Australian
National
University

Disintermediation and legal education

Professor Paul Maharg

http://www.slideshare.net/paulmaharg
paulmaharg.com/slides

1. Background research in LETR

2. Mediation / Intermediation / Disintermediation / Reintermediation / Apomediation

3. Law school mediation

4. Three alternatives

1. Background research in LETR

Susskind: Provocations & Perspectives, Briefing Paper 3/2012

Evidence base:

- four interviews conducted specifically for LETR

- a series of interviews across the profession

- his own on-going research and consultancy activities, including two extended interviews with experts about professions outside law, six confidential discussions with leading practitioners (including General Counsel and senior partners in major firms) and discussions with academics and students at three seminars (one in England, one in Holland, and one in the US).

- 50 face-to-face, interviews carried out in 2012 across the professions, and on insights gained during 2012 from five client consulting projects (three leading law firms and two in-house legal departments). (Appendices, 1.24)

LETR & technology in liberalised legal services

- 'regulation and technology, as the scenarios suggest, both have the potential to transform the demand side of the market' (para 3.6)

- There is use of 'technology to enhance communication, information access, data management, and workflow, particularly in conjunction with outsourcing and commoditised practices' (para 3.74)

- Automation vs innovation:
  - 'The capacity of technology to enable things to be done differently rather than just more quickly, easily and/or thoroughly appears to be underestimated by respondents.' (para 3.88)

LETR & technology in liberalised legal services

'Technology therefore has longer term implications for the type of legal roles in the marketplace and may contribute to a reduction in the number of traditional lawyers. Some of this number may be absorbed into the kinds of new roles Susskind (2010, 2012) describes for legal information technologists, knowledge managers and legal process analysts. Such roles would also require new technical skills, and a greater understanding of the potential for ICT to innovate, not just automate.'

(para 3.96)

technology in legal education & practice

'Technology, particularly through increasingly sophisticated forms of blended and e-learning also has the potential to transform the delivery of LSET. One of the questions for the LETR is therefore, **how might these technologies connect?** In other words, what can those who are planning LSET learn from the use of technology in practice?'

(para 3.86, my emphasis)

technology in legal education & practice

'The emergence of new online providers, like LegalZoom and Rocket Lawyer, albeit supported by a human interface, is already indicative of the ways in which the market may be moving. **Such online providers may increasingly challenge and substitute for traditional f2f providers, particularly as the technology moves from 'search engines' to far more powerful and intuitive "discovery platforms".'**

(para 3.94)

commercial & social awareness

'There is also a case for including a greater understanding of the transformative potential of information technology under this heading. It is not sufficient to ensure that trainees or prospective trainees understand how technology is used to facilitate current work tasks without also **helping them to understand how it can radically change, and is changing, their business models and the way clients may access and use legal information.** In this context Richard Susskind's (2012) suggestion that law schools should include an optional course on developments in legal services deserves to be taken seriously.'

(para 4.70, my emphasis)

2. Mediation / Intermediation / Disintermediation / Remediation / Apomediation

commercial mediation

- Eg buyer & seller: contacting, contracting, negotiating, buying, selling, paying, receiving payment *directly*

intermediation

- Intermediate entity acts as a middle agent between industry agents such as buyer & seller.

- Eg buyer- or seller- locator, advertiser, manufacturer in a chain process

disintermediation

- Established middle agent is eliminated from market position, often because role is subsumed or taken over by the operation of digital technologies, which operate at much lower costs.

reintermediation

- But e-markets have their own emergent intermediaries – aggregation, trusted providers, authentication agents, filtering agents, value-adding agents, online shopping agents.

- Dis- and re- are actually constant processes in the digital domain

general examples…?

- Clerking industries, eg Travel Agencies, re travel & hotel bookings; bank clerks

- Music (Napster, iTunes, Spotify, Tidal, Beats) & book retail (Amazon)

- Photography (~~Kodak~~…)

- Bank financing (Hester 1969; Anderson & Makhija 1999)

  Keeping with the theme of Schumpeterian creative destruction, the financial sector is one seen by banking sector analysts and commentators as being particularly ripe for disruptive innovation, given its current profits and lax competition. Technology-driven disintermediation of many financial services is on the cards, for example, in financial advice, lending, investing, trading, virtual currencies and risk management. (Zilgalvis 2015, http://bit.ly/1aJmVcW)

- Disintermediated banking ('removal of banks as financial intermediaries', Schwarcz 2012) is termed 'shadow' banking (eg finance companies, hedge funds, real estate investment trusts, securities lenders, investment banks)

- Disintermediation is 'one of the main sources of financial stability concerns' (Bakk-Simon 2012)

how should we (re-)frame it?

- Mediation enables communication and representation of meaning, involving artefacts, processes and culture:

  > The arrival of new information and communication technologies led to a belief that we witnessed a decrease of the importance of mediation and the arrival of abundance. Yet, instead of the widely predicted process of disintermediation that was supposed to accompany emerging technologies, we are currently forced to confront a process of reintermediation, marked by new actors and methods of disseminating information and framing reality. [...] We are only on the verge of understanding what the social implications of the new mediating forces might be [...]
  >
  > (Verhulst 2005)

- Disintermediation is a process or symptom within much deeper cultural change.

manuscript writing: the early context, pre-12th century

1. Materials
   - Wax tablets
   - Tally sticks
   - Paper
   - Parchment or vellum
2. Forms of writing
   - Different hands, thickness of line, height of letters
   - Early medieval scripts included *scriptio continua* – **theexperiencewasratherlikereadingthisnottoodifficultthougheasierifyoutryreadingunderyourbreathalsocalledsubvocalisationwhichiswhatalotofscribestendedtodowhenreadingandwritingandofcoursenomodernpunctuation**
3. Punctuation
   - Marks were used at different heights in lines, eg 'diple' or arrowhead (for quoting scripture), *hedera* or ivy leaf for start of quotations, and 7-shaped mark (end of section)
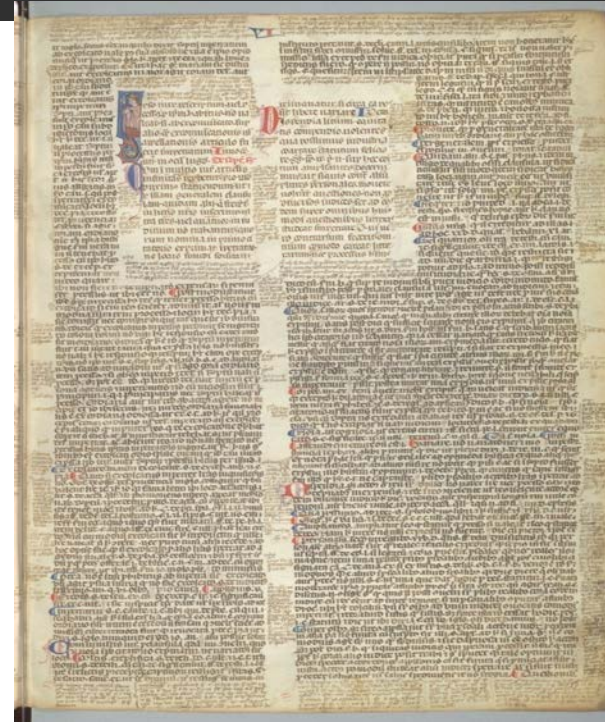
Codex Sinaiticus, http://tinyurl.com/6mmw95

the 13th century scholarly text

- Writers used alphabetisation, arabic numerals, chapter divisions, rubrics, capitals, paraph marks, running titles
- Used *compilatio* – compilation of extracts of works of authority or *auctoritas*, chosen by hierarchies of compilators

Berkeley, University of California,
Berkeley, Robbins Collection
Robbins MS 032, http://tinyurl.com/5tjvgs

'The late medieval book differs more from its early medieval predecessors than it does from the printed books of our own day. The scholarly apparatus which we take for granted – analytical table of contents, text disposed into books, chapters, and paragraphs, and accompanied by footnotes and index -- originated in the applications of the notions of *ordinatio* and *compilatio* by writers, scribes, and the rubricators of the thirteenth, fourteenth, and fifteenth centuries.' (Parkes 1976, 66)
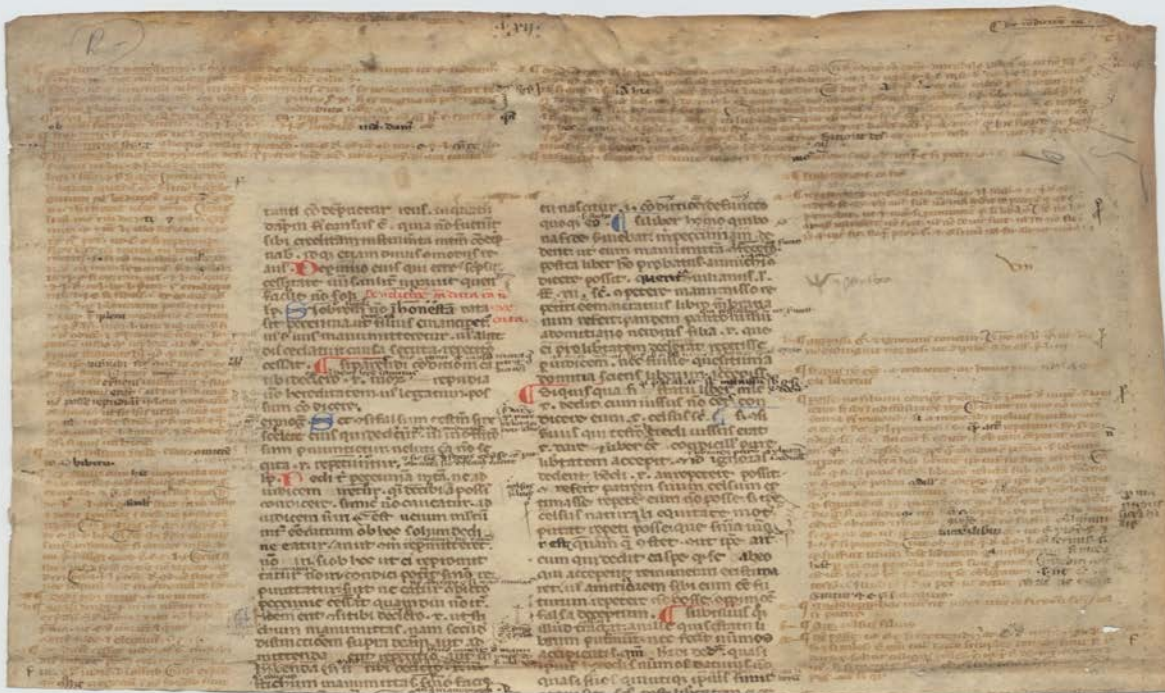
gloss structure and effect

- Glossators corrected *textura*, commented on sources, added other sources, and discussed hypotheticals

- Glosses were in constant flux, a better one replacing a poorer one in the compilation

- The effect is one of respectful criticism, a dialogue on the page that's full of information, very mobile, flexible, highly practical, very memorable.
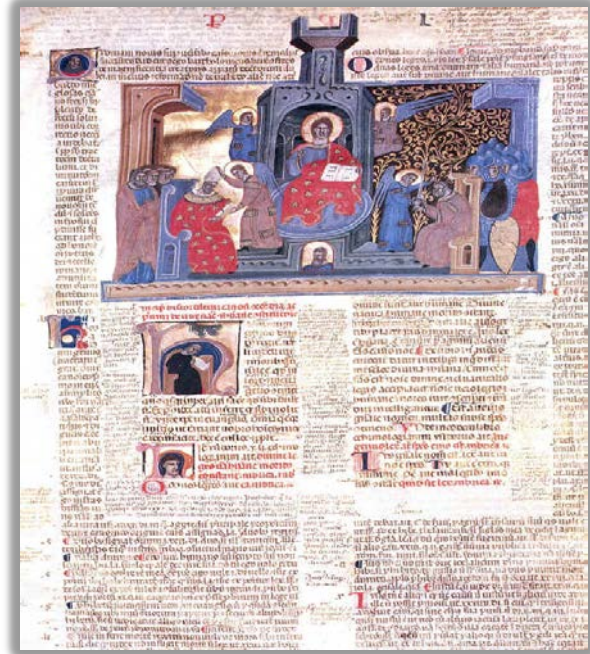
1. Primary *textura* in the central two columns
2. *Glossa* or commentary surrounded them, sometimes signed with glossator's initials

Corpus iuris civilis, c.1285-99, Berkeley, University of California, Berkeley, Bancroft Library UCB 130:f1200:10, http://tinyurl.com/6y5bva

1. Primary *textura* in the central two columns
2. *Glossa* or commentary surrounded them, sometimes signed with glossator's initials
3. Compare with book & digital finding tools

Corpus iuris civilis, c.1285-99, Berkeley, University of California, Berkeley, Bancroft Library UCB 130:f1200:10, http://tinyurl.com/6y5bva

glossators as apomediators

Apomediation –

•Essentially the replacement of traditional intermediaries by apomediaries, tools and peers standing by to guide consumers to trustworthy information, or add credibility to information.

•Helps users navigate informational overload

•Uses collaboration to scale, collaborative filtering, recommender system, allows bookmarking and scholarly folksonomies

•Sophistication of reader means that intermediaries may be preferred at first; but as expertise grows, apomediation is needed.

•With pre-print publication, journals themselves could be disintermediated, though publishers contesting this strongly.
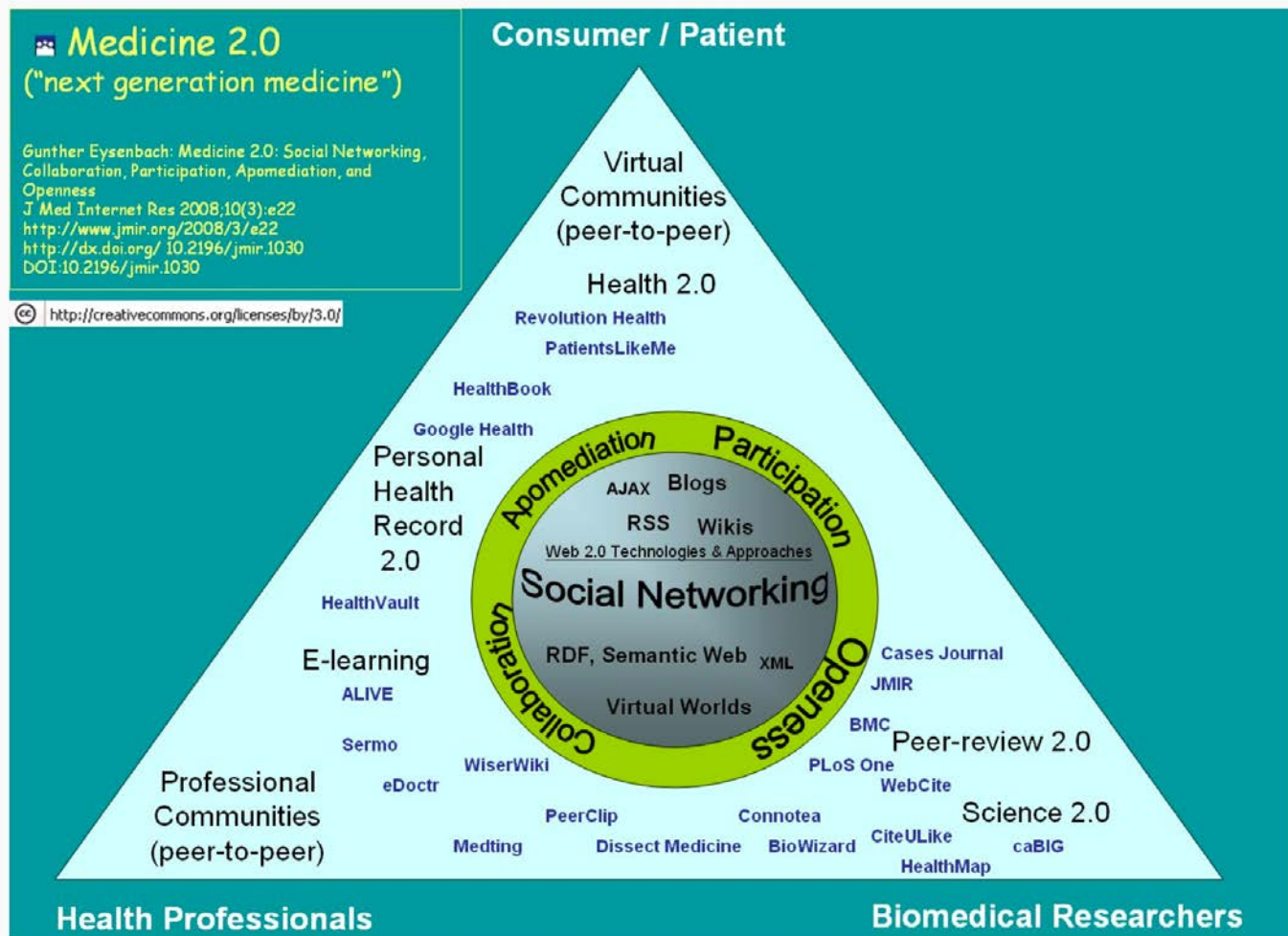
Eysenbach (2008)

Figure 1. Medicine 2.0 Map (with some current exemplary applications and services)

digital scholarship & mediation

- Castells on signs and lived culture, ie real virtuality…

- BUT see Don Slater's critique (2002) of Castell's dichotomisation of 'the Net' and 'the Self'

- form/signs influence nature of content/reality – they *are* a reality – see Latour & actor-network theory: digital networks have rendered the real world more visible, as complex social networks combining humans & machines.

3. Law school mediational activity

Law school mediational activity

For students

- Flexibility, collaboration more possible

- Campus less a focus as a learning platform

- Distance learning > intimate learning

- Change to the nature of data access and collaboration

Law school mediational activity

For the curriculum

- Diversified, customised, student-negotiated, re-designed around policy, transaction, historical development, ie disintermediation of the canon, eg triclusters of subjects in PBL

- LMSs converge data but also fragment experience, and above all cut continuity between learning experiences in-school and beyond-school.

Law school mediational activity

For staff

- Academics as teachers- central role explaining law altering to designers of learning – but still problematic

- Intermediaries diversifying, eg IT staff, course assistants, adjunct tutors, SCs

- Digital role playing can enable reintermediation as online coaches, practice managers, supervisors,

Law school mediational activity

For staff

• Law Librarians – wholly disintermediated by the Google & wider digital revolution.

• Part of a larger pattern of disintermediation across the profession (Brabazon 2014), and indeed libraries themselves (cf Academic Commons model of scholarly access)

Cf professional position of journalists?

The journalist of tomorrow is a professional who serves as a node in a complex environment between technology and society, between news and analysis, between annotation and selection, between orientation and investigation. This complex, changing environment cannot be kept outside of journalism anymore -the journalist does not work in 'splendid isolation' anymore –particularly because of the sheer abundance of information and the fact that the publics are perfectly capable to access news and information for themselves, as well as the fact that institutional players (profit, governmental, non-profit, activist) are increasingly geared towards addressing their constituencies directly instead of using the newsmedia as a go-between.

(Bardoel & Deuze 2001)

librarian/journalist

The ~~journalist~~ **librarian** of tomorrow is a professional who serves as a node in a complex environment between technology and society, between news and analysis, between annotation and selection, between orientation and investigation. This complex, changing environment cannot be kept outside of ~~journalism~~ **Informatics** anymore –the ~~journalist~~ **librarian** does not work in 'splendid isolation' anymore – particularly because of the sheer abundance of information and the fact that the publics are perfectly capable to access news and information for themselves, as well as the fact that institutional players (profit, governmental, non-profit, activist) are increasingly geared towards addressing their constituencies directly instead of using ~~newsmedia~~ archives and libraries as ~~go-between~~ **resource**

(Bardoel & Deuze 2001)

LETR BIALL interview...

'[Trainees] appeared to be generally **unfamiliar with paper-based resources** by comparison with digital resources. In addition they noted that trainees seemed to **depend on one-hit-only searching**: in other words they did not check thoroughly and contextually around their findings. They used Google extensively and **their searches tended to be shallow and brief**. Trainees were also increasingly **unable to distinguish between the genres of legal research tools** – the difference between an encyclopaedia and a digest, for example. They seemed **to lack persistence and diligence** in searching, as well as **organization**. These values, that underlay the learning outcomes of the LILT document, needed to be worked on by students. The group were unanimous in their opinion that many **academics shared the weaknesses of students and trainees in this regard.'**

LETR BIALL interview...

'Students needed to be assessed on **skills** as well as content: **process needed to be audited** both in **practice-based situations** and in **formal academic learning**, and indeed if **good habits** were established early on in academic learning, supported by staff and driven in part by assessment, then it would make the job of practice-based librarians a lot easier.'

- 'The law degree was an apprenticeship of content, not of process.

- Over the last few decades the law curriculum had become ever more crowded with more core content and extra options.

- Part of the solution to crowded curricula was better design. In particular, academic staff needed to design with library staff in joint activities. Library staff, in other words, needed to be more at the heart of the educational design process with academic staff, and involved in teaching, learning and assessment. [...]

- Following on from this, regulators needed to recognize the changing role of law librarians as legal educators. Currently librarians are classified occupationally in many institutions as 'Clerical Staff' or some such. This needs to change and their role as educators and digital information curators and digital information environment designers should be recognized.'

future effects in legal education

- Significant shift towards apomediation in staff, curriculum, student learning

- Major threat to law school economics and independence from corporate publishers:
  - Cost of journal subscriptions
  - Corporate capture of our learning / teaching systems
  - Corporate capture of digital learning content

4. Three alternatives…

example 1: curriculum design

- Education for whom, by whom, when (Harry Arthurs…)?

- Eg JD + online + PBL…?
  - We have a very sparse literature on f2f PBL (eg some major studies on Maastricht, none on York, none online)
  - Curriculum needs re-designed
  - Library curricular integration needs radical re-design – see the excellent work of Emily Allbon: http://lawbore.net
  - Digital technologies need re-designed to facilitate PBL collaborative learning online

example 2: saturated integration of digital epistemic communities

- See lawbore.net

- Goes beyond
  portal concerns to a core
  function of the law school

- Could it go further?
  Of course – with radical curriculum
   design that saturates learning with research and creates a
  true epistemic community

Link Directory: Core Areas

example 3: Extreme disintermediation of blockchain technologies

- Open technology platform
- 'Permissionless innovation'
- Blockchain code – a shared public register of code transactions
- Decentralized file storage
- Decentralized Autonomous Organisations (DAO)
- On-chain decentralized marketplaces for services

which services?

- Currencies & sub-currencies, eg Bitcoins - http://bit.ly/1nWUfyT
  - decentralized digital cryptocurrencies. See www.bitcoin.org
- Almost any financial instrument
- Further, more sophisticated platforms, eg Ethereum, www.ethereum.org
- Contracts and wills
- Savings wallets
- Online voting
- Decentralized government
- Secure messaging - http://bit.ly/1qtpvpZ
- Decentralized data feed
- Legal education

Ethereum Contracts as Legal Contracts
Posted on June 23, 2014 by Daniel Martin Katz

Ethereum contracts as Legal Contracts

Is an Ethereum Contract Enforceable under U.S. Law?

Can be.
May help in showing that there was a contract. Parole evidence issues may arise.

0:00 / 59:11

legal education DAO?

- Peer-to-peer comms

- Peer-to-object comms

- Could include granulated learning objects + comms system + badge system (eg Mozilla Badges) + payment system + other decentralized functions, using identity and reputation system as a base

- Regulation?
  See regulation of VoiP, and Bitcoins itself
  http://bit.ly/1jKa4Ex

BITCOIN
A Primer for Policymakers

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Email: paul.maharg@anu.edu.au
Web: paulmaharg.com
Slides: paulmaharg.com/slides