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Striking a Balance Between Artificial Intelligence and Law

I Dr. András SZECISKAY

Les avocats sont menacés par l'image de l'Intelligence Artificielle, étant le conquéreur du domaine juridique depuis de nombreuses années. En regardant la montée des sociétés LegalTech et Predictive Analytics, sans parler de l'introduction de juges robots, il peut sembler que l'avenir de la profession soit en danger. Réagissant à cela, le but de cet article est de vérifier la réalité derrière certaines inquiétudes liées à l'IA et de souligner le rôle de soutien que la technologie peut jouer dans la vie des praticiens du droit. Cet article vise à peindre un tableau équilibré des risques et avantages potentiels liés à l'utilisation de la technologie dans la justice et dans la vie des cabinets d'avocats.

Introduction

The year 2020 will be remembered as an unprecedented time, filled with extraordinary demands and challenges, a time when video-conferencing software applications like Zoom, MS Teams, Skype, and many others played a pivotal role in both personal and professional lives. From rethinking teleworking and client meetings, to virtual coffee breaks, a preview was provided about how useful technology can be. This Legal-Tech should be differentiated from systems with Artificial Intelligence (AI), which are systems that use intelligent behavior to analyze their environment and take actions, with various levels of autonomy, to achieve specific goals. However, Legal-Tech can be the gateway for AI.

The question arises whether the experience of the pandemic will encourage legal practitioners to adapt new technologies more broadly—and more fearlessly—in the future, even after the pandemic is over. Indeed, this could bring the shift aspired to by many. According to a survey¹ conducted by AIJA in 2018, half of European lawyers rated resistance to innovation as the first biggest threat to the legal profession. It is time to be bold and think outside the box,

while not giving up the lawyer and human mentality. Be skeptical and perfectionists, even towards AI.

Artificial Intelligence and Justice

“The peculiar traits, disposition, biases and habits of the particular judge will, then, often determine what he decides to be the law.”
(Jerome Frank, *Law and the Modern Mind*, p. 111)

In light of Frank's thought, one could easily assume that a neutral and unprejudiced algorithm is more capable of ensuring the right to a fair trial than a human being. Or, at least it can be a remarkable tool to free up human judges so they can focus on more complicated cases in the future. As an example of this, in 2019, Estonia announced its plan to introduce an 'AI judge' in small-claims disputes of less than €7,000. It would examine documents uploaded by both sides of a dispute and deliver decisions that can be appealed to a human judge.²

costs, impartiality, and consistency through automated decision-making. On the other hand, new technologies might pose certain risks to judicial systems. To mitigate these risks, the European Commission for the Efficiency of Justice (CEPEJ) adopted five fundamental principles on the use of AI in judicial systems: (1) respect for fundamental rights; (2) non-discrimination; (3) quality and security; (4) transparency, impartiality, and fairness; and (5) that it is “under user control.”⁴

Trustworthy Artificial Intelligence

The use of AI must be considered with the greatest reservations to prevent discrimination, especially in criminal courts. To avoid perpetuating existing and systemic bias, trustworthy AI systems are needed. Obviously, even with the best intentions, AI systems may show – and might even continue – the current inequalities in a society. In other words, AI systems are

[...] AI systems are only as good as the data and information provided to them.



only as good as the data and information provided to them. Also, for the avoidance of doubt, discussions should be had about who owns the algorithm and who is responsible for its decisions – its developer or the state.⁵

In 2018, a coalition of more than 100 civil rights, digital justice, and community-based organizations released “A Shared Statement of Civil Rights Concerns,” a publication that highlighted issues with the adoption of algorithmic-based decision-making tools. The contested risk-assessment tools can predict a person’s likelihood of appearance at future court dates and the risk of repeat offenses.⁶

Although algorithms can be excellent tools in straightforward decision-making processes, they are not able to provide neutral predictions about the future – yet. Judging is a mix of skills, including a logical way of thinking, empathy, and creativity. The use of AI could be among the tools used and considered by a judge. By playing a secondary role, it might support a court in the management of cases or in the analyzing of court performance.

Artificial Intelligence and Law Firms

“In the 2020s law firms will have a very clear choice: they will either compete with machines or they will build the machines (themselves) that will compete with other machines.” (Richard Susskind)

While previous technologies principally replaced clerical and support staff, AI and machine learning threaten to displace lawyers themselves. Despite how intimidating it may sound, let us try to dig into the question with an open mind.

Machine Learning

For now, Legal-Tech helps law firms support clients and win. AI systems cannot deal with data they do not know or measure emotional states. Since one key part of lawyering is the skill of assessing unstructured human interactions, AI systems can only take over the tasks that are more routine in their nature, while client-sophisticated advice is typically performed by a lawyer.

For instance, ContractPodAi® is an AI-based Contract Lifecycle Management

(CLM) system. It is a platform that can generate contracts, review third-party documents, and run reports on existing contracts all in one place. In 2019, ContractPodAi® secured nearly €49 million Series B funding led by Insight Partners along with participation from Eagle Proprietary Investments. Another great example is Luminance®, which is an AI platform that uses machine learning to read, analyze, and form an understanding of documents much like a human does. While a lawyer might get bored after reading the hundredth page of a document, the AI never does, thus saving money and time while improving efficiency and client service.

Fast Train Is Coming!

People usually do not realize that their issue is a legal one or, even if they do, they seek the help of the internet first. Disposing of property upon death is an ordinary, but excellent example here. Farewill is a will-

here. Its software analyzes not only the judges and courts by mining public court documents, but also counsels’ winning rates and their experience before specific judges and courts.

Conclusion

As Alan Kay said, “The best way to predict the future is to invent it.” AI influences the demands for legal labour. It can expand the client base and increase the billable hours of a lawyer. It depends on humans whether—or when—to take advantage of it. Keep in mind however, that the driver remains the human being, so why don’t people choose the faster car if it is possible and available?

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writing service that provides a platform for people to write online wills, organize probate services (such as sorting out death duties and taxes on a person’s property), and order cremations. Farewill won ‘best social innovation’ award at the 2020 Europas and raised £20 million in funding.

Consequently, law firms should realize the promises of AI in their marketing. There is a vast pool of potential clients out there. Law firms should be able to collect data on their prospective clients through social media platforms and web searches, and to exploit those data commercially.⁷

Predictive Analytics

Predictive analytics can save countless hours for law firms while revealing hidden connections between entities through powerful visualization tools. Predictive analytics is basically a prediction on how a judge or court will rule in a particular case based on research on previous decisions. Lex Machina® is a remarkable example

1. AIJA in collaboration with the Council of Bars and Law Societies in Europe (September-October 2018): The future of the legal profession survey <https://www.aija.org/en/news/2018-12>.

2. https://www.wired.com/story/can-ai-be-fair-judge-court-estonia-thinks-so/?fbclid=IwAR2TZdQG9aIVIShhs1qd2i7rZLpk6C3ahJKjt5KyQxZyhiw7sx-76JT8xNk&mbid=social_fb&utm_brand=wired&utm_campaign=wired&utm_medium=social&utm_social-type=owned&utm_source=facebook.

3. CCBE (2019): CCBE Comments on the Stakeholder’s Consultation on Draft Artificial Intelligence Ethics Guidelines.

4. European Commission for the Efficiency of Justice (CEPEJ) (2018): European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment.

5. CCBE (2019): CCBE Comments on the Stakeholder’s Consultation on Draft Artificial Intelligence Ethics Guidelines.

6. <http://civilrightsdocs.info/pdf/criminal-justice/Pretrial-Risk-Assessment-Full.pdf>.

7. Dr. Orsolya Görgényi (2017): ‘Wake Up’ How Young Lawyers See The Future, The Journal of the Law Society of Scotland, VOL62 NO.2 – February 2017.