

AI: opportunity or threat for the legal profession?

Native to the freshwater lakes of Mexico City is the Axolotl – a salamander that boasts unique powers of regeneration. Following assault from a hungry predator, it can regenerate its own limbs, spinal cord and even heart. This striking adaptation has allowed it to survive the rough and tumble of Mexico's waters for the last 10,000 years despite its unassuming physicality.

The McKinsey Global Institute concluded that the impact of Artificial Intelligence (AI) – the simulation of human intelligence by software-coded heuristics – will have 3,000 times the global economic impact of the Industrial Revolution. In the eye of the AI storm is the legal profession, which is forecast to lose 114,000 jobs to AI-based automated systems offering increasingly frugal clients more cost-effective legal solutions. To survive, the profession – like the Axolotl – must adapt to its changing ecosystem. It must deploy one of nature's oldest strategies: resilience by regeneration.

This essay argues that the threats posed by AI are formidable, but not fatal. With the correct adaptations, these can be reframed as opportunities.

The traditional pyramid business model of law firms is coming under immense pressure. Clients are less open to incurring significant fees on due diligence and document review when AI could do the same work with greater speed and accuracy at a fraction of the price. JP Morgan's Contract Intelligence platform can now review 12,000 annual commercial loan agreements in the time taken to (thoroughly) read this essay. To complete the same task would have cost the financial service behemoth 360,000 hours' worth of legal fees.¹

Increasing automation does not necessarily equal job cuts, however: the arrival of the ATM did not precipitate the demise of the bank teller. Clearly, it would be ill-considered to draw parallels too closely. But a nervous economy is already making clients hesitate before commissioning expensive lawyers. Integrating AI into the services provided by firms could relax these nerves by increasing efficiency and strengthening value for money. This was recently illustrated in *Pyrrho Investments v MWB Property*² where Master Matthews determined that the use of predictive coding for the purpose

¹ <https://reports.jpmorganchase.com/investor-relations/2016/pdf/2016-annualreport.pdf>

² *Pyrrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256

of disclosure would lead to greater accuracy and was in accordance with the Overriding Objective. An opportunity arises for proactive law firms to gain competitive advantage by offering greater output for the same price.

To achieve this, law firms must respond radically with a new business model fit for modern times. It is no good hosting panel events on AI, without *seriously* investing in it. Partners should commit to investing a meaningful percentage of annual profits in developing in-house legal AI solutions before their clients do this themselves. Firms have made a start, but not nearly aggressively enough: regrettably, trainee solicitor work still overwhelmingly consists of document review and due diligence. These tasks are ripe for automation.

Other aspects, however, remain harder to automate due to the nuance of fundamental legal principles. Consider ‘unconscionability, ‘good faith’ or ‘reasonableness’. Within a legal context these terms lack a stable definition; their determination instead depends on a web of further interrelating and contextual factors. Attempts to convert vague legal rules into digestible constants for algorithmic consumption risks calcifying naturally dynamic concepts. In this sense, AI – in its unmatched ability to carry out review-based tasks – will provide opportunities for law firms to dedicate greater focus to resolving more complex, lucrative and, frankly, interesting legal issues where human judgment remains best placed to advise.

The very disruptiveness of AI creates further opportunities for the legal profession to profit. AI will pose novel questions of underlying substantive law; the legal profession will experience a surge in demand for advice and guidance, as clients struggle to navigate new and murky waters. For example, how should liability be allocated where an adverse outcome occurs due to an *autonomous* AI system? This will be particularly tricky regarding causes of action which require a *mens rea*.

The answer will likely be messy: different forms of AI will require different treatments. Where AI is used merely as a tool, it should be treated as precisely that – no different to a pen used to sign a contract, or a knife used to intimidate. But what if an AI machine trades stocks in its own name and breaches Market Abuse Regulation by, let’s say, leveraging insider information to maximise profits?

If AI reaches the point of indistinguishability from humans, it follows that it should also have comparable legal status. How should liability be determined in scenarios in-between either extreme described above?

Untangling these questions will provide a steady workstream for the legal profession whilst also creating jobs in specialist practice areas. To capitalise, the legal profession must bolster capabilities in the fields that will characterise the disputes of tomorrow. It is surprising that no mandatory legal education on AI currently exists: incorporating a selection of AI based modules onto the Solicitors Qualifying Exams would be a good start.

AI can initiate more than just commercial opportunities. Investment in AI, as one element of a proper funding package, can offer the government the beginnings of a solution to the consequences of decades of legal aid funding reductions. Algorithmic decision tree software is already being used to turn an individual's convoluted grievance into a legal claim thereby offering alternatives to inaccessibly expensive initial legal advice that often hinders access to justice. This will, surely, play into the hands of punters and litigants in person rather than London's legal elite. Nevertheless, with 64% of the profession understood to believe that access to justice has declined over the last decade, AI products offer a welcome opportunity to strengthen this fundamental pillar of the rule of law.³

In conclusion, existential threats are often the stimulus for radical and enduring change. Though the threat may be novel, the remedy is age-old. Adaptability, whether in the freshwater lakes of Mexico or the howling winds of Bishopsgate, is the common currency for survival. Those who do, will realise the opportunities of the AI revolution; dawdlers will fall by the wayside.

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³ <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/nearly-two-thirds-of-lawyers-believe-access-to-justice-has-worsened-over-the-last-decade>