific and only directs to one solution.

A better question might be:

"How can I build trust using a digital work environment?"

That is a bigger and broader statement and directs us to a number of different ways of looking at the problem and a range of potential solutions.

The Jobs to Be Done toolkit

Asking the right question is key - but getting there is not always a straight line

Process is a necessary part of this – you may need to ask a number of smaller questions to get a handle on the totality of the situation, as part of working towards the JTBD question. "Understanding jobs is about clustering insights into a coherent picture rather than segmenting down to finer and finer slices." (Christensen et al: Competing Against Luck: Harper Business, 2016)

When analysing the merits or not of a particular course of action it's fundamental to understand the ultimate end goal for the organisation, not just the legal one. If it's a customer facing organisation, a key aspect has to also be to consider the customer centricity of what 'success' looks like.

An interesting application for many of our workshop attendees was asking themselves 'what's my legal team's 'Job to Be Done' in general or in a given situation?' It's often not the most obvious. It may have nothing to do with the legal work but be about outcomes for the wider business.

And risk cannot be ignored

Lawyers will need to factor into the use of a strategy exercise like JTBD theory the relationship with risk. Part of the process of considering all the different questions which can play into a JTBD question is focused around 'why do we want to do this?'; 'why will this be good for our customers; 'why do our customers want this; You can be layering in the risk factors and evaluating those. 'How can we fulfil the ultimate job to be done with the right amount of risk exposure' is a question our general counsel felt lawyers needed to be thinking of in their application of JTBD theory.

Culture (internally and externally) is also a significant factor

Culture needs to be woven in to evaluating application of JTBD theory our general counsel felt. As Christensen et al explain in Competing Against Luck, circumstances - of which organisational culture will be a significant piece - are often what leaders don't take into account when thinking of new products, innovations or major changes.

Lawyers can feel that it's not their place to question or hold other functions to account in non-legal areas, but this is now a necessary part of being a leader, who happens to be a lawyer.

"Creating and maintaining a psychologically safe environment where colleagues can share and embrace failure has been critical in developing our culture. For us, addressing the notion of lawyerly perfection has brought benefits in risk management, upskilling, and, vitally, in wellbeing."

Kenny Robertson, Head of Legal Outsourcing, Technology and IP, NatWest

Leading in Extremity

For our second sessions in Brave New Law we considered the notion of leading in extremity - how to be a leader in challenging times, as this was a key topic which had emerged during our first round of sessions.

Leading vs. managing in a crisis

The HBR article "Are You Leading Through the Crisis or Managing the Results" resonated with our general counsel. The article looks at the difference between leading in a crisis (looking at the bigger picture and trying to anticipate a range of results) versus managing (dealing with the pressing operational issues.) The authors make it clear that you need both approaches in a real crisis but that the immediacy of management demands can make people lose sight of the need for leadership.

- Many of the general counsel we worked with said they felt they were probably managing rather than leading in the crisis.
- Part of the issue is that people often turn to the lawyer in times of crisis. If there is a problem, they expect the lawyer to fix it.
- The need to fix the problem can limit your ability to take a big picture view.
- The key is looking at the opportunity available in crisis and ensuring, as a leader, you can look at the big picture and long-term changes rather than just the immediate.

Eric j. McNulty & Leonard Marcus "Are You Leading Through The Crisis Or Managing The Results" Harvard Business Review March 25, 2020

Change of focus

How do leadership skills change in a crisis? Front of mind for discussion was the Covid-19 crisis that we are currently in.

General counsel agreed that there needed to be a fast-tracking of skills development:

- Prioritising, diverse thinking, the ability to challenge and listening have all come to the fore.
- Communication is key. Many mentioned the need to almost over-communicate.
- All stakeholder groups need managing. We need to recognise that not everyone responds to a crisis in the same way / is impacted by a crisis in the same way.
- But it is important to ensure colleagues don't feel isolated – the onus is on leaders to understand the whole person.

The need to look at the whole person, both yourself as a leader and with those you lead is outlined well in the concept of total leadership as outlined by Stewart Friedman:

Total leadership concept


- Be real: Act with authenticity by clarifying what is important
- Be whole: Act with integrity by respecting the whole person
- Be innovative: Act with creativity by experimenting with how things get done.

Suggested reading

Stewart Friedman Be a Better Leader, Have a Richer Life Harvard Business Review April 2008

Culture

- Culture is an anchor and is very important to how a leader acts and how their messages resonate.
- Mention made of the Mindful Business Charter and the need to consider how colleagues are working and how you are working.
- Key is ensuring resilience and wellbeing. Working from home gives flexibility but can mean work never stops.



Leading in Extremity

But how do you enforce or create culture in a virtual world?

It is a key issue for those joining organisations in times of crisis. Solutions include:

- Regular virtual networking groups.
- Introducing ‘hub working’ for three or four people over video conferencing to mimic the experience of working in an office. Individuals can work alone but speak to their colleagues from time to time.
- Walking meetings or meetings outside, virtually and in real life.

Psychological safety builds a greater sense of team and helps lawyers become more rounded. For example, the use of ‘Failure Camp’ by some legal teams - a structured and safe forum for sharing where mistakes have been made and what the team can learn about them.

Other ideas for reading on culture and leadership:

- Daniel Coyle *The Culture Code* (Random House Business 2019)
- Simon Sinek *Leaders Eat Last* (Penguin Business 2017)
- Groysberg at AI *The Culture Factor* Harvard Business Review January-February 2018

Resilience

There’s a strong link to resilience in the way we potentially build new work cultures as a result of ways we may come out of the COVID-19 crisis. Ideas to consider in relation to resilience and leadership include:

- Resilience is not the same as endurance, it is being able to bounce back from setbacks. This is better achieved if individuals are not constantly working at full capacity.
- As a leader you are a role model, so taking regular breaks and showing you do this is key.
- Check in on team members who don’t seem to be taking breaks.

Suggested reading

Jenny Campbell *The Resilience Dynamic* (Practical Inspiration Publishing, 2019)

Authentic Leadership

This is crucial in times of crisis. People need to believe the messaging from leaders.

It can be easy to default to there being one style of leadership and that style can often be representative of the norm of leadership we have now. We may immediately think of extroverts and a command and control style. Given many lawyers might define themselves on the introvert side, can lawyers be good leaders?

Apparently, the performance of introvert CEOs is actually better than extrovert CEOs. Our general counsel agreed with this, feeling that it is about finding a style that will work for you and feel true to who you are. That includes sharing when things don’t go well.

But, is there also a danger with authenticity limiting us? Herminia Ibarra has cautioned that when we say authentic that shouldn’t be an excuse for not allowing ourselves to grow as leaders.

Suggested reading

- Herminia Ibarra *Act Like A Leader, Think Like A Leader* (Harvard Business Review Press, 2015)
- Zachary Crockett “Why introverts make great leaders” *The Hustle* (July 13, 2018) <https://thehustle.co/why-introverts-make-great-leaders/>

Can you/should you teach leadership to lawyers?

Should lawyers be taught leadership? Can you teach leadership or is it always going to be something you learn on the job?

Recruitment in medical schools now often focuses much more on the whole person and their range of aptitudes rather than excellent academic grades. This was developed over the last thirty years as a result of the Edinburgh Declaration. The rationale for including (non-academic) personal qualities was that this would lead to the selection of students who will perform better as a doctor than those who are selected on the basis of academic measures only. A second rationale was the expectation that this would lead to a more diverse workforce.

Many general counsel, felt that there should be more consideration of skills outside of technical legal and our general counsel reported that this was what they focus on in hiring. There was some discussion over whether there could be a challenge in implementing this in legal training due to expertise and capacity available.

Suggested reading



Marshall Goldsmith *What Got You're Here Won't Get You There* (Profile Books 2010)

Diversity, inclusion and Black Lives Matter

The response to the tragic death of George Floyd and the Black Lives Matter protests has forced many organisations to question their culture and normative behaviours.

How can leaders respond in a meaningful way and actually take action to make a difference?

Authenticity comes to the fore here according to our general counsel. It's also being open about what you don't know and what you can't know.

Communicating and allowing safe forums to share experiences is important.

White leaders cannot know what racism is like as a lived experience.

But hearing from the top leadership is very important to show to ethnically diverse employees that they are valued. In one example a town hall for tens of thousands of people was also made a safe space for sharing employees' experiences via video clips that some employees made. This showed the reality of these experiences.

How do you practically make a difference?

- Examples include legal teams in the US working and lobbying to make race hatred a hate crime.
- Looking carefully at internships and recruitment policies. Creating experience and opportunities for black law students and graduates.
- Looking at social events for teams to check they are not excluding or making some colleagues feel uncomfortable.
- How you can run inclusive meetings for everyone.

For example:

If some will find it hard being called upon to speak gathering thoughts and feedback personally prior to the meeting or via email.

- Activist network ideas where employees are invited to join networks on topics that they are passionate about such as D&I, Sustainability. This gets diversity of thought and perspectives in a way that may be broader than affinity groups alone.

Suggested reading



- Remi Eddo-Lodge *Why I'm No longer Taking to White People About Race* (Bloomsbury 2017)
- Robin D'Angelo *White Fragility: Why It's So Hard for White People to Talk About Racism* (Penguin 2019)
- Ibrahim X. Xendi *How to Be an Anti-Racist* (Vintage 2019)
- William Spivey *Who is White in America and Why?* Medium.com
- Catherine McGregor "A Thousand Cuts Virtual Reality & Inclusion" in *Diversity & the Bar Fall 2018* https://issuu.com/mcca10/docs/02_-_db_fall_2018/42
- Kenji Yoshino *Covering: The Hidden Assault on Our Civil Rights* (Random House 2007)



Brave New Law

In DWF's Brave New Law series, we are working together with general counsel from across the world to explore ideas and strategies around how we create the legal profession of the future and accessing the skills and ideas which are best to shape this. What's needed to imagine this future of law is bravery and an ability to embrace the new. But to do this we cannot have a tension between on the one side, the human and the creative and on the other processes and technology; we need to bring both together.

"DWF's Brave New Law discussions have provided a unique platform for discussing the contribution lawyers can make to their organisations. I have particularly enjoyed the opportunity to hear from my peers on a diverse range of topics, such as how you demonstrate authenticity in leadership, Diversity & Inclusion programs, and defining corporate culture."

Ingrid Cope, Legal Counsel GB&I and NE at Coca Cola

We're continuing the Brave New Law series with workshops, roundtables and webinars predicated on the spirit of exploration and co-creation around the future of the legal profession.

Visit dwfgroup.com/bravenewlaw to stay up to date

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