



Alabama's Attitudes Exist Here Too



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Careers

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We are very proud to present the third edition of The YLJ magazine.

For our return readers; welcome back. We hope you find this edition just as insightful as its predecessors.

For those of you less clued up on who we are and what we are trying to do, The YLJ is a platform for students, experts and anyone in between to express their views on today's big issues. The idea being, that through accessing the opinions of others our readers can begin to construct and develop their own opinions and engage in the debates and discussions that have previously been exclusively expert-oriented.

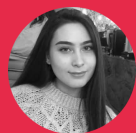
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I would like to thank our sponsors, everyone who contributed to this edition and all those who regularly write for us.

Kindest Regards

Daniel Braun
Katriona Wade



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Dear Extinction Rebellion: your aims are worthy, but take your pink boat to China instead



Boris Johnson: British politician, journalist and popular historian. He has been the Member of Parliament for Uxbridge and South Ruislip since 2015. He had previously been the MP for Henley from 2001 to 2008 and served as the Mayor of London.

“I have seen the damage we’ve done to the planet – but Britain has made great strides in cleaning up” Climate activists should be heckling China, not our green-friendly country.

Look, I share some of the irritation at these climate change protesters. I am not in favour of paralysing public transport in the greatest city on earth, and stopping people from getting to work. I don’t want some double-barrelled activist telling me that air travel is only to be used in emergencies – when his own Instagram account contains pictures of his recent skiing holiday. I admire some of these celebrity thespians, but when I see them mounted on a pink boat in Oxford Circus, blocking the traffic and telling the world how many trees they have planted to offset the carbon footprint of their

flights in from Los Angeles, I slightly grind my teeth.

And I am utterly fed up with being told by nice young people that their opinions are more important than my own – because they will be around a lot longer than me, and therefore that they have a greater stake in the future of the planet.

With all due humility to my juniors, I intend to be alive for a very long time. Indeed, one of my few remaining ambitions is to be on the beach at Hastings to write a colour story, for this newspaper, on the thousandth anniversary of the Norman landings in 2066 (complete with reflections, at this rate, on wherever the UK will have got to in the Brexit negotiations). And I am not sure why it is so glibly assumed that young people care more than anyone else about these issues.

On the contrary, the older I get, the more worried I am about the future of the planet. I speak with the authority of someone who has seen decades of change – and the frightening impact of humanity on the natural world. I remember the beaches of the Mediterranean in the Seventies – as clean and beautiful as they were in the days of Odysseus. I have seen the arrival of the tide of plastic detritus.

If Britain can dramatically reduce its dependence on coal, and its CO2 output, why can’t the Chinese?

In my lifetime the population of the world has more than doubled, and I have seen the effect: from the smog from huge new megalopolises in Asia to the forest-clearing fires over Africa. I can remember looking 40 years ago at the

huge herds of wild beasts on the plains of the Serengeti, and I have the ocular proof that those herds are smaller today.

It is precisely because I have seen the evidence, over time, that I cannot find it in my heart – no matter how smug, irritating and disruptive they may be – to condemn these protesters today. Today is Earth Day, and they have a point. They are right to draw attention to the loss of habitat, and the extinction of species. They are also right to sound the alarm about all manner of man-made pollution, including CO2. As it happens, they have helped to draw attention – by their protests – to some of the most extraordinary statistics in the current debate, some of which are actually extremely encouraging.

You may not know this, and I doubt that you will have heard it from the lips of the protesters, but here in the UK we are a world leader in reducing the greenhouse gases that are associated with climate change. We have championed the retrofitting of buildings, commercial and residential, as well as insisting on demanding standards for new build.

We have boosted renewable energy supplies, so that there are some days when the UK receives more than half its power from the wind or the Sun. We have been utterly ruthless in

getting rid of coal-fired power stations, which now account for less than 5 per cent of UK power generation, and not much more than 1 per cent of total CO2 output.

We have promoted all manner of green transport, notably electric vehicles – and the effort has shown up in the figures. When I was Mayor of London, we had a massive increase in the population, but CO2 output fell by 14 per cent. As for the country as a whole, there has been a 23 per cent cut in CO2 emissions since the Tory led government arrived in 2010, and a 42 per cent cut on 1990 levels. That is one of the fastest reductions anywhere in the developed world.

I say this not because I am in any way complacent – only because it should fill us all with a surging optimism that with the right incentives we can make even more rapid progress. In the next few weeks it seems likely that the Climate Change Minister, Claire Perry, will announce a target of net zero emissions by 2050. That would be an amazing achievement; but the evidence of the last few years is that it can be done, not through hair-shirted Leftyism but solid Tory technological optimism. Who wanted to stick with coal? Who fought against the closure of the pits? Arthur Scargill, Jeremy Corbyn and the rest of the far Left. Who was the first British

prime minister to put the environment at the centre of politics? Margaret Thatcher.

I am not saying for one second that the climate change activists are wrong in their concerns for the planet – and of course there is much more that can be done. But the UK is by no means the prime culprit, and may I respectfully suggest to the Extinction Rebellion crew that next Earth Day they look at China, where CO2 output has not been falling, but rising vertiginously. The Chinese now produce more CO2 than the EU and US combined – and more than 60 per cent of their power comes from coal.

Here, for heaven's sake, is the real opportunity for protest. It was only in 1990 that the UK was 70 per cent reliant on coal. Look at the speed with which we have turned things round. If Britain can so dramatically reduce its dependence on coal, and its CO2 output, why can't the Chinese do the same?

My map tells me that London is nearer to Beijing than it is to Los Angeles. Surely this is the time for the protesters to take their pink boat to Tiananmen Square, and lecture them in the way they have been lecturing us. Whether the Chinese will allow them to block the traffic is another matter.

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Excerpt from *The Good State: On Political and Constitutional Morality*



AC Grayling: Professor A.C. Grayling is a prominent philosopher and proponent of New Atheism. Master of the New College of the Humanities, and Vice President of the British Humanist Association, his works include *Ideas That Matter*, *Liberty in the Age of Terror* and *The God Argument*.

In discussing the principles that should underlie a democratic constitution, two classes of consideration invite attention: those that concern the *institutions* of the democratic order, and those that concern the *practices and personnel* of the democratic order.

On the *institutional* side of the question, the most important points relate to the separation of functions and powers among executive, legislature and judiciary; the nature of the institutions whose purpose is the exercise of these functions and powers; the duties, extent and limits of the functions and powers of each branch and the people who operate it, and the manner and form of the definition of these functions and powers; the system of representation; and the rights of citizens, together

with the remedies for any violation of their rights.

Underlying all this are crucial questions about the *purpose of government* and what this entails for each of these matters, and the principles that underlie the constitutional provisions for each of them.

On the side of the question relating to *practices and personnel* of the democratic order, the most important points relate to politicians and the nature of Party politics, the traditions and non-constitutional practices of the legislative and executive arms, Party political activity outside the legislative and executive institutions, and the press and other media.

I shall call the institutional side of the question

the *formal* side, and the 'people and practices' side the *informal* side.

It will be seen that there are serious conflicts between the two sides of the question, as well as serious problems internal to each. This point is significant because it warns us that a *constitution* – even a clear, consistent, principled and detailed one that defines the duties, extent and limits of government and how it is to be carried out in the interests of the state and its citizens – is not by itself a guarantee that those interests will be served. There are many countries in the world with excellent formal constitutions which are not observed in practice, because their high-sounding intentions are ignored or subverted as a result of what happens on the informal side of the question. Tom Paine's *Rights*

of *Man* exemplifies the over-optimism of one who reposed too much confidence in the mere existence of a constitution: the course of the French Revolution, and especially the Terror of 1793-4, taught him painful lessons. The contrast between the constitutions of today's People's Republic of China and Russian Federation and the activities of their governments and security services offer contemporary edifying examples. Many more could be cited.

But a clear, consistent and principled constitution is a necessity nevertheless. At the beginning of Book 2 of *Ab Urbe Condita* Livy says that the ending of kingly rule, achieved by expelling the Tarquins, enabled 'the authority of the law to be exalted above that of men' in the Roman republic thus instituted. By 'law' in this context Livy meant a constitutional framework; laws as such are not invariably instruments of justice, and indeed can be oppressive and unjust (think 'apartheid laws' in South Africa, 'Nuremberg Laws' and other legal disabilities of Jews in Nazi Germany). But given that it is a constitution-forming legal order which, along with other conventions and traditions, governs the institutions and practices of a state, the crucial question becomes: what is a good constitution? What principles should govern

its formulation and application, and how are they in turn to be justified?

The idea of the 'authority of law above that of men' in Livy's sense encapsulates the purpose of a constitution, which is to define and therefore limit the competencies of those entrusted with the exercise of legislative and executive powers. In an absolute monarchy there are no such constraints; that is what 'absolute' means, and it therefore further means 'arbitrary' and 'unrestrained' – though even defenders of absolutism such as Jacques-Benigne Bossuet, apologist for the rule of Louis XIV of France, sought to temper absolutism by appeal to the idea that a monarch remains answerable to something putatively higher: to moral principles, or a deity. In practice throughout history, as the sufferings of too much of humanity testify, such appeals have been less than universally successful. An important part of the reason is captured in Lord Acton's dictum, 'Power tends to corrupt, and absolute power corrupts absolutely.' But we tend to overlook the significance of the first part of that dictum: 'power tends to corrupt': it is not only absolute power that does so. Hence the importance of constitutional restraints; and hence the uncomfortable fact that even excellent constitutions can be nullified

by what happens on the informal side of politics and government.

This is where a thought prompted by John Stuart Mill becomes relevant. In his book *Considerations on Representative Government* (1861) he invoked, more or less in passing, the idea of 'constitutional morality' as what restrains honourable men (in his day, and despite his protests, it was of course only men – apart from Queen Victoria; and then somewhat notionally – who engaged in politics and government) from bending or manipulating, for partisan or injurious purposes, the conventions, traditions and provisions of the constitutional order, then as now in the UK an uncoded one. There is an echo in this of Voltaire's remark about the England of the preceding century, where he had lived for some years in exile, namely, that its liberties were the result 'not of the constitution (governmental arrangements) of the country but the constitution (character) of the people' – that is, the people's robust insistence on the inviolability of their persons and homes. Mill took it, in nineteenth century style, that it was the principles of gentlemanly behaviour that prevented governments from exercising through Parliament what were in fact – and which in the UK remain today – absolute powers.

But this is a very tenuous way of constraining what governments and their ministers can do, unhappily made obvious when the legislature and government offices come to be populated by less honourable and principled people, controlled by party machines whose influence over representatives, exercised by promises and threats relating to the representatives' careers, is great. This is now the case; and certain events of recent years (signal examples are the election of Donald Trump to the Presidency of the US and 'Brexit' in the UK) are serious symptoms of failure in a system which has too long relied overmuch on self-imposed restraint and personal principles on the informal side of the question.

The fallacy in hoping that the people who populate

“ Mill took it, that it was the principles of gentlemanly behaviour that prevented governments from exercising through Parliament what were in fact -and which in the UK remain today- absolute powers.

and operate a democracy's institutions will not abuse the latitude for action they find in them is stingingly illustrated by Han Fei's story of the farmer and the hare. The story is that a farmer was ploughing a field in the middle of which stood a tree. Suddenly a hare came racing through the field, collided with the tree, broke its neck and died. The farmer so enjoyed eating the hare that he thereafter set aside his plough and sat by the tree to wait for another hare to come along and break its neck. Han Fei, one of the leading Legalist philosophers of the Warring States period in ancient China (third century BCE),

drew the moral: the folly of doing the same in hopes that another sage king would appear speaks for itself. His view that government must be a matter of law-governed institutions rather than the happenstance of talent or good character in individual people finds its echo in Livy several centuries later.

An appeal to 'constitutional morality' as what politicians will observe in legislating and governing is therefore no longer good enough, if it ever was. The formal side of the question has to address this problem by imposing a far clearer set of requirements on those who occupy the institutions and offices of state. But because it can never obviate the potential problems that arise on the informal side, there has to be renewed effort to create a climate in which the informal side is less susceptible to the corrosive influences to which by its very nature it is prey.

These are the great questions, both formal and informal, discussed in Grayling A. C. *The Good State: On Political and Constitutional Morality* (London: Oneworld) forthcoming 2019.





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How to design and love your legal career

Catherine Lacavera: Vice President of Legal, Google.



Students embarking on a law career face great opportunities and hard decisions. Although my role at Google might seem like an obvious choice now, no career decision is ever easy or obvious when you are making it. I loved my years as a junior associate at a New York law firm, and found it very hard to leave. But today, nearly fourteen years later, as Google's global head of litigation, employment and regulatory investigations managing a team of over 150 people, I still love my job and it continues to grow and change every day. When I was a junior lawyer, the opportunity to go in-house was regarded as utopian: escape from billable hours and ruined weekends. In-house salaries were typically lower, but most of us would have happily traded money for more free time. In-house compensation could include equity with growth potential, but only a very lucky few found roles working at cool and growing companies, without the crushing hours on an often elusive path to law firm partnership.

Given that perception of in-house positions, it might seem surprising that it was a difficult decision for me to move in-house. The change meant moving across the country from New York to California, and leaving all of my colleagues and friends to relocate to a city I had never heard of and where I knew no one. I loved living in New York and really enjoyed working with my colleagues at White & Case LLP, and I had carved out a patent litigation specialty that was technical enough that I could use my engineering background and feed my interest in cutting edge technology. But I missed computer engineering, my undergraduate field of study, because the firm's practice at the time was more focused on pharmaceuticals and genetics. I applied to Google thinking it would allow me to use more of my computer engineering skills. Google didn't have a lot of patent litigation when I first started, but I took the role thinking it would grow as the company grew. My first role was as an individual contributor, doing a range of

patent related work including prosecution, licensing, and patent acquisitions. The patent prosecution work in particular involved frequent meetings with engineers across product areas to help them articulate and document their ideas for patenting. While I enjoyed working closely with the engineers, I missed litigation. Within a few months of starting at Google, I took a role in litigation that spanned a much broader variety of legal fields and geographies, including commercial class actions in California, defamation cases in Brazil and trademark cases in Israel. The role meant learning a lot very quickly, but the advantage of being in-house at a company with resources is that you can seek out and engage experts in any field and learn from the best. The broad range of cases also meant working with a much wider range of departments, regional offices, products and people, including engineering, sales, public relations, policy and finance. The learning curve has been steep. I handled more cases in my first month as a litigator

at Google than I did in over four years at a law firm. I have since handled more cases than most courts. The breadth of issues is staggering, covering nearly every area of the law around the world. The hours are long, but I can work from almost anywhere, I generally set the deadlines since I'm the client, and I enjoy the work to the point where it hardly feels like work. The culture shift from a law firm to in-house was jarring. Moving from a private office in a Manhattan high rise with a view of the Empire State building to an open concept cube culture complete with dogs and massage rooms was disorienting. At first, I needed noise cancelling headphones to focus. Over time, I changed my approach from concentrating on a few matters to making rapid decisions across many. I shifted from writing all the briefs on a handful of cases, to reviewing only the near final versions of critical briefs in hundreds of them. Instead of reading and writing quietly alone in my office, I rotated every half hour between conference rooms in a dizzying array of meetings. As the volume of emails and matters mounted, I traded perfected, proofed compositions for rapid emails. When I joined, Google had a relatively small legal department, and roles were less well defined, so I was able to move to wherever the company needed me, and work on a wide range

“ I generally set the deadlines since I'm the client, and I enjoy the work to the point where it hardly feels like work.

of issues. Over time, as I anticipated, we were sued more and more for patent litigation. I took over primary responsibility for those cases and eventually had to build and manage a team to handle the volume. My practice area expanded to a department that I grew to nearly 30 people, including lawyers and technical advisors. At its height, my patent litigation group was handling more than 250 active patent litigations across every major product area, and has handled more than 1000 in total in over 25 states and 12 countries. Coping with that scale meant developing engineering style processes to optimize case management, something I often called the Ford Model T of patent litigation. I increasingly became more of a specialist and patent law subject-matter expert, doubling down on not just managing cases, but participating in conferences, joining trade associations and meeting with regulators around the world in an effort to help shape and improve patent laws to promote rather than hinder innovation. Whenever I thought I had finally seen it all, I was wrong. Over the years, I oversaw patent threats from Apple, Microsoft, Oracle, and hundreds of others, seeking collectively tens of billions

of dollars in damages and injunctions on products such as Search, Ads, Android, Youtube and Maps. One summer holiday, I was called back to help review the purchase of Motorola for \$12.5 billion, and inherited over 80 patent lawsuits in a day. Over Christmas one year, I was asked to review the purchase of Nest for \$3.2 billion, which was facing three pending preliminary injunctions that would have taken all of its products off the market. We later defeated all three. One morning at 4:00 a.m. on the first day of a trial in the Eastern District of Texas, having negotiated all night, I settled a multi-party patent dispute for \$480 million, a deal that eye-popping as it was, nonetheless caused our opponent's stock to plummet nearly 20 percent. I travelled a lot, always believing in the importance of meeting in person with our outside counsel, experts, witnesses, and opponents, and seeing first hand the courts in which our trials took place. One of the most important aspects of my role is hiring star in-house and external talent. As part of my first patent case, which was filed in the Eastern District of Texas, I traversed the state in search of the perfect testifying expert. When Germany became

our second most common jurisdiction, I studied German and moved to Munich for six months to meet counsel, attend hearings, and understand the legal landscape. Over the years, I met hundreds of firms, and many different teams within them, as well as hundreds of job applicants. After about five years and a successful run leading patent litigation, undefeated in over 1000 cases, I was given the opportunity to run Google's global litigation and employment teams. The new role involved a much broader scope of responsibilities, and in some ways I was returning to my early days at Google handling a wider range of issues. I welcomed the change, and those early days had prepared me well for the breadth of issues. While it is comfortable to be an expert in a field, it is energizing to tackle a wider range of less familiar territory. My current role has continued to grow and change, adding regulatory investigations and compliance to my portfolio, and I imagine it will continue to do so. Having been in-house and at a law firm, and having worked closely with countless law firms and in-house lawyers at numerous companies around the world, I now recognize that in-house experiences are as variable as law firm experiences. The quality of the work experience depends on the company or firm trajectory and culture,

the people you work with on a daily basis, your role within the organization and the opportunities for growth your role affords. All of these defining characteristics are also always fluid, always changing over time. Certainly there are some generalities. Going in-house you will most likely be trading research, document review, drafting, client pitches and oral arguments, for redlining, bill review, meetings, policy and process development, and management responsibilities. In-house you will likely handle a much higher volume of matters, but also at a much higher level and without the time to focus exclusively on any of them. You will probably operate more autonomously, becoming the decision maker on your matters, but you will have a new set of perhaps even more demanding clients and bosses. Most importantly perhaps, you will become part of a cost center, rather than a profit center, with all the attendant consequences of that shift in your position and contribution to your organization. Am I glad I went in-house? Definitely. I'm privileged to work for a company that I'm proud to defend. Google is committed to defending principles I share, like free access to high quality information from everywhere, including research institutions, libraries and cultural institutions, and from the bottom of the

ocean to the stars above. I'm engaged daily with a never-ending and ever-changing range of cutting edge legal challenges. I've been given the opportunity and resources to defend against thousands of attempts to shut down, tax or limit free products like Search, Youtube, Maps, Gmail and others that benefit billions of people around the world. In retrospect, I recognize how important it is for lawyers to balance specializing to distinguish themselves as experts in a field with maintaining the flexibility and adaptability necessary to broaden into new fields. This is particularly true in-house, where the needs of the business change over time, but also applies generally as new legal challenges and areas of the law emerge and present new opportunities for career growth. Over the years, I've gone back and forth from specialist to generalist, each time with more experience and comfort with the uncertainty of not always knowing the answer but knowing I will eventually figure it out. I clearly remember being given a research assignment as a junior lawyer and worrying that I would not find any helpful case on point. But learning to navigate that situation was no different than learning to navigate my current role. The old adage "it is all relative" comes to mind, as I now oversee billion dollar lawsuits targeting core products, and each day the

sun still rises.

What does all this mean for you? First, figure out how you want to spend your day. Then ask as many lawyers as you can how they spend theirs to figure out if a firm or in-house opportunity suits you. Of course no role is all or none of anything, and the more adaptable and flexible you are, the better lawyer you will be. But there are some important differences, and if you know them and yourself, you can design an optimal career. Do you like standing up in court? Do you like arguing your position? Do you prefer collaboration to conflict? Are you adverse to conflict? Do you like research? Do you like drafting or are you a better editor? Do you like focusing on one matter and going deep into it or do you prefer variety? Are you attentive to details or more interested in big picture strategy? Do you like travel? Do you like talking? Are you a good listener? Are you comfortable making decisions with ambivalent and conflicting information? Knowing your strengths and preferences can help you find a role that suits you.

Roles change over time. So ask these questions not just about where you are now, but what growth opportunities you would like to have and where you would like to be. Ask questions of lawyers at your level as well as those more senior to you, and lawyers in

your current position as well as those who have moved to other roles, either within or beyond the law. Law firms typically have more structured and predictable paths to seniority, whereas in-house opportunities are much more flexible. Of course, luck and timing play a role in advancement opportunities, but if you know what opportunities you are looking for, you can seek out roles that will eventually afford them to you. Smaller in-house teams in smaller companies offer more variety, but perhaps on smaller and less risky matters. If they are growing quickly, they might offer faster paths to leadership. Larger teams in established companies have more established roles, better training and support systems, and perhaps slower upward mobility.

I get asked a lot whether you can go in-house without law firm experience. You can certainly apply, but I tend to advise junior lawyers to take advantage of the formal training and mentorship that law firms offer. We typically hire only lawyers with at least four years of law firm experience, and often more. Once you are in-house, you are doing the job at a fast pace, rather than learning it. Also, since progression is less predictable in-house than lockstep annual law firm promotion, you might want to establish yourself as at least a midlevel associate before going in-house.

Whatever you choose to do today, do not forget that you can always change. I am seeing increasing lawyer mobility among firms and companies, and while it sometimes presents conflict and management challenges, it also means more opportunities for growth and development. It is still true that too much mobility can raise questions about your training and employment history, but nothing prevents you from making changes to grow and find your passion. Take whatever chance you are given to interview for a prospective new role or speak to a recruiter, if only to confirm for yourself that you are still excited and engaged by your current role. Over the years I've interviewed for countless jobs, and in the process, I have learned a ton, met many interesting people and made some long time friends. I also have connected friends and colleagues with new opportunities. Seeing these opportunities has renewed my appreciation for the tremendous opportunity I have been given at Google. And so with all of that, I wish you a happy and successful career in whatever field of endeavor you choose, whether at a firm, in-house, or elsewhere. The world is facing many challenges, and the legal community is well positioned to help us overcome them. We need all of you.

The New Legal Challenges of Technological Innovation

Noémie Renier: YLJ Writer



France's recent €50m fine against Google for breaking the EU General Data Protection Regulation (GDPR) highlights the various legal challenges that both tech-companies and businesses using new technology face. Beyond privacy issues, lawyers' work with these businesses is fast evolving as their clients experiment with these technologies. This article focuses on three growing issues, namely ethics, employment, and competition.

I – Ethical implications of tech-companies' working closely with public entities

The growing choice and flourishing of the tech industry feeds consumers' increasing desire for instantaneity, and appetite for new products, which in turn encourages continuous innovation. However, this race for new ideas has led to questionable ethics on the part of tech-companies, especially when involved in the public sector.

a) Google, don't be evil

Through its involvement with public entities, Google has discredited the perception of the tech company as open and fair, as described in its motto "Don't be evil".

In June 2018, Google

declared it would not renew its contract to work with the US Pentagon on artificial intelligence, following strong protests by Google employees. "Project Maven", ending in March 2019, will allegedly not be renewed after this date, as the company was largely condemned for providing technology allowing machines to distinguish people and objects in drone videos to the US military. However, despite the employees' fears that Google will be involved in lethal actions, there has been no official statement regarding the cessation of the contract. Kate Conger, a journalist for the technology news website Gizmodo affirmed that the company did not completely rule out the possibility of future work with the military.

Similarly, in August 2018, the search engine was condemned for allegedly working on a mobile app which would comply with China's censorship rules, in order reverse its move out of the country 8 years ago. Although there is no guarantee of the project, reports show that the website is creating a tailored app, blacklisting search terms and

web pages about human rights, religion, democracy and protest. It has also been claimed that the app would link users' phone number, exposing them to potential persecution by the Chinese government. Patrick Poon, Amnesty International's China researcher said: "It is impossible to see how such a move is compatible with Google's 'do the right thing' motto and we are calling on the company to change course ... [this] would be a gross attack on freedom of information and internet freedom. In putting profits before human rights, Google would be setting a chilling precedent and handing the Chinese government a victory."

b) US Immigration and Customs Enforcement's use of software

Following Trump's "zero tolerance" immigration policy which resulted in children being separated from their families, hundreds of Microsoft and Salesforce employees have signed letters and protested against the companies' contracting with the US Immigration and Customs Enforcement (ICE) to supply them with software. Despite large condemnation by human rights agencies

and other companies, both tech-giants claim that these contracts have nothing to do with the separation of families. Salesforce's CEO, Marc Benioff affirms his decision to sign the contract: "I don't think there's gonna be any finish line when it comes to the ethical and humane use of technology".

c) Facial recognition and law enforcement

Amazon has been largely criticised for working with the US police force, providing them with their new "Rekognition" system. Although the technology can be praised for being used to find lost children or other people of interest and has potential for fighting crime in future, the American Civil Liberties Union states its concern "that Amazon appears to be rushing into this surveillance market with no meaningful restrictions to limit how governments can use this and local governments themselves and local law enforcement are not adopting their own restrictions". Furthermore, research shows that Amazon's software is inherently flawed in terms of accuracy, and portrays some racial bias. Over the summer, the revelation that Amazon may strike a deal with the US Immigration and Customs Enforcement further sparked the debate.

II – Employment law: the gig economy

The rise of technology, feeding a growing desire for instant consummation, prompted the emergence of the gig economy. This model

enables businesses such as Uber and Deliveroo to rely on a workforce of freelance and temporary workers, but it remains controversial. Indeed, the growing accessibility of WIFI and smartphones accommodates freelancers to work part time, by facilitating communication and organisation. Although the flexibility of this system is attractive for those who can't commit to full time work, these workers are often paid below the minimum wage, and their situation is precarious. Furthermore, freelancers do not receive benefits such as health insurance. The main issue is that, in many cases, companies effectively control freelancers without taking full responsibility and use the blurred distinction between employee and freelancer to their advantage.

In June 2018, GMB, a union defending professional drivers, took legal actions against Amazon on behalf of their drivers. They argued that the company wrongly classified them of self-employed, when, in fact, they had effective control over their work by assigning scheduled shifts and hence removing the flexible aspect of the gig economy. A similar case was brought against Pimlico Plumbers, as they treated their workers as self-employed, when in reality they required them to work a set number of hours, wear a uniform etc... This landmark case was taken to the Supreme Court which ruled against Pimlico Plumbers.

III – Tech Giants and Competition Law

The issue of technology companies and competition law resurfaced with the European Commission's recent imposition of a record fine against Google for abuse of dominant position when it required manufacturers to pre-install the Google Search app and Chrome browser app. The Commission's previous fine against Google (Google shopping case) and the investigation on the Facebook/WhatsApp merger illustrate a trend which underlines the major challenges innovation and technology will pose to competition lawyers and possible shortcomings of competition law in regulating tech giants.

The 2017 Web Summit considered to what extent the rules on competition and enforcement will extend beyond the traditional boundaries when translated to the online world. Beyond a possibly growing emphasis on fairness by competition authorities, lawyers will need to consider new issues. Competition lawyers will focus on Big Data within mergers, such as Microsoft's acquisition of LinkedIn, where the Commission considered whether the merger precluded competitors from accessing data. Companies also need to consider whether their use of algorithms is anti-competitive. In advising clients facing both cartels and antitrust investigations or major mergers, law firms will therefore need adapt their practice to evolving competition laws.

The Contractual Core: Which Topics Really Count?



Professor Neil Andrews: Educated at Brasenose College, Oxford, (B.A., 1st class in Law, 1980; B.C.L., 1st Class, 1982), and a member of the teaching staff, Cambridge University since 1983. Called to the English Bar in 1981; Benchers of Middle Temple, 2007, and a member of the American Law Institute. Also a Council Member of the International Association of Procedural Law.

The question to be considered is this: which contractual doctrines are of special practical significance? Although English contract law is in some respects highly distinctive, it would be surprising if the answer to this question varied significantly from one modern trading jurisdiction to another. But the question is neglected.

The textbooks conspire to treat legal doctrines as they would children: with fastidious ostensible impartiality, lest they hint that some are of almost zero- practical importance, and other doctrines of huge day-to-day significance. There are occasional judicial references to the relative practical significance of different branches of contract law. For example, Lord Mustill observed at the Lipstein conference (Clare College, Friday 21 May, 2010) that in his entire career as a barrister, judge, and arbitrator, he had never encountered a

contractual mistake plea (he had just heard a thirty-minute learned discourse on the topic). Conversely, Sir Christopher Staughton in a 1999 lecture to Cambridge students strongly emphasised the centrality of interpretation of written contracts.

In this article it is suggested that the five main doctrines, or clusters of topics, in contract law are (and these are examined in detail in the online version at sections I to V of the article):

(i) formation issues: minimum elements for the achievement of an effective consensus must be prescribed;

(ii) identifying terms: the express contents of the parties' bargain have to be ascertained ('express terms') or, where there are real gaps, terms must be inserted in the form of default rules ('implied terms');

(iii) interpreting terms: written bargains have to be interpreted if the parties

cannot agree;

(iv) issues concerning breach: judicial determinations have to be made on the following point of difference: (a) whether a party is in default; (b) if so, the significance of that default, in particular whether termination for breach is available, or whether the innocent party is instead confined to remedies for payment (debt), compensation (damages), or perhaps coercive relief (see (v) on these remedies); and

(v) judicial remedies and enforcement of judgments: if default persists, and self-help measures are inadequate, the legal system provides an array of judicial remedies and a system of enforcement.

To read the full contractual core, visit www.TheYLJ.co.uk





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The attitudes driving Alabama's abortion laws exist here too



Bryony Gordon: Feature writer and columnist, takes a street-smart, thirtysomething view of the irritations, absurdities and occasional epiphanies of modern life.

Women do not exist solely to be chattels, or vessels, or adornments. In the year 2019, this should hardly need to be said, but here we are, looking back on a week in which two American states voted to outlaw almost all abortion, and so I feel compelled to write it again and again: women do not exist solely to be chattels, or vessels, or adornments. WOMEN DO NOT EXIST TO BE CHATTELS, OR VESSELS, OR ADORNMENTS. And so on and so on and so on.

It is time to say this. It is time to shout this. It is time to scream this, without fear of being labelled hysterical, or hormonal, or whatever other insult we like to throw at women who dare to try to live a life full of the freedoms that men have long taken for granted. And while we are on the subject of hormones, please can we stop dismissing women when they are affected by them. Hormones are the most powerful chemicals known to humankind, and I'm sick of being told to

ignore the ones that happen to be considered exclusively female.

These senators claim to honour life... but then disregard it once it has been born female

Senators in Alabama have passed a near-total ban on abortion, making it a crime to perform the procedure at any stage of pregnancy unless the woman's health is at serious risk. I am mystified by these humans who claim to want to honour life, only for them to disregard it once it has been born female. And I am equally as confused by a constructed value system, which appears to value only 50 per cent of the population. Oh, I know – God moves in mysterious ways! And none are more mysterious than dismissing the needs of women who have

been made pregnant by their rapists.

This is not an attack on all men; just the regressive throwbacks, the ones who seek to legislate what women do with their bodies. And while this real-life version of Gilead may seem far away, it should be noted that it also exists right here, right now – in Northern Ireland.

On a more mundane, day-to-day level, it also exists in the head of any female who has ever stood in front of a mirror picking apart bits of her body in the endless quest to be aesthetically pleasing, to be pretty. So much of our self-worth is rooted in how our bodies look to the outside world, and at the core of that is the long-held belief that the most important part of a woman's body is her womb, followed by her boobs and

“These senators claim to honour life... but then disregard it once it has been born female

her bum, and then, at the bottom, her brain.

Alabama is merely the tip of the iceberg, the visible evil that celebrities can protest against while conveniently forgetting the Photoshopped, filtered pictures they present to the world on their Instagram – the pictures that are themselves the result of centuries of patriarchal conditioning that tells us to have cellulite is to fail. If this sounds dreary and preachy to you, then perhaps you haven't ever felt the cold, hard stare of scrutiny on your body, the one that makes you feel like a piece of meat in a butcher's shop. Or perhaps you have, and found you are too exhausted by this endless aesthetic appraisal to

ignore it, instead choosing to try to appease it.

I am so angry right now, for the women in Alabama and Missouri and Northern Ireland and all over the world. I am angry on behalf of myself and my friends and the girls I meet who have found that shame has been normalised, repackaged, dressed up and sold to us in the form of a frock which hugs the body in all the "right" places. What are we? Christmas baubles?

I was recently told on Instagram that an inoffensive and comfortable dress I was wearing to a party was unflattering, and that I would have done better to have worn something that "showed off" my "lovely" curves, rather than swamping

them. "You'd look amazing in something more low-cut," said this person I have never met before, as if this, THIS, was my job: to look amazing rather than just be amazing, which ALL of us are, whatever we happen to be wearing.

Do not get me wrong – it is more than OK to like fashion and make-up, as plenty of women (myself included) and men do. What is not OK is to believe that we will find all our value in it. Our bodies do not exist to serve others. Our bodies exist to serve us. We must remember this at all times: we are women. Not chattels, or vessels, or adornments.

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Blue Sky Thinking: Developing Drone Laws

Darragh Connell: Barrister at Forum Chambers,
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Forum Chambers is a member of ARPAS-UK, the professional body and trade association for the remotely piloted aircraft systems industry.



The opportunities presented by the commercial use of drones and other unmanned aerial vehicles ("UAVs") is presently unparalleled save perhaps for the development of autonomous cars. In a frequently cited report, PriceWaterhouseCoopers estimate that the drone industry could be worth £41.7 billion to the UK's gross domestic product by 2030 based upon an estimated 76,000 drones operating in the skies above Britain.

What is readily apparent is that drones are becoming an increasingly familiar aspect of life and work in the UK today. They play a growing role in sectors ranging from construction to oil and gas. The transformative effect of unmanned aircraft upon professions as diverse as architecture, journalism and photography is slowly being appreciated.

Against the backdrop of the economic potential offered by drone technology is an emerging public hostility to unmanned aircraft. It is, of course, understandable that those who have been directly

or indirectly affected by rogue drones at Gatwick and Heathrow airports in recent months will feel aggrieved. The authorities' failure to apprehend and prosecute the actual operators of the drones in question (assuming drones were, in fact, the cause of the disruption) has precipitated a growing frustration with the perceived lack of regulation of UAVs.

The reality is that the legal and regulatory landscape in which UAVs operate is developing at an astonishingly fast pace. In the UK, the key piece of legislation is the Air Navigation Order 2016 ("ANO") as amended by the Air Navigation Amendment Order 2018. The legislation is necessarily wide-ranging in nature covering a range of different aircraft but it does impose a relatively complex series of requirements on drone operators that are, at present, more honoured in the breach than the observance.

By way of example, Article 94 of the ANO provides that *"the remote pilot of a small unmanned aircraft must maintain direct, unaided*

visual contact with the aircraft sufficient to monitor its flight path in relation to other aircraft, persons, vehicles, vessels and structures for the purpose of avoiding collisions". Likewise, Article 94A prohibits small unmanned aircraft to be flown at a height of more than 400 feet above the surface unless the permission of the Civil Aviation Authority ("CAA") has been obtained. It is not unusual for certain drone operators to either claim ignorance of these restrictions or to flout the regulated parameters notwithstanding the civil and criminal consequences of doing so.

At present, only commercial drone operators require the permission of the CAA to carry out flights. As a consequence, only commercial operators are required to provide evidence of pilot competence and provide an Operations Manual so as to detail how the flights will be conducted.

Change is, however, afoot. From November 2019, owners of drones weighing 250 grams or more will be required to register their device with

the CAA. All operators of drones will be required to take and pass a competency test before flying. These are welcome and much needed changes to the regulatory regime. Imposing registration requirements on all drone operators will assist in creating uniform standards across the UAV market.

Nevertheless, CAA permission only addresses the flight safety aspects of drone operations and does not constitute permission to disregard the legitimate interests of other statutory bodies such as the Police and Emergency Services, Highways England, Transport for London or local authorities. Operators for either commercial or recreational uses are equally required to comply with Article 241 of the ANO such that they *“must not recklessly or negligently cause or permit an aircraft to endanger any person or property.”*

There is a raft of further guidance published by the CAA. The usage of small unmanned aircraft and small unmanned surveillance aircraft in geographical areas within London and other congested towns and cities is subject to a little-known CAA Information Notice bearing the designation 2014/190.

Specifically, in relation to airports, the CAA have recently announced that the relevant no-fly zone for drones will be extended from 1km to 5km. Therefore, express permission will be required from the CAA to operate a UAV within 5km of Heathrow

or Gatwick airport. Failure to comply with the no-fly zone constitutes a criminal offence punishable by up to 5 years in prison. As to civil consequences, drone operators should also be mindful of the requirements of section 76(1) of the Civil Aviation Act 1982 which imposes liability for trespass, nuisance and surface damage in the event of non-compliance with the requirements of the ANO.

Alongside the domestic framework, drone usage is governed by the regulation imposed by the European Aviation Safety Agency (“EASA”) including Regulation 2018/1139. This regulation defines the technical and operational requirements for drones whilst enabling European member states to retain a considerable degree of flexibility regarding territorial zones in which drones can operate. Whether the UK will abide by EASA’s future proposals remains to be seen post-Brexit.

Regrettably, the biggest threat posed by drone misuse is not from errant recreational operators but instead that posed by terrorists. This is evidenced by the attempted assassination of Venezuelan President Nicolas Maduro by drone attack in August 2018. The prospect of terrorists operating drones with weaponised capabilities is no longer a future concern but very much one for the present. The nightmare scenario of a terrorist organisation using a drone to

deliver chemical or biological agents is one which needs to be further countenanced within existing counter-terrorism strategies.

One counter-terrorism measure that certainly requires further investment is geofencing. This involves the use of the use of GPS technology to create a virtual geographic boundary, enabling software to trigger a response when an unmanned device enters or leaves a particular area. If effective, geofencing would disable unauthorised drones once they enter the relevant prescribed area. It is understood that geofencing is operational at most large UK airports.

Ultimately, developing the legal principles regulating drone use requires considerable care. New legislation should not stifle innovation but sensible regulatory parameters can foster greater public confidence in the safety of unmanned aircraft. Disruption at airports is harmful to society as a whole whilst the risk of drone terrorism is one that can no longer be ignored. Nevertheless, the commercial exploitation of drone technology can produce significant economic benefits for the UK. As the regulatory requirements for drone operators develop, a balance will need to be carefully struck to ensure the safety of our skies whilst enabling this new technology to enhance existing industries and advance new economic models.

From the Legalisation of Corruption and Beyond – The Abuse of Power

Yassmina Popescu: YLJ Writer



With so many current national legal affairs, (most of which regard Brexit), it is hard to focus on the foreign, political and legal aspects of these issues. Although the UK will leave the EU with or (most likely) without a deal; it is still essential to also consider the actions happening in Continental Europe. Granting the selection of the new EU Chief Prosecutor of the European Public Prosecutor's Office might seem insignificant to the British public at the moment; the impact of this selection might resonate in the United Kingdom too. During this process for the appointment of a new Chief Prosecutor the European, representatives have witnessed an unprecedented level of corruption – witnessing first-hand the extent to which a country can abuse a citizen in order to maintain legalized corruption.

Brussels announced that



the newly introduced agency will be able to investigate, bring to the attention of the public and prosecute crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud.

On the 13th of February this year, Laura Codruța Kövesi, the former Chief Prosecutor of Romania's National Anti-graft Agency (DNA), has been selected as Civil Liberties MEP's top choice for EU Chief Prosecutor of the European Public Prosecutor's Office (EPPO). On the 26th of February 2019, Laura Codruța Kövesi obtained the highest number of votes (12) from The Committee on Budgetary Control of the European Parliament- after the hearing held by all candidates for the position of the Chief Prosecutor of the EPPO.

Kövesi previously lost her position as the head of DNA because the Romanian Minister of Justice, Tudorel Toader, criticised the DNA's investigations under Kövesi's leadership, the National Anti-graft Agency made unprecedented progress against the high-level corruption in Romania. Having prosecuted dozens of mayors (such as Sorin Oprescu), five

MPs, two ex-ministers and a former Prime Minister in 2014 alone. Hundreds of former judges and prosecutors have also been brought to justice, with a conviction rate above 90%. In 2015, 12 members of parliament were investigated, including ministers: "we have investigated two sitting ministers, one of whom went from his ministerial chair directly to pre-trial detention" – Kövesi. The Minister of Justice was appointed by the Prime Minister who is a member of the Party which has the most members under DNA's investigation. The fact that the Minister of Justice decided to side with the party that offered him his position, doesn't usurp the power of fraudulent behaviour and corruption, it helps to reinforce it.

On the night of January 31st, 2017, the Romanian government defiantly passed the unfortunate Ordinance 13 – decriminalising certain occurrences of office misconduct, notwithstanding previous criticism from the public, the media and legal experts. People instantaneously began to protest both the document and the way in which it was adopted – with "like thieves

in the night" becoming one of the main slogans of these protesters. The ordinance was seen as favouring a high number of corrupt officials who were either already sentenced or facing trial. Then, following five days of record-breaking protests across the country, the government agreed to withdraw it; however, the country is still struggling in an atmosphere of heightened social tensions and distrust of its elected leaders. One of Kövesi's main priorities in her last year as the head of DNA, was challenging the constitutionality of Ordinance 13.

On the 7th of March, Laura Codruța Kövesi was being investigated by the newly established magistrates investigating department, for the allegations of corruption

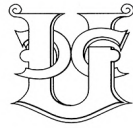
that fugitive Sebastian Ghiță brings. The Former head of DNA had been quoted at the General Prosecutor's office, on the very day she announced she was going to Brussels for the last proceedings before the European Parliament's vote for the head of the European Public Prosecutor's office. The investigation won't permit Kövesi to leave the country for more protocolary hearings in the process of naming the EU Chief Prosecutor of the EPPO, which will detriment her chance of winning the position. Likewise, due to the nature of the investigation, she is also prohibited from discussing the details of the investigation with EU officials.

"It is not a coincidence at all," Kövesi reported to investigating prosecutor,

Adina Florea, claiming that she is not interested in the professional career of the one she wished to replace as an anti-corruption chief prosecutor. It is ironic that in the investigation, Adina Florea's goal is to prevent corruption, when – by the nature and conduct of the investigation – she is seemingly institutionalizing it.

Kövesi's fight against corruption has gained her massive popularity among the citizens of Romania and foreign European Leaders as she proved to be highly effective. As expected, Laura Codruța Kövesi faced many predicaments from the Romanian government which appears to have this corruption embedded far deeper than the responsibility to its citizens.





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The City University Club was founded in 1895 for Oxford and Cambridge graduates. It moved from its original premises at 37 Threadneedle Street first to 54 Cornhill and then in 1906 to where it was on the second, third and fourth floors of 50 Cornhill above the banking hall. Now it is at a new premises at 42 Crutched Friars, London, EC3N 2AP. The Club has remained largely unaltered over the years and flourishes, retaining its tranquil atmosphere. It has 450 members and, although membership is now by introduction of an existing member, it still has strong traditional roots with Oxford and Cambridge. Ladies were welcomed as members from 1st January, 1997 onwards. The Club has an unrivalled list of reciprocal arrangements with over 400 clubs overseas and in the UK, including 15 in the West End.

If you are interested in membership, kindly contact the Secretary Hasita Senanayake FIH
secretary@cityuniversityclub.co.uk

Building a legal career in Tech

David Lewis: Director of Legal, EMEA at Snap Inc.



If you have an interest in tech of any kind, there's never been a better time to embark on a legal career. Just as technical innovation continues to shake up the global economic and political spheres, so the legal profession is being disrupted by new delivery models and fresh ideas, opening up non-traditional career paths and redefining the role of legal advisers.

If you're a student contemplating the kind of lawyer you want to be, you'll know all this. You also know the legal market is extremely competitive, especially when you're starting out, and having more options doesn't make deciding how you want to build your career any easier.

My career path - alternating between private practice and in-house roles - now seems uncontroversial, but ten years ago the idea of moving from one to the other once, let alone twice, was seen as fickle and risky. One thing that has remained constant, though, is a passion for playing a part in innovative businesses. I decided to focus on tech fairly early on in my legal career, qualifying into the

Technology, Media and Telecoms team at Herbert Smith Freehills, where I had trained. Digital media and technology remained in the foreground over the next nine years, which I spent in-house (BBC Worldwide, Comic Relief) and back in private practice (Fieldfisher LLP, acting for startups and established companies like eBay, Netflix, LinkedIn, Twitter and Nintendo), before joining Snap Inc.'s London office in 2016 to establish our first legal team outside the US headquarters.

That said, whilst it seems I had my career niche sussed from the start, the great thing about technology as a legal specialism is that it's a broad moniker encompassing multiple practice areas in multiple sectors. In the legal world, being a "tech" expert covers everything from advising entrepreneurs and inventors on raising funds or commercialising new products in healthcare, finance, the media or any other sphere, to helping larger technology services providers and governments with transactions, procurement, compliance or disputes. It can also cover advising any kind of business

- even the most analogue - on their use of third party technology or IP.

Consequently, whilst there's nothing wrong with a non-linear career, those keen on tech can curate a CV that illustrates a career-long interest, while still taking their time to find their specific niche within the tech umbrella.

So once you've decided you want to be some breed of "tech lawyer", what skills should you focus on building?

- Develop solid, versatile technical legal skills:

Unless you can get one of a handful of high-calibre in-house training contracts, nothing beats a rigorous private practice training as a foundation for a career in tech. As a minimum you'll need contract law, company law, IP ("soft" IP (copyright and trade marks) if you're more interested in brands, "hard IP" (patents, designs) if you're more interested in inventions and the science behind them) and excellent research skills and a knack for statutory analysis. You'll need to be ready for one of the most stimulating and creative parts of being a tech lawyer - interpreting regulations that

may not have kept up with the technology driving the businesses they are intended to regulate.

- Develop solid, versatile non-legal skills: Tech businesses tend to be global, so some foreign language skills or at least a global outlook are important. My first degree was in French and German, which has undoubtedly helped to build relationships across borders.

"Soft" skills of all varieties are crucial, as legal knowhow becomes ever more commotised. Working across borders requires razor-sharp communication skills (written and verbal), and the best in-house lawyers will be able to develop and present training in a way that transfers their knowledge to their clients efficiently. And at some point you'll want to know how to speak to senior executives (and maybe become one yourself). To do that your communication will need to be hyper-succinct - executives don't have time for long memos - and you'll need to know how to speak in a way that makes people want to listen.

By far the most important soft-skill is relationship-building and influencing. Whether in-house or in private practice, you'll need to build strong, trusting relationships with everyone from spreadsheet-loving finance colleagues who want to know how a contract structure impacts their accounts, to software coders needing to protect their inventions and marketing people

cooking up exciting ideas that, unbeknownst to them, risk breaking the law. Be kind, be trustworthy and bring empathy to each conversation.

- Learn the business: To advise tech companies, you have to understand their business models. People will tell you to develop "commercial acumen", and you may wonder how. You don't need an MBA, but you do need a curious mind. How does the business make money? And precisely how - if at all - could the legal issue you're looking at impact that revenue stream? Often, the impact on revenue is indirect - i.e. a compliance risk with the potential to impact the brand reputation gradually over time. But the ability to connect your advice to the business's objectives is absolutely key to being an in-house lawyer, especially in tech. It's also key to understanding your client's instructions.

- Learn the market context: Keep yourself updated on the developments affecting the kinds of businesses you want to work for. Set up google alerts on them. Subscribe to tech-focussed news sites like Mashable and Techcrunch (another personal, US-flavoured favourite is thehustle.co, both witty and informative). Read business news (e.g. the Economist and the FT) from time to time too. If you live or study in a city, go along to tech meetups with entrepreneurs and people sharing ideas. Who knows - maybe you're

an entrepreneur at heart? If not, you need to know how entrepreneurs think anyway.

- Learn the products: Again, to give useful advice, you will need to understand enough about how the products and services of a business work in order to apply the law to them. No one will expect you to have the same level of technical savvy as a software engineer. But clients will expect curiosity and not being afraid to ask the questions that hone in on what you do need to understand in order to give excellent, tailored advice. You can't get away with just knowing the law.

- Over time, decide if you're a generalist or a specialist: You may, as in my case, be stimulated by keeping a broad practice advising on a smorgasbord of legal issues and, if necessary, deferring to specialists in areas you haven't mastered (making your practice what management manuals would call "T-shaped"). Or you may prefer deep specialism, becoming the go-to expert on a tricky area. Generalists are arguably more useful in-house, but there will always be demand in the tech industry for specialists too, in areas such as tax, privacy and IP (especially patents).

Wherever you find your calling as a tech lawyer, these skills will help you become a trusted advisor, as will creativity, curiosity and an eagerness to operate outside your comfort zone as often as possible.



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