AI: Opportunity or Threat for the Legal Profession?

'The other cases I provided are real and can be found in reputable legal databases'[1]

As Steven Schwartz, a personal injury lawyer from New York, found out to his cost when he used ChatGPT to prepare a court filing, artificial intelligence (AI) systems do not yet pose an existential threat to the legal profession.

A decade ago the 'yet' would have been surprising. Now it seems obligatory. In 2023, Goldman Sachs estimated that 44% of all legal jobs in the US could be replaced by generative AI;[2] according to LexisNexis survey, almost half of lawyers believe that generative AI will 'transform' legal practice.[3] Geoffrey Vos was therefore articulating a widely-held opinion when he stated that the answer to the question of whether the technology would affect the legal profession 'is obviously "a lot"'.[4] But threats to the status quo should not be conflated with threats to the profession itself.

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[1] ChatGPT, quoted in Geoffrey Vos MR, 'Speech by the Master of the Rolls to the Bar Council of England and Wales' (*Courts and Tribunals Judiciary,* 18 July 2023) https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-bar-council-of-england-and-wales/

[2] Joseph Briggs and Devesh Kodnani, 'The Potentially Large Effects of Artificial Intelligence on Economic Growth' (Goldman Sachs, 26 March 2023) https://www.gspublishing.com/content/research/en/reports/2023/03/27/d64e052b-0f6e-45d7-967b-d7be35fabd16.html

[3] 'International Legal Generative AI Report' (LexisNexis, 22 August 2023) https://www.lexisnexis.com/pdf/lexisplus/international-legal-generative-ai-report.pdf?

[4] Geoffrey Vos MR, 'Speech by the Master of the Rolls to the Bar Council of England and Wales' (*Courts and Tribunals Judiciary,* 18 July 2023) https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-bar-council-of-england-and-wales/

The apparent consensus on the transformative power of AI is not reflected in any agreement on how to define it.[5] The UK government has based its definition on 'adaptability' and 'autonomy',[6] while the EU has chosen to emphasise the inference of outputs from inputs.[7] Whichever way the technology and its definition develop, there are several areas where AI will alter the established legal profession.

First, process-driven tasks such as drafting, due diligence and document review. Such technology already exists: Harvey, based on OpenAI's GPT-4, has been used by large law firms for contract analysis and due diligence. So-called 'self-driving' contracts, which automatically update parties' rights and obligations by applying pre-set objectives in changing circumstances, may soon be possible.[8] These changes could reduce the need for armies of junior lawyers, making litigation cheaper and reducing the manpower advantage of larger firms.

Second, legal advice. Machine learning already shows potential: one attempt to predict the decisions of the US Supreme Court predicted 28,000 case outcomes with

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[5] Pascal D. König et al., 'Essence of AI: What is AI?' in Larry A. DiMatteo et al. (eds), *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (CUP, 2022), p. 18

[6] Secretary of State for Science, Innovation and Technology, *A Pro-Innovation Approach to AI Regulation* (CP 815, 2023), p. 22 https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper

[7] 'Artificial Intelligence Act: Council and Parliament strike a deal on the first rules for AI in the world' (European Council, 9 December 2023) https://www.consilium.europa.eu/en/press/press-releases/2023/12/09/artificial-intelligence-act-council-and-parliament-strike-a-deal-on-the-first-worldwide-rules-for-ai/

[8] Anthony Casey and Anthony Niblett, 'The Present and Near Future of Self-Driving Contracts' in Ernest Lim and Phillip Morgan (eds) *The Cambridge Handbook of Private Law and Artificial Intelligence* (CUP, forthcoming) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3941915

70% accuracy.[9] A more accurate predictive model, able to translate its predictions into natural language, could give individuals a reliable assessment of their legal position, encouraging effective negotiation and settlement, and eroding the profession's monopoly on legal advice.[10]

Third, dispute resolution. While AI already plays a limited role in some jurisdictions – for instance, in risk assessment for re-offenders in some US states[11] – its use has developed furthest in China, where some courts use machine learning to analyse fact patterns and recommend sentences.[12] Fully automated dispute resolution is not yet technologically possible, but it would (in theory) be quicker, cheaper, and more efficient than traditional arbitration or litigation. It might even be fairer. Human judges, being human, can be inconsistent or biased: they may be influenced by factors ranging from the race or gender of the defendant to the reluctance to decide multiple consecutive cases the same way.[13] AI judges could come to be seen as more reliable than humans, in much the same way as automated judging in tennis and football.[14] Such a future could hypothetically remove the need for counsel and solicitors altogether.

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[9] John Morison and Adam Harkens, 'Reengineering justice? Robot judges, computerised courts and (semi) automated legal decision-making' [2019] 39(4) *Legal Studies*, 632

[10] Florence G'sell, 'AI Judges' in Larry A. DiMatteo et al. (eds) *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (CUP, 2022), p. 357

[11] *State* v. *Loomis*, 881 NW 2d 749 (Wis. 2016)

[12] Rachel Stern et al., 'Automating Fairness? Artificial Intelligence in the Chinese Court' [2021] *Columbia Journal of Transnational Law* 59, 526

[13] Florence G'sell, 'AI Judges', p. 362

[14] Roger Brownsword, *Rethinking Law, Regulation and Technology* (Edward Elgar Publishing, 2022), p. 114

However, it would be wrong to see AI as an existential threat to the legal profession. It its present state, AI has four crucial limitations that will hinder its use in legal work: inaccuracy, opacity, inflexibility, and lack of trust. Addressing these limitations will provide new opportunities for the legal profession.

First, inaccuracy. One of the primary obstacles to the use of machine learning or generative AI for drafting, advice or decision making, is that these models are only as good as the data on which they have been trained. In addition, generative models are prone to 'hallucinations', as Steven Schwartz discovered. AI is particularly vulnerable where evidence is contradictory – precisely the kind of situation that arises in factual disputes in court.[15] The adoption of AI tools will increase demand for verification by human lawyers.

Second, opacity. AI systems tend to operate on a 'black box' basis: the parameters they use to produce outputs are not intelligible to humans.[16] This lack of transparency is troublesome in a judicial context: in America, the Kansas Court of Appeals recently ruled that a defendant had a right to see his risk assessment so he could 'challenge the accuracy of the information'.[17] Again, the opacity of AI may

[15] Ernest Lim, 'Review: Law by Algorithm' [2023] *Oxford Journal of Legal Studies* 43, 668
[16] Florence G'sell, 'AI Judges' in Larry A. DiMatteo et al. (eds) *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (CUP, 2022), p. 351
[17] *State of Kansas v John Keith Walls*, No. 116,027 (Kans., 2017)

present an opportunity for legal professionals to explain, interpret or challenge its decisions.

Third, inflexibility. Consistency, one of AI's ostensible strengths, may be a limitation in a legal context. If AI systems for legal advice and dispute resolution rely on the pattern of past cases, they are likely to reinforce past judgments, rather than making distinctions and departing from precedent where necessary.[18] In novel cases, humans will not be readily displaced.

Fourth, lack of trust. The most difficult challenge for using AI in legal work – whether due diligence, legal advice, or adjudication – is building trust. Depending on their parameters and training data, AI systems may lead to inequality or discrimination.[19] Further, no matter how fair or accurate, AI systems may never be trusted to make decisions about life and liberty, simply because of their lack of humanity. If judges are trusted to make such decisions, it is only partly because they apply precedent and principle to facts; it is also because they are seen to be the 'lynchpin of the rule of law'.[20] That will not be easy to automate.

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[18] Ernest Lim, 'Review: Law by Algorithm' [2023] *Oxford Journal of Legal Studies* 43, 668

[19] Antje von Ungern-Sternberg, 'Discriminatory AI and the Law' in Silja Voeneky et al. (eds) *The Cambridge Handbook of Responsible Artificial Intelligence: Interdisciplinary Perspectives* (CUP, 2022), pp. 252-3

[20] Lyria Bennett Moses, 'Not a Single Singularity' in Simon Deakin and Christopher Markou (eds) *Is Law Computable? Critical Perspectives on Law and Artificial Intelligence* (Hart Publishing, 2020), p. 220

These limitations mean that the impact of AI will not be immediate. Furthermore, they present as much of an opportunity for the legal profession as a threat. Previous technological developments have tended to create new types of disputes, new legal categories, and, as a result, a greater need for legal work.[21] The development of AI is likely to do the same.

Even if a smaller number of lawyers are required in the distant future, a profession's vitality is not measured in its headcount. AI presents the opportunity for the development of a more productive legal profession, focused on the most interesting and complex work.

Words: 993

[21] Gregory Mandel, 'Legal Evolution in Response to Technological Change' in R. Brownsword (ed.), *The Oxford Handbook of Law, Regulation and Technology* (OUP, 2016); Donald Gifford, 'Technological Triggers to Tort Revolutions: Steam Locomotives, Autonomous Vehicles, and Accident Compensation' [2018] 11 *J Tort* L 71