

IBA Annual Conference in Rome 2018

Showcase Panel

The tech revolution: A threat to the core values of civil society and the legal profession

Part 1: Opportunities provided by technology and their correlation with law, values and professional ethics

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Keynote Speech by the Rt. Hon. Sir Geoffrey Vos Chancellor of the High Court of England and Wales

Introduction

1. The tech revolution is reality. We in the legal community can shun it or embrace it, but we will not stop it. The reach of FinTech, LawTech, RegTech, artificial intelligence and digital ledger technology extends daily. My view is that, if we work with rather than against the tech revolution, we can improve the quality and reduce the cost of legal advice and dispute resolution for the new generation of businesses globally. There are risks, of course, but so long as we are aware of them, we can minimise their adverse effects.
2. My starting point is that young people will rightly no longer accept that everyday legal advice and justice are the only things they cannot obtain instantly or the next day by a few taps on their smart phone. The older generation of lawyers, judges and court providers must therefore be instrumental in providing legal systems that are up to date, cost effective and make the best use of all appropriate modern technologies.
3. I am a judge, so you may think my contribution is light on the philosophy implied by the title of this session, and heavy on pragmatism, but '*c'est la vie*'.

What does my approach mean?

4. My approach embraces the early adoption of online dispute resolution, the use of LawTech to cut down the mechanical and repetitive tasks undertaken by lawyers at all levels, whether in transactional work or in litigation, and the use of FinTech and RegTech to automate transactions and ensure that they can be undertaken seamlessly across borders on the blockchain.
5. Ultimately, it will result in a society that is the master of technology. It will be a society where human legal advice and decision-making, and indeed all endeavour, are more focused, based on a far more reliable evidential foundation, and therefore of more value to businesses and consumers alike.

What are the downsides of my approach?

6. There are, as the title of this session implies, a number of arguable or potential downsides of my approach. They include:-
 - (1) The fact that much legal advice in the future will be delivered online and without face to face interventions.
 - (2) The suggestion that increasing use of technology will lead to the legal profession becoming over-commercialised and uninterested in serving the client.
 - (3) The fear that online dispute resolution will result ultimately in decision-making by machine, making human judges redundant and true justice and fairness obsolete.
 - (4) The forecast that the use of LawTech and artificial intelligence will hugely reduce the chargeable hours available to lawyers, because transactional documentation, regulatory compliance, and discovery

in litigation and arbitration will all be undertaken by machines.

- (5) The suggestion that cyber-crime will increase exponentially and provide unstoppable opportunities for hackers, scammers and fraudsters generally.
 - (6) The fear that the accumulation of big data paves the way for rule of law abuses and will allow governments with totalitarian tendencies to hinder free speech and to abrogate dissent.
7. Let me look briefly at each of these downsides briefly in turn.

Face-to-face legal advice

8. There is, I think, no doubt that much, if not most, legal advice will in the future be delivered online and without face to face interventions. But I hazard that young clients would want it that way. It is time consuming to see a lawyer. Much transactional advice can be more efficiently delivered online. This may include everyday transactions like buying, letting or selling property, dealing with succession issues, getting divorced, dealing with regulatory compliance, and even concluding straightforward business deals.
9. Legal advice will still need to be delivered by human beings, even face to face, in some fields and for some issues. One can imagine that significant business transactions, custody of children, defence of serious criminal charges, may fall into this category. But machine learning will enable the legal advisers to be better informed even in these areas. The legal advice, however delivered, will be assisted by artificial intelligence, and the data processing that that entails, but explanations and evaluations will always be required by humans.
10. I have no doubt that we can use LawTech to cut out manual processes without depreciating the quality of advice that

individuals and businesses receive. We will, as a necessary safeguard, need to introduce systems that allow the client to know when they are receiving advice generated by artificial intelligence and when they are receiving advice that emanates from a human lawyer.

11. But none of that should make us think that machine assisted legal advice is something to be frightened about. It has the potential to reduce legal costs, to allow legal advice to be delivered more quickly, and consequentially to increase access to justice.

Over-commercialisation of the legal profession

12. The suggestion that increased use of technology will make our legal professions over-commercialised and inadequately client-centred seems to me to be a generalisation. Let me deal with this alongside the idea that LawTech will reduce billable hours.
13. LawTech will obviously reduce the hours worked by human lawyers in undertaking due diligence, discovery and many other manual and repetitive processes. But, over time, a far greater percentage of our populations will require legal advice in all fields, as they become economically active. The lawyers will, therefore, have plenty to do even when they are assisted by machines. Our highly trained lawyers, even our young lawyers, will be able to concentrate on productive client-facing legal work for the direct benefit of the growing number of clients in need of legal advice. I would suggest that the use of technology will direct our lawyers to become more rather than less client-focused. I doubt that commercial imperatives will be affected one way or another.

Machines instead of judges

14. Online courts and other forms of online dispute resolution are absolutely essential if we are to deliver justice to those brought up in a technological era. The delays and expense of our existing systems are inexcusable, when online solutions are available.
15. But there is no reason whatever why decision-making should be undertaken by machines. Instead, it will, like legal advice, be assisted and informed by machine processed data. It is all about design and control of the systems.
16. Individuals and businesses are unlikely to have confidence in decision-making that is made by machines alone, but they are equally unlikely to have confidence in decision-making that ignores the available data. It is, therefore, necessary to use machines to produce the background information for the judge or human decision-maker, whether judge or arbitrator, to base her decision.
17. This approach should lead to more, not less justice.

An exponential increase in cyber-crime

18. Cyber-crime is already increasing fast. It is inevitable that criminals will use artificial intelligence and digital ledger technology to further their nefarious purposes. The law enforcement agencies and regulators are already well aware of this and use all available efforts to stay one step ahead.
19. We cannot accept no-go areas on our streets. In the same way, we cannot allow the risk of cyber-crime to prevent us taking advantage of the massive benefits that the use of legal technology will bring to clients and the legal community alike. Instead, we need to develop enhanced and effective security systems to protect our cyber world as we protect our physical world.

Totalitarian control through big data

20. So, I come to the big question. Will the accumulation of big data really lead to abuses of the rule of law and allow governments with totalitarian tendencies to obliterate dissent. Of course, it is possible. But again, I am not sure that technology makes these abuses any more or less likely. We see a growing global trend towards nationalism and parochialism. Interestingly, that trend is precisely opposed to the trend towards borderless businesses, the use of the blockchain, cryptocurrencies and smart contracts.
21. Countries where the rule of law has been most challenged have managed to impose central control and combat dissent, long before artificial intelligence. George Orwell imagined 1984 long before computer processing, let alone the blockchain, was invented. Of course, the Chinese system of social credits is made possible by the use of big data, but that does not mean that China would not anyway, in its absence, be a highly regulated society.
22. There is, of course, a risk that big data will be abused, but rule of law abuses have always existed. I would hardly regard this as a good reason for halting technological progress.

Conclusions

23. The legal profession, the justice system and the software experts need, I think, together to work out how to cater for a modern generation with a new technological capability. Put bluntly, I do not regard the tech revolution as a threat to either the core values of civil society or to the legal profession. We must keep in mind the reasonable expectations of the new generations in our society. They will rightly criticise us if we fail them, by failing to make good use of the advances in artificial intelligence to improve their lives.

24. Legal advice will not look the same in 20 years, but citizens and businesses will still be in need of help and assistance in their professional, commercial and private lives.
25. One final thought. Let us make sure that we train our lawyers appropriately for the new digital age. Educational structures and courses designed for the 19th and 20th centuries will not enable our lawyers and judges of the future to capitalise on the advantages of technology for the benefit of clients and litigants.

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