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# HOW TO FACILITATE LEGAL INNOVATIONS – LIKE HOME COOKING WITH A TWIST

By **Ulf Maunsbach\***

**This is the text of the inaugural *Mudgeeraba Lecture*, presented at an event arranged by the *Centre for Commercial Law* at Bond University in October 2016.<sup>1</sup>**

## Introducing the idea

There is little doubt that law is in a constant state of flux, a conclusion most readily identifiable in the field of information technology. There is a blurring of traditional borders of the law leading to the creation of new patterns, and establishing new concepts. In legal practice examples are numerous and are profound in areas like digital information, the sharing economy and cloud-services (not to mention the internet of things).

These areas exemplify the problems facing lawyers, who must deal with how the efficiency and appropriateness of the application of law should be achieved. To find appropriate and functional legal solutions, lawyers must be creative and knowledgeable; or, to put it differently, they must find (or even create) innovations in law.

Within the innovation literature, the law is usually not discussed or considered as an object of innovation. Instead, the law is traditionally presented as an element that may support innovation, for example, in protecting an invention by patent law. In many situations, the law is even described as an element that prevents innovation by creating obstacles to creativity and freedom of movement (for example, by regulating the possibility to freely employ workers or by imposing certain regulations regarding environmental protection).

This is a one-sided description of the law, a description that fails to describe the inherent quality that the law possesses when it contributes to societal developments. Although it may be stated that the law cannot be regarded as a traditional object of invention and consequently not technical in a way that makes legal constructions amenable for patent protection, the law can be both creative and useful and legal constructs can be innovations that may benefit society in a similar way to more traditional innovations.<sup>2</sup>

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<sup>1</sup> This inaugural lecture was delivered at an open air forum in the hilltops of Mudgeeraba, overlooking the highrises, suburbs, canals and beaches of the magnificent Gold Coast, Australia.

<sup>2</sup> The questions as regards the possibility to regard legal constructions as patentable subject matter was discussed in *Grant v Commissioner of Patents* [2006] FCAFC 120. In this case from the Federal Court of Australia, it was stated (at p. 34): “The interpretation and application of the law would not be considered as having [...] an industrial or commercial or trading character, although without doubt it is an area of economic importance (as are the fine arts). The practice of the law requires, amongst other things, ingenuity and imagination which may produce new kinds of transactions or litigation arguments which

Legal history provides numerous examples of innovations in law. The limited liability company is one vivid example. As an innovation in law, it contributed significantly to successful industrialization, transformation and growth. In 1926, *The Economist* paper actually suggested that the inventor of the concept might earn “a place of honour with Watt, Stephenson and other pioneers of the industrial revolution”.<sup>3</sup> The “invention” of a separate legal personality is another example,<sup>4</sup> as is human rights, an innovation in law that led to the establishment of the United Nations after the Second World War and since then has revolutionized the relationship between state and individual.<sup>5</sup>

In this paper, I will take the opportunity to develop the discussions that followed the Inaugural *Mudgeeraba Lecture* that I gave at an event arranged by the Centre for Commercial Law at Bond University in October 2016. Original inspiration is derived from an ongoing research project at Lund University that builds on the research presumption that innovations in law exist, and that there is a gap in the knowledge of social scientists in analysing and understanding the law as an object of innovation. This lack of knowledge needs to be addressed, not the least because an understanding as to innovations in law will make it possible to cast new light on the process of legal decision-making.

## Developing the theory

As concluded above, law has hitherto played a marginalized role in the discourse of innovation, mentioned at best as a tool that may support an innovation, by way of providing means to protect inventions. Simultaneously, it is evident that law may be much more than a supporting service. In truth, some of the world’s most important innovations are innovations in law. Legal innovations have changed the world, and it is not only due to the limited liability company, the separate legal personality or human rights: imagine existence without a right to privacy,<sup>6</sup> or without property, intellectual property<sup>7</sup> or...taxation!

It is possible to distinguish two general areas, contextual innovations and normative innovations. The introduction of human rights as a general perspective to legal development after the Second World War may be an example of a contextual innovation, whereas the limited liability company that paved the way for the industrial revolution may be mentioned as a normative innovation.

The definition of terms is an important aspect when analysing innovations in law, and a more thoroughly developed terminology would be highly desirable. In this paper, however, I will use the term “innovations in law” as the general description comprising both normative and contextual legal innovations. Irrespective of the terminology, the paper aims to highlight the fact that law and legal constructions may be innovations as such. Consequently, this paper is not intended to focus on law as merely a supportive element in the innovation process. It is about innovations, not inventions.

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could well warrant the description of discoveries. But they are not inventions. Legal advices, schemes, arguments and the like are not a manner of manufacture.”

<sup>3</sup> See further: ‘The key to industrial capitalism: limited liability’, *The Economist*, available at <http://www.economist.com/node/347323>, accessed March 23, 2017.

<sup>4</sup> The “invention” of a separate legal personality was introduced in the case *Salomon v A Salomon & Co Ltd* [1897] AC 22.

<sup>5</sup> It is to be observed that “human rights” may be regarded as a set of principles that, at least, can be tracked back to the French revolution and the declaration of human and citizen rights in 1789. However, the way in which human rights have influenced the relationship between the state and its citizens after the Second World War may be described as a separate, contextual, innovation.

<sup>6</sup> The modern right of privacy is often said to have emerged from a law review article written by Samuel Warren and Louis Brandeis: “The Right to Privacy” (1890) 4 *Harvard L.R.* 193.

<sup>7</sup> The legal construct of a patent monopoly for a newly introduced invention was said to have been first “invented” by the Venetians: see G. Mandich, “Venetian Origins of Inventors” *Rights*, *Journal of the Patent Office Society*, June 1960, Vol XLII, p 378.

By necessity, a first part of an investigation into the realm of innovations in law needs to deal with the concept of “innovation”. It is crucial to agree on an understanding of the term in order to pinpoint what innovation in law is. Furthermore, it is imperative to identify what factors may be relevant in the construction of such innovations.

A logical starting point is innovation theories, as introduced by the Austrian/American economist Joseph A Schumpeter and further developed by scholars during the years that followed his foundational work during the first half of the 20<sup>th</sup> century.<sup>8</sup> The importance of innovation as a driving force in economic development was emphasised by Schumpeter and the scholars that followed in his footsteps.<sup>9</sup>

Innovation in this regard is to be separated from inventions. Inventions are patentable solutions to technical problems and as such are legal constructs that provide proprietary rights to the inventors. This right is given by society, but there is no mandatory requirement that inventions have to be useful. In other words, usefulness or societal benefits are not prerequisites in patent law, and a solution may still be regarded as an invention even if it is never used. In *Grant*, the trial judge “[...] determined that the claimed invention had no utility of value to the country and would not add to the economic wealth of the country or benefit Australian society as a whole or advance the public interest; rather it was contrary to the public interest if individuals paying their debts as and when they fall due. Accordingly, her Honour held, the claimed invention was not a proper subject of letters patent”.<sup>10</sup> The appeal court had no sympathy for this approach, and authoritatively stated the traditional view: “It is not relevant, in our view, that some may think that a method or product will not advance the public interest. Once a product or process has been patented, its use is subject to the laws of the land, such as (to take but a few examples) those concerned with environmental protection, pharmaceutical product approval and occupational health and safety”.<sup>11</sup>

In contrast to inventions, innovations focus more on the process of making the invention useful. Innovations comprise a more general platform and represent a new solution that has been made effective and useful, with the result that there will be benefit for society as a whole. It is in this regard that we may introduce the entrepreneur, who turns inventions into business, as a necessary precondition for innovation.<sup>12</sup>

Thus innovation may be described as a process in which a novel idea (an invention) is turned into a business or commercially viable product. The person who controls that process is the innovator, whereas the provider of the original idea is the inventor. These two activities may coincide – the inventor and the innovator may be the same person – but they are often separated due to the fact that these two activities require completely different skills. For the purpose of this paper, we may describe the inventor as the lonely genius who possesses specific expert knowledge and the skills to concentrate and focus on the formation and development of a novel solution. The innovator, on the other hand, has more holistic knowledge and a sensitivity in relation to the surroundings, possessing the skills to identify and pick-up novel solutions and turn them into business. The innovator recognizes a market need or opportunity and knows how to meet that need with a new product.

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<sup>8</sup> Joseph Schumpeter, *The theory of economic development: An inquiry into profits, capital, credit, interest, and the business cycle* (Originally published in German in 1934).

<sup>9</sup> For more thorough information regarding the theories on which the practice of innovation rests, see Drucker, P.F., *Innovation and Entrepreneurship – practice and principles*, Harper & Row, 1985, in particular pp 26-28.

<sup>10</sup> *Grant v Commissioner of Patents* [2006] FCAFC 120, at [42].

<sup>11</sup> *Grant v Commissioner of Patents* [2006] FCAFC 120, at [44].

<sup>12</sup> For more elaborate information regarding the relationship between innovation and entrepreneurship, see Drucker, P.F., *Innovation and Entrepreneurship – practice and principles*, Harper & Row, 1985.

There is no generally accepted theory on innovation, but a simplified definition should reasonably include at least the following elements: the innovation has to be defined as something new (i.e., a new solution to an existing problem) and it has to be (extensively) used, for example, put on the market. One additional prerequisite is that the innovation needs to be useful, for example, that there is societal benefit, traditionally measured in commercial surplus.<sup>13</sup>

In recent times, research has developed further and social innovations (among other things) have been introduced as a separate explanation model in relation to innovations that are not-for-profit. Social innovation may be defined in different ways, but a common denominator is that the usefulness of the innovation is measured in non-commercial values.<sup>14</sup> Definitions of social innovation emphasise novelty in relation to solutions to social problems and the fact that the solutions ought to be more effective and/or efficient than prior solutions. It is also common that the efficiency in this regard includes aspects of sustainability and fairness. Finally, a social innovation needs to result in a created value for the society as a whole rather than for private individuals.<sup>15</sup>

According to such a definition, developments like *fair trade*, *international labour standards*, *microfinance* and *emission trading* can be regarded as social innovation.<sup>16</sup> Some of these social innovations are obviously legal constructions, making room for the conclusion that social innovation as a term may include innovations in law.

Why then discuss innovations in law as a separate area? There are several reasons for this. One first and obvious reason is that it is important to specifically highlight legal developments and novel legal constructions. More importantly, but perhaps less obvious, innovations in law need to be treated separately because legal developments are driven by different and separable motives. Put differently, factors that are important for innovations in law differ in important aspects from factors that will facilitate social innovations (or technical or economic innovations).

### **What makes innovations in law special?**

One initial observation is that law is a construct that is a result of a legislative process, usually submitted to democratic review. The recognition of the importance of openness and democracy is a necessary part of a model that aims to investigate conditions under which innovations in law take place. Openness is also an important condition that separates legal innovations from other innovations, in relation to which a disclosure of information may have an inhibitory effect.

Another important aspect that specifically relates to innovations in law is that the legislative process is time-consuming, not the least due to necessary democratic concerns. Thus, innovations in law grow at a slow pace, which is completely contrary to the apparent need for speed that categorises other types of innovations.

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<sup>13</sup> For a more developed and nuanced picture as to the principles of innovation, see Drucker, P.F., *Innovation and Entrepreneurship – practice and principles*, Harper & Row, 1985pp 133-140. See also e.g. Schumpeter, Joseph A., *The Theory of Economic Development*, Harvard University Press, 1934; Rosenberg, Nathan & Birdzell, L.E., Salzberger, Eli M., (eds.), *Law and Economics of Innovations*, Edward Elgar, 2012.

<sup>14</sup> Drucker discusses the need of social innovation already in 1985, in relation to the development of the entrepreneurial society. See further, *Innovation and Entrepreneurship – practice and principles*, Harper & Row, 1985 pp 257-260.

<sup>15</sup> See, eg, Phills, Deiglmeier & Miller, *Rediscovering Social Innovation*, *Stanford Social Innovation Review*, fall 2008.

<sup>16</sup> Phills, Deiglmeier & Miller, *Rediscovering Social Innovation*, *Stanford Social Innovation Review*, fall 2008, p. 40.

Furthermore, the actors differ. While “traditional” innovation is predominantly facilitated by economic operators, innovations in law are facilitated by legislative bodies (including supreme courts and potentially law reform bodies). Hence the incitement to develop new products differs. Whereas the economic operators will be driven by an urge to gain market shares and profit maximization, the legislator is likely to have, as its first priority, the well-being of the state and its citizens as a whole. In this regard, innovations in law resemble social innovations.

A final important aspect that separates innovations in law from other types of innovations regards copying. Innovations can be measured by their ability to be copied by other actors and one crucial element in a description of a successful innovation is the extent to which the innovation is copied by others (i.e. used).<sup>17</sup> In this regard, borders are not part of the equation. In contrast to this, a legal construction will, at least during an initial phase, be limited to the territory of the state in which it was adopted. The territoriality of law will make transformation and copying less immediate, and a more extensive cross-border use of a legal construction is therefore likely to take time. The process of copying legal constructions is furthermore influenced by the fact that laws are to be applied in a legal system applicable in a specific cultural environment. A legal construction that may be a perfect solution in one country may need to be amended before is it likely applicable in another country. Legal transplants are a controversial topic in the sphere of comparative law – some arguing that it is impossible to insert a legal solution generated in a very different jurisdiction without rejection and failure.<sup>18</sup>

One recent example that can highlight this is a legal construction that may be called a Swedish innovation (as is indicated by the word itself). This is the introduction of an independent “ombudsman”, appointed by the government or by the parliament, to represent the interests of the public by addressing complaints of maladministration and violations of rights. An ombudsman often has a specific mandate to represent certain weak party interests. Thus, there exists an ombudsman in Sweden to represent, for example, consumers, children and disabled persons. The ombudsman was copied by the European Union and introduced, at surface level, in a way seemingly identical to how the institution is used in Sweden. Upon closer inspection, however, it is apparent that the EU ombudsman is tailored differently. It was, as it seems, necessary to amend the original innovation in order to make it efficient in its new environment. And so it is. Law usually needs to be adapted to its territorial environment in a way that separates legal innovations from more traditional innovations.

Still, I argue that the notion of copying is a necessary element of a theory of innovation and one that poses problems in relation to innovations in law. One initial finding is that the importance and influence of innovations in law is rather measured in relation to the extent to which a legal construction has inspired others to apply similar (not identical) solutions. If we agree on this conclusion, however, we also need to acknowledge that it becomes a challenging endeavour to find empirical data on the use of legal innovations. A quest to find solutions that have been inspired by others is much more of a challenge than a mere counting of copies that can be applied in relation to use that is identical to the original.

I must confess that we still puzzle over how to pursue this task. So far we have identified the problems. We have realised that it will become necessary to use historical examples (such as the limited liability company) to identify how legal inventions are turned into innovations by way of highlighting copy or adoption

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<sup>17</sup> It may be discussed if the term “copied” is a workable expression as to how the success of an innovation is to be measured. Drucker is instead elaborating on the statement that an innovation starts small but should end big (p 166) and that a successful innovation must aim at leadership in the sense that it must have the ambition to achieve a strong position within a given environment. See further, *Innovation and Entrepreneurship – practice and principles*, Harper & Row, 1985, p 136, 166. In this paper, I choose to express the imbedded necessity of growth in successful innovation by its ability to be widely used and copied. See also Salzberger, Eli M., (eds.), *Law and Economics of Innovations*, Edward Elgar, 2012.

<sup>18</sup> See Pierre Legrand, ‘The impossibility of legal transplants’ 4 *Maastricht Journal of European and Comparative Law* 111 (1997).

patterns. An historical study is furthermore fruitful in order to illustrate legal developments over time, and it will be imperative in order to identify factors that characterise legal innovations. In this paper, I will only be able to briefly address some aspects, while simultaneously identifying that a more thorough historical analysis is a necessary part of a research paradigm on innovations in law.

## **Patterns of legal innovation**

By regarding innovations in law as a more general concept than legal inventions, and with the focus that it should be a new solution that will benefit society as a whole, patterns can be identified in history, patterns in the form of periods of time under which innovations in law were more frequent and perhaps conspicuous.

Such examples could be the 11<sup>th</sup> - 12<sup>th</sup> century, and legal development after the establishment of the first university in Bologna (in 1088). Flourishing trade in combination with the revival and elaboration of Roman law in Europe, gave rise to several new legal concepts and new ways to study and codify law. Another interesting period in time is the 16<sup>th</sup> -17<sup>th</sup> century, after the “judicial revolution”.<sup>19</sup> A period in Europe when the legal system was characterized by more professional, educated lawyers with a whole new expertise, and a state-controlled administration of justice and court system. This was a time of bureaucratization of justice. With the art of printing well established, books on legal matters could easily be circulated among lawyers all over Europe providing new means to spread ideas and legal solutions.<sup>20</sup>

Finally it may be relevant to specifically address the developments after the “industrial revolution”. Dramatic advances in technology had placed new demands on the legal system in fields ranging from automobile regulation to intellectual property. The technological development also facilitated new ways to use the law and legal tools.

An historical analysis, as outlined above, will prove means to identify copy patterns in relation to legal innovations, and it will shed light on factors that characterise legal innovations. In addition to those factors, it is also relevant to pay attention to the legislative process. As indicated above, there are certain specific aspects that distinguish the innovation process for legal developments. In order to fully understand this, it is important to acknowledge that actors on the legal market differ from actors in traditional markets.

## **The law-making market**

The legal market, in which the legislator operates as a central player, is pre-defined by the democratic framework under which legislation is constructed. In this environment, the legislator is given a mandate to operate and decide on legislation that will have to be observed by other legal actors on the market. In this so defined market, legal actors apply the law but not necessarily the black-letter text. The law is to a large extent organically developed in the hands of its users. One obvious user is the judge, allowed primarily to apply the law objectively in light of its presumed purpose. Other prominent users are lawyers, with specific abilities to bend the law in favor of the interest of their clients. Finally, we may add legal scholars (academics), a less obvious actor, that pursue the ambition to challenge the existing law and investigate possible new developments.

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<sup>19</sup> The expression “judicial revolution” was coined by the English historians Bruce Lenman and Geoffrey Parker as a term that refers to the development that occurred between 1500 to 1800, a period in time during which a shift from community law to state law took place: a shift from adjudication by local communities to adjudication by the central state. See further Lenman, Bruce - Parker, Geoffrey 1980: “The State, the Community and the Criminal Law in Early Modern Europe”. In: *Crime and the Law. The Social History of Crime in Western Europe since 1500* (ed. by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker), London, Europa, 1980.

<sup>20</sup> The first printed book of English law is considered to be the “Abbreviamentum statutorum”, printed in 1481 in London by John Lettou and William de Machlinia.

In this market, it is difficult to identify specific innovators and/or inventors: a task that is easier to perform in relation to traditional innovation markets where those actors are much more distinct. There are several reasons for this. Besides the obvious, the pre-defined democratic framework that needs to be accounted for, it is important to understand that there are no obvious proprietary interests in legal innovation. In a traditional innovation process, the driving force is the possibility to be first and potentially the holder of a proprietary patent right that will place the innovator in a favorable monopoly position. In such an environment, actors have an interest in being visible and acting in their capacity as inventors and potentially innovators. But, as concluded above, the rules of the law-making game differ. Without proprietary interests, the innovation process for law-making becomes more dynamic and the important driving force is rather the interaction between different actors than the sole movement of one innovator. Thus, it is not apparent from where the invention originates and who the potential innovator actually is.

Due to the democratic character of legislation, it can be stated that the only actor that may actually turn an idea into use is the legislator itself, whereas the only way law can be truly manifested is in legislation. Such a definition, however, seems to ignore reality; it also ignores the common law tradition which accommodates law-making by judges. Another way of putting it would be to define all actors on the legal market as entrepreneurs that together strive to create new legal solutions, but again this definition seems to miss the target. I think that it is important to separate actors that have actual power to create law from actors that are using the law (although occasionally with a creative mind). One obvious representative in the first group is the legislator, but supreme courts (e.g. courts with decisive powers) are to be included as well. The second group comprises all other actors that apply law (e.g. lawyers, judges in lower courts and legal scholars). In this second group we may find inventors, willing to argue for new solutions, but in order to create innovations they need the support from an innovator (e.g. the legislator or a supreme court). Put differently, they need to garner attention for their legal inventions in a crowded marketplace for new legal ideas and solutions.

I acknowledge that my description of the legal market and its actors is a simplification and that the actual existing legal market is more multifaceted. For instance, contracting could be described as a separate arena for legal innovation with its own actors (although often lawyers – independent or in-house - representing client interests). Irrespective of this it can be concluded that there are specific aspects that need to be addressed in an accurate description of the process that facilitates legal innovations and that the development of novel legal solutions has its own dynamic.

Bearing this in mind, it may be stated that a toolbox that is adapted to legal innovations must be calibrated in certain ways. Time and space matters, together with the pre-defined environment in which innovation takes place. The incentive structure also needs to be accounted for as well as certain problems that relate to how use of new innovations is to be measured and how copy patterns are to be identified. In addition to this, one must also understand the interaction that occurs between different actors in the legal market. In other words, a lot of work needs to be done in order to establish a functional toolbox that can be used in order to analyze legal innovations. But for what reason?

## **What is the point?**

So far much attention has been devoted to the idea that innovations in law need to be discussed and understood as a special concept separable from other types of innovations. This idea however, irrespective of its potential attractiveness, will not be meaningful to pursue unless there is evidence of usefulness. An argument that implies usefulness with a developed model regarding innovations in law is that such a model would create analytical tools that can be used to evaluate legal decision-making. By highlighting the relationship between different actors and specifying characteristics that are pertinent for legal innovations,

it will prove possible to identify innovative environments and it may be easier to facilitate and stimulate a legal decision-making process that enhance legal innovation.

One observation, already derived from the research project, is that legal innovations rarely emanate directly from the legislator, i.e. the legislator fits the standard description by being an innovator but not an inventor. So, the invention takes place in other areas of the legal market, by creative actors like lawyers and judges. With this description, the most innovative legislator is not the one that brings ideas into being, but the one that brings ideas into use. Consequently, an innovative legislator will be someone that possesses the ability to be attentive, listening and aware of developments – inventions – in the surrounding society. Such a legislator may be able to better fulfil societal goals. If we conclude that an innovative legislator – which we presuppose is something good and desirable – is characterized by its ability to view the surroundings holistically with a listening mind, the priority is not to focus on the legislators potential to invent new solutions, but to tune in voices from actors on the legal market and identify voices that are more influential than others. In this regard it is relevant to emphasize that influential does not necessarily equal loud.

This may sound like a downgrading of the importance of the legislator, but that would be a misconception. It is rather an adaption of the legislator's role to modern society, a multi-faceted society crowded with blurred voices. I would claim that the ability to identify relevant voices in such an environment demands equally advanced skills as the ability to create legal solutions as a sole inventor. But the skills are different.

In this paper, there is no room to develop the application of the suggested model for innovations in law and the tools are not yet in place. It may still be relevant to present examples where a new and innovative approach to legal decision-making is likely to be desirable. I will stick to one example in the realm of private law where blurred voices indicate a need for legal innovation and the example is derived from the on-going and fast moving development of new legal solutions in the area of information technology law.

It may be regarded as a truism that modern society is complicated. This complication is, among other things, derived from the fact that we live in what I call multi-relational environments. A typical standard citizen of the modern world does not interact in single peer-to-peer relations but in relations that are characterised by their resemblance with networks that make such interactions multi-relational. In contrast to this development, (private) law may be described as particularly well adapted to single relations. The law applies to one contract that is binding between the parties that agreed on the terms and single contracts are expensive to negotiate, and such negotiations are time-consuming operations.

For several years, there has existed the development of different forms of smart contracts e.g. computerized automated contracts, which include certain security elements (e.g. encryption) that facilitate efficient, safe and fast contracting that diminishes transaction costs in a range of potential situations. Among other things, smart contracts are key in the development of block-chain technologies and cloud computing.

Described in terms of the findings in this paper, it may be stated that inventive activities in the field of “smart contracting” occur right now among a variety of different legal actors - the entrepreneurs of the legal market - including consultancy firms, legal scholars and non-governmental bodies. For legal innovation to take place in this environment, the priority skill of the innovative legislator (or the innovative judge) is not the ability to invent additional new solutions, but to identify and choose the relevant solutions among those that already exists, and this will prove to be an advanced operation that demands certain specific qualifications: skills and abilities that historically have not been included in the legislator's toolbox. Put differently, the legislator needs to be innovative in order to manage this situation.

## **Concluding comments**

As may be evident from what is stated above, the pursuit of establishing a toolbox for innovations in law is in an initial phase. The tools are, so far, only vaguely visible, and the idea to view the legal market in terms of innovation needs further tailoring. I am confident, however, that it is possible to identify the different elements that categorise innovations in law and that knowledge as to how different actors on the legal market interact will prove to be useful.

For law and legal innovations, the specific dynamic of legal decision-making is key in understanding what makes law innovative. For a majority of legal scholars, it may seem rather obvious. Legal actors are generally well aware of the activities in the legal market, but it is not common to perceive this market in terms of innovation. I claim that this is a deficiency, and by this paper I hope to inspire others to consider adopting an innovative approach to law. For there is much work that remains to be done, and in this particular case traditional proverb does not apply. It does not hurt to be many; on the contrary it is actually a benefit if there are many cooks that are willing to prepare the broth.