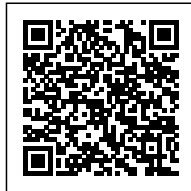


# ON THE HUMAN AND THE DIVINE (OF THE "NEW" LEGAL UNIVERSE)

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**Three lawyers, from different generations and backgrounds tell us how they perceive the new reality and how it will affect law practice**



The pandemic has forced an acceleration of the digital transformation of offices and the Administration of Justice in general, which may well resemble a revolution or a change of era and, as such, also entails a change of mentality. While the Spanish Government is already working on the draft of the normative text that will regulate teleworking.

By Desiré Vidal

## OLD LAW, NEW LAW

**Iván Gayarre** (pictured left), partner at **Sagardoy Abogados**: The main novelty has been the generalisation of remote work and meetings, even for the most important aspects of the life of companies (councils and Board meetings) and of the judicial processes (the Royal Decree-Law 16/2020, of April 28, has foreseen that the telematic form is the preferential way of carrying out judicial proceedings during a certain period of time that includes the state of alarm and the three subsequent months). However, the foundations and principles of our social, democratic and legal State remain the same. Therefore, only those technologies that help to improve them and not to undermine them, that serve to move forward and not to move backwards, will survive. This assessment will have to be made when the extraordinary and exceptional situation generated by the coronavirus comes to an end. In the meantime, what is appropriate is to experiment by taking advantage of the coverage provided by the law. The art of the process remains the art of administering evidence, with documentary evidence being one of the main means of proof. The same is true about the main decisions and negotiations in companies, which require truthful information, usually embodied in many documents. Being able to work remotely with a voluminous and complex documentation in an efficient, coordinated and respectful way with the demands imposed by confidentiality, data protection, and procedural guarantees and requirements is not an easy task and forces everyone to think about abandoning old practices (such as sending documents and their different versions by e-mails that run the risk of being lost in almost always saturated inboxes) in order to be able to replace them with new ones that allow them to be organised and digitally shared in an efficient and coordinated way, guaranteeing the necessary intangibility and authenticity of those that must be brought into any administrative or judicial procedure. Technology has shown itself to be a great recogniser of structures, but it is far from being able to do three things reserved for humans: the first, to be great generalists; the second, to generate a 'plan B' in the face of unpredictable situations in which everything suddenly fails; the third and perhaps most important, technology does not challenge and violates the rules of its creator. **Morad Maanan** (pictured left), lawyer at **Carles Cuesta Abogados** y Asesores Financieros: Honestly, I think these are substantial differences. In the "old law scenario" we were called to coexist under very rigid rules for a changing and advanced society such as ours (the inexorable unwritten law of presentism, the difficult time self-management, the limitation of efficiency by unnecessary travel, etc.), while in the "new law" era it seems -because it is yet to be confirmed- that, in essence and content, we will do the same as before but we will have the functional opportunity to execute it in a different way; we will coexist in the same professional environment but we will work according to criteria based on the "necessary

and irreplaceable”, the “recommendable” and the “useful”. In my opinion, the only problem with the above is that this change account is not very optimistic. If we do not involve ourselves in these conceptual differences, they will be no more than fictitious axioms with a lot of theoretical content and a shamefully ephemeral practical statement (it will last as long as it takes to forget what we have experienced this painful beginning of the year). If we want this apparent digital revolution to be a real change (moreover, in the hope that it will survive the “new normality”) we have to be part of it and not just be mere spectators who temporarily accompany the acceleration shadow. In the professional field (as in our most personal one) changes are the result of free will or imposition. In both cases there is a shared reason for necessity (to adapt - in the best of cases - or to survive - in the most extraordinary situations), but it is not the same embracing change freely and consciously as doing so for reasons beyond our own control. I believe that the latter is precisely what has happened with this digital transformation acceleration that we have experienced. Unfortunately, the COVID-19 has forced us to accelerate too quickly; in the vast majority of cases, by imposition. From zero to one hundred without having the possibility of defining the goal or charting the path. The digital transformation acceleration that we are witnessing is more a question of survival than of adaptation; and, in the medium to long term, that seems to be more a problem than a solution. A practical example of this idea is teleworking. If we manage to create a system where professionals and other operators can achieve higher levels of personal satisfaction because they work in more comfortable and flexible environments, I am convinced that we will be on the right path to achieve a much more productive and efficient system. **Luís Graça Rodrigues** (pictured centre), head of legal at **Indra/Minsait Portugal**: I would say that the main conceptual differences between law practice before the pandemic and after the pandemic are the ones related to daily procedures and to forms of communication. As for the procedures, it is undeniable that several of them were globally digitalised; even though the digital signature of contracts or other legal documents like powers of attorney were already a possibility, a significant part of companies and law firms were reluctant to embrace this procedure, opting to maintain the traditional hand signature. With the confinement imposed on a global scale, lawyers and their clients had to drastically change this status quo in order to keep the business running: we left our offices on a Friday with a pile of papers to be manually signed and on Monday we were told to stay at home and keep the legal procedures flowing. As for the communications, it became evident that traditional telephone calls were not enough to ensure the elementary needs regarding dialogue and trust: both in law firms and legal departments one of the first strategies to be adopted were videoconferences, webinars... The 2020 lawyer found out (or he was reminded of) the importance of looking his clients and his colleagues in the eye. Working from home will also be a recurring reality among lawyers, I believe, considering the freedom it provides regarding personal life and work balance. Nevertheless, law firms and legal departments that choose this model will have to be aware of its weaknesses: the challenges it represents to the remote management of your teams and to corporate identity (isolation will make this identity blur if it is not fostered by other means). This neo-reality is definitely a challenge to our creativity.

## **BUILDING “DIGITAL TRUST”**

**L.G.:** I believe that personal contact plays a very important role in the relationship with our client and with our teams. If we reduce client-lawyer personal contact, we will have to compensate it with new factors that strengthen the necessary trust: for me one of these factors is availability. As a client I don't mind if having fewer face-to-face meetings with my lawyers (I may as well be thankful for it); however, I will need to make sure that when I need my lawyer he will be there: distance won't be a problem and that he will have the technological tools that allow him to be in contact with me by video whenever necessary.

**I.G.:** Law practice is an ancient, millennial profession, based on trust and necessity. On the client's needs and on the trust between the client and his defender. Law is an art and a profession, an

obligation of means, not of results. It is not a social science; that is what law is. There are no right answers in law, but the permanent struggle to demonstrate that your solution to the conflict is the most founded, congruent and motivated in accordance with the law. What is the algorithm of this art and craft? The human or technology? In my experience, telework generates much less empathy. However, clients and lawyers have something in common: we are not averse to change, we are averse to uncertainty, since it generates anxiety, and we must calm it down with information and confidence. To the extent that in the face of a situation of anxiety caused by an unknown fear, the lawyer manages to transform it into a concrete fear by designing scenarios and clear conclusions that allow his client to control and explain it, the client-lawyer trust will arise, even if it has to be done in a digital context. And if, in addition, empathy arises from human contact, so much the better.

**M.M.:** In my opinion, the fundamental thing is to connect with people (in its broadest sense - be they individuals or companies). For this reason, I believe that law practice, in addition to a necessary and fundamental technical-legal knowledge component, requires an additional capacity; emotional intelligence. For me, the concept of our clients' trust cannot be understood if we are not first able to assimilate that we are intellectual and emotional managers of their affairs (whether they are more or less complex). In the same way that we conceive happiness and disenchantment as emotions that are very much connected to the individual, we have to conceive success and failure as business emotions; our main mission is to do our best to achieve the former and avoid the latter. From there, I believe that trust arises and is strengthened almost naturally. Moreover, from my particular point of view, it is important not to forget that, despite the respectable appearance of corporatism - casual or not - the intimacy bubble in which societies live (mainly, those of a family nature), or even the strictly particular confidentiality curtain that covers each of the matters in which we intervene, there are people behind all professional issues. For me, here is the fundamental thing: never forget that there are always people behind everything, and do everything possible so that our clients are aware that their matters are in the right hands (if they are urgent and/or extraordinary matters: twenty-four hours a day, seven days a week - here I am not in favour of limitations, working remotely or not, as emergencies do not have timetables). In short, I believe that when we continually strive to be good and better people - an essential ingredient for being a good professional - and we manage to make our clients perceive our commitment to them, trust can be maintained physically or by means of an email, a call, a video conference, or even by means of text messages. The important thing is to know how to adapt to the resources that the new digital era offers us to continue building bridges of trust with the people around us - physically or virtually.

### **LAWYER = COMMODITY?**

**M.M.:** They surely exist, but I don't think they will be any reference in the future. In my opinion, in order to be a good lawyer nowadays you need values that are far beyond hourly billing (and, although there are clients who still take it very much into account, the vast majority already consider other more relevant aspects when hiring a lawyer or a firm's legal services); I continue to work daily on all those aspects trying to get a better version of myself. As I said before, we live in a very changing environment and this requires a constant capacity for adaptation. Until not so long ago it was said that lawyers had to have a solid academic background, be technical in legal terms, be able to work very well under pressure and speak a couple of languages (Spanish and English, preferably); but that now belongs to the past. Today's legal profession demands a lot more, and I cannot say whether this is a result of the sector globalisation or of the competition that lives within it. Everything that used to be considered necessary is still necessary, but now, in addition, other qualities are needed (both business and personal). In particular, I believe that today's lawyer must also have a strong entrepreneurial attitude component (clients need to know that we will go beyond their legal needs); be able to generate business, have negotiation and conflict resolution skills, develop a lot of empathy, be considerably flexible - they now call it "resilience" -, learn to plan ahead, take responsibility for creative results and develop leadership skills. In addition, as if the above were not

enough, it goes without saying that today's lawyer is increasingly connected to all world corners so that now it is highly valued to have excellent social skills, the aforementioned emotional intelligence and a vast cultural background (I would never have imagined how difficult it could be to be an intermediary between an Indian executive and his counterparts, Spanish and American, until it was time to do so; even if they belonged to the same multinational company). Finally, I believe that today's lawyer can no longer limit himself to the practice of law on a strictly professional level; we have to increasingly commit ourselves to society and its different causes, do our bit to help build much more solid and humane social structures. There are many groups that need our involvement as the main actors in the justice system.

**L.G.:** I don't hesitate here: a good lawyer still retains values that are above hourly billing. When I am looking for a lawyer, I am not only looking for the best quality/ price balance: I am looking for trust. You cannot put a price on ethics, on honesty, on the adoption of the best practices by the law firms you work with. Every lawyer knows Celsus' dictum "Jus est ars boni et aequi" ("Law is the practice of what is good and fair") – this should appeal to our commitment to what is right, not just to our commitment to achieve the best conditions in our company's contracts or in the best fees-quality balance of work provided by our lawyers. In a world full of differences, we have to commit to diversity. We have to be the ones who bet on the young lawyer who is seen as not ready to take on responsibilities, or on the older lawyer who thinks the market no longer has a place for him. We have to be the ones who empower the presence of women in management positions, who question the law firms we work with and why there are so few women in their Boards. I want to have by my side lawyers who are not afraid to say in a business meeting that discriminatory comments are not welcomed or acceptable and I would also like to have more law firms in Portugal with alliance programs with their LGBTQ+ workers.

**I.G.:** A good lawyer must have high ethical, technical and human capacities, a soul that prevents confusing value and price. Therefore, I consider that a good lawyer, in the tasks that really require it, will never be a "commodity" that must offer the lowest possible price before a company's purchasing department that considers legal services as a mere service, indistinguishable from others. Even today, some activities in the law practice remain an "honorable" activity (hence the term "honorary fees" in some languages).

### **BUSINESS DEVELOPMENT INCLUDED IN HOURLY BILLING?**

**L.G.:** In this particular question I would say that we have to be conservative: even though those other activities can be a "nice to have" it is very difficult to internally defend a legal cost that is not based only in strict professional fees. From my point of view as a client it is a very difficult balance.: I am only willing to pay for fees directly related with legal service but I will favour a law firm that delivers the best quality service and goes beyond the strict legal work (a nice presentation, a tutorial, etc...).

**M.M.:** I think that today's lawyer -and tomorrow's lawyer- also has to have an entrepreneurial attitude. Assuming the need for this attitude implies understanding that work as part of our professional fees. Obviously, we cannot forget what our main mission is ("to work on our clients' affairs, from a predominantly legal approach, trying to ensure success and avoid failure"), but I do not think that in the future we can -and must- separate purely intellectual work from lawyers and that ability to generate or develop business. Luckily or unfortunately (I, in particular, like it), we live in an era where business law predominates.

**I.G.:** The essence of the services to be provided by a lawyer to his client continues to lie in high-quality legal advice and in his representation and defence in judicial or administrative proceedings. This must not change. Sometimes good legal advice can be transformed, in collaboration with other non-legal companies, into applications that integrate it into the company's day-to-day running (for example, in the area of registering the working hours of employees, Sagardoy Abogados developed

an application called "o'clock" in collaboration with a digital transformation company and a consultancy firm). Finally, it will always be positive for lawyers to try to offer their clients improvements in the essential legal services they contract (for example, offering document and knowledge management systems compatible with the client's technology and data protection regulations) or services for analysing new developments (newsletters), conferences and other activities (practical courses, workshops), international networks (like our firm's "ius laboris"), but always as additions or complements and not as substitutes for high-quality legal advice.

## **HARD/SOFT SKILLS + VALUES**

**L.G.:** The hard skills are and – I think – will always be the same: deep knowledge of the law and a notorious experience in its practice. As for the soft skills I would underline two: communication skills and a versatile knowledge/experience. Communication is an essential soft skill: a lawyer's vast knowledge will be no good to him if he doesn't know how to convey it to his client ensuring that he understands it. I always tell the lawyers I work with to present me their conclusions as if they were salesmen: be objective and succinct. One of the most common things I used to do was going through memos from our external lawyers and make them "understandable" to my internal client. Fortunately, things changed and our "legal language" is more adapted to common understanding. The next step will be improving our communication on video systems: I think we all can conclude from the last months that nobody wants to attend webinars where the presentations are made in the same traditional way as face-to-face meetings. On the other hand, being in contact with different knowledge areas (finance, technology, different cultures and ways of doing business) is definitely an essential soft skill in a society as globalised as the one we live in. We always talk about the legal gap in TMT law but the truth is that gap is becoming wider and more global, considering that it now exists in every area of law (just think of the traditional labour legal regimes regarding teleworking in Europe and the home office model that was generalised with the COVID-19 pandemic, for instance). A lawyer who is curious, who is interested in different areas will be able to provide creative approaches to solve problems than cannot be solved only with the law.

**I.G.:** The lawyer must solve the conflicts of law with his words, either said or written. He will write up legal rules or interpret them, will ask others something on our behalf or will defend us against those who claim something from us, and he will always have to do so with such strength, conviction, security, structure, clarity, technical rigour, enthusiasm and feeling that he will cause his client for a few moments to be proud of him as a lawyer, and the satisfaction of having felt the words, ideas and struggle he has carried out as his own. He will make them have the feeling that everything possible has been done for them, in due time and proper course. To reach this goal he will always show the clients that he is their priority and is by their side at all times, taking an interest in their business and their world, immediately responding with rigour and professionalism, without fear of saying "no", although knowing how to say it ("not like this") when that is his legal advice. He will convey confidence, and will be comfortable in conflicting situations because he knows how to deal with them. The client hires you because you know how to do what they don't know; that's why you have to tell them, what to do from a legal point of view, but with empathy, that is, knowing how to put yourself in the other's shoes, from the emotional to the professional.

**M.M.:** Commitment, dedication, study, passion and interiorising that the effort is not negotiated. I have always said that success is the result of a very disciplined habit. There are exceptions, as with everything in life, but if you do this the odds of success are immensely greater than those against. As for values, I insist on the need to work daily to be good and better people. I am not able to think of a good professional who is not a good person before. In this daily work, I believe that it is very necessary to get involved in social causes and help the most vulnerable groups. If at some point we forget those who need us most we would be forgetting the true reason for the existence of our profession and the very genesis of justice.

## **LAW STUDIES, ADAPTED TO THE NEW TIMES?**

**M.M.:** In my particular experience, I can say yes. I teach at several universities and business schools specialised in Master's degrees and postgraduate courses (Universidad CEU San Pablo, ISDE Law & Business School and Universidad de Navarra) and during these last years, I have witnessed that the level of future lawyers is increasing. In the training of the students of these university institutions in which I have the opportunity to participate through teaching practice - to which I must acknowledge a titanic effort and an undeniable commitment to the future - there is a solid theoretical base with an increasingly practical approach. The emphasis is no longer so much on teaching what to do - but on how to do it.

**L.G.:** In Portugal, I would say that even though there are some isolated experiences, the truth is that the general rule - the one we see in the traditional universities - hasn't changed. The academic study keeps focused on the law, and it lacks some training on soft skills and on other knowledge areas that have an amazing impact on business activities, like technology, finance and ethics, for instance.

**I.G.:** There is a classic book called "the soul of the gown", written by Angel Ossorio and first published in 1919, which highlights the values of lawyers and tries to guide young people on how a real lawyer should be. It is very relevant today, and even then, he said that before grabbing the pen, one must have exhausted the study in the papers and in the books. Law is rigour. The qualities of a good lawyer mentioned above demand that he be an open and blank book: always open to study and learn, without rigid and preconceived ideas that are not adapted to the present day, in order to have a system in his journey towards very personal conditions that allow him to recognise in his person a talent that has been developed and educated with great and constant effort. In this journey an obligatory stop should be what is now called "new law", "legal tech", "legal design thinking", etc. to try to achieve a sustainable and human technology in his work as a lawyer, differentiating where the human (intuition and creativity) and the technological (efficiency in very well-identified processes in which the risk of human errors is minimised) prevail. The best lawyer will never be a technology, nor a person, but a team of people using technology.

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