

Have we lost sight of what we are trying to do?

For years David Birch has been flagging up the implications for the financial sector of AI use by customers, but finance has it easy when dealing with liability, at least on earth (not Mars) and ignoring identity challenges: there are specified amounts, times and sometimes places.

The Economist leader this week (8 Aug) points out the more urgent issue that use of AI has already brought parts of the legal system to meltdown: injunctions have increased one-hundred-fold; the process can't be expected to cope and is not. It observes that AI also threatens the ability of the civil service to respond to increased demands, noting that £20bn of legitimately available benefits are not claimed. It does not split this between those who choose not to (Tony Blair: people like me do not need family allowance), those who can't face the virtual paperwork (Job seekers required to apply for the job from which they have just been fired as it matches their profile), and those simply not aware of the benefits available. Many countries, not least the magic Estonia, arrange to pay entitlements automatically, so no claim is needed and there are thus no fraudulent claims. Estonia also saw what the public sector needed to do to allow the private sector to go digital (e.g. the e-residency programme for non-resident non-citizens) and did something about it.

The credibility of legal processes was already under strain with the Post Office Horizon scandal, where the underlying problem was, and remains, the unrebuttable 'rebuttable presumption' by the law that a computer acts like a mechanical device. It took until early in 2025 to have a consultation, and the response is still awaited. Now we also have the sorry sight of everyone (even Fujitsu) waiting for the Inquiry which has to give everyone mentioned a chance to respond. There were plenty of other very significant problems about the Lawyers' ethics, for which see Richard Moorhead's freely available book: *Frail professionalism?* English law is widely used when there is an option to select applicable law, not just because it is in English and is flexible but predictably follows precedent, but also because the awarding of costs is controlled. (A good example is that from 1950 where the conviction for not showing an ID card was upheld, but the costs awarded against the government and an unconditional discharge given.) Working out which law applies wasn't a problem in the middle ages when the action was where the person was, and extraterritoriality was only relevant for witchcraft and the like. International shipping needed conventions, but these were not applied to internet packets, not least because there is an innate US aversion to accept that laws and legal processes can be different elsewhere, as evidenced by the various 'status of forces agreements' and the non-adherence to the International Criminal Court.

Sellar and Yeatman's parody of English history '1066 and all that' noted in 1930 that "America was thus clearly Top Nation, and history came to a . ." 'History' has presumably restarted since 20 January 2025 as the US lead is no longer 'clear'. This may also mean that there is a chance that someone can come up with a coherent basis for establishing applicable law for services provided online instead of the meaningless 'mutual recognition' or the confused mess of xenophobia and supposed openness that is being applied. For example, an employer in the gig economy is now forced to confirm my right to (continue to) work in the UK and has chosen a Canadian provider for this task. The said provider, despite being on the officially approved list, does some processing in the US, but is requiring me to consent to this detail instead of accepting it for necessity for contract. This is a pointless waste of time but also a drag on the economy (the employer have only known me since 1976), yet it is presented as an opportunity for the private sector. How are foreign tourists going to get into bars? There's plenty of enthusiasm for innovation, but little clear idea of what is trying to be done. The Home Office has at least come out with the economic analysis of the online age checks and are expecting parliament to sign off despite the overall negative benefit for most of the predicted range. See

https://www.legislation.gov.uk/ukdsi/2026/9780348284980/pdfs/ukdsiod_9780348284980_en_001.pdf