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RESEARCH WEEK 2017 LAW WITHOUT LAWYERS – SESSION WRAP UP

BY ANDREA PERRY-PETERSEN

THURSDAY 19 OCTOBER

SUMMARY

In October 2017 I participated in a symposium “Law without Lawyers” as part of Research Week at Bond University. This is an overview of the day. Discussions covered the types of technologies changing the practise of law, and the implications of those technologies for Judges, lawyers and dare we forget, the customers / end-users of our judicial system, the clients.

Introduction

Anyone who understands the current real-life applications of Artificial Intelligence, chat bots or even document assembly would not for a minute imagine that law will be practised without lawyers in the immediate future. To quote Northwestern University School of Law Dean and Professor Daniel B Rodriguez “deep blue didn’t put chess out of business... lawyering is not going to be put out of business. Human judgment will be instrumental”.

However, discussing the possibility of “Law without Lawyers?” allowed for the exploration of such ideas (fears, hopes and dreams depending on your background!), and the specific ways in which law may, in fact, be practised to some degree without human input along every step of the detailed way. This included the role of the internet of things, augmented reality, blockchain, document automation, predictive analytics, algorithmic decision-making, online dispute resolution and self-executing contracts. Whether the assertion in my opening sentence remains true further into the future, well, read on....

““Law without lawyers” at Bond University - so many questions, today we discuss the possible answers”. @katgallow @BondUniversity - tweeted by me at 10:30am.

But did we?

Setting the scene

The symposium was hosted by the Centre for Professional Legal Education at Bond University during its Research Week in October last year.

Executive Director of the Centre, Professor Nick James welcomed participants and introduced the keynote speakers. You can read the agenda for the day [here](#), which was split into 3 sessions.

In acknowledging the traditional owners, Associate Professor Dr Kate Galloway also recognised the extensive disruption experienced by our First Nations peoples. The symposium was held in a beautiful light-filled room surrounded by some of the most striking (and large!) Aboriginal art that I have ever seen. Despite devastating interruption to culture and ways of being and doing, cultural knowledge and technical expertise of the highest calibre was on display.

The first session is best described as a conversation between Matthew Burgess, Director, View Legal and Associate Professor Dr Kate Galloway. It covered the role of the Academy in teaching content or skills, whether a law degree is really a tool to learn how to learn (what is the value-add?) and how Matthew believes legal or other regulation will be ineffective because it will be redundant before it is in place. He also challenged the assumption that lawyers are the best people to deliver solutions – lawyers may be irrelevant.

The second session was a panel discussion and debate: "The implications and consequences of law without lawyers". From that description you are unlikely to imagine the engaging and entertaining discussion that it was. Professor James developed a [hypothetical](#) to illustrate current issues which were addressed by different panel members based on their area of expertise including:

- the proliferation of online legal services,
- whether such services are providing legal information, assistance or legal advice,
- the role of regulation and ethics,
- the use of discretion in decision making,
- unconscious bias in Artificial Intelligence and
- ethical and practical considerations relating to automated dispute resolution and self-executing contracts.

After lunch, the audience was split into groups to address issues relating to specific areas of law namely access to justice, administrative law, family law, consumer and criminal law and the day concluded with each group reporting their findings.

So many questions, so few answers...

Across all sessions these were the issues that arose:

- Are lawyers the people best placed to develop legal solutions? If not who are?
- Do clients expect a fiduciary duty from their lawyer? Or just a business relationship?

- Although there are a lot of new “legal products” entering the market, are they doing what they say they do?
- Have such on-line products/apps been user-tested and are they really solving clients’ problems? And will they lead to the outcome of the clients are seeking?
- Or are they actually creating more work for litigators? (eg DIY wills). Is it too soon to know?
- Is the information that an app provides legal advice?
- How will blockchain affect the role of lawyers? (or... how won't it??)
- Do clients want a human lawyer? (my comment – maybe we should ask them #designthinking)
- Or do they really need a social worker or psychologist?
- If a hologram advocates on behalf of the client is the client self-represented?
- When there are limited graduate jobs in firms i.e. traditional training grounds, whose responsibility is it to equip graduates with skills needed for practice? And exactly what will those skills be in the future?
- Should decision-makers rely on an algorithm in the exercise of the discretion?
- If an algorithm leads to more consistency in judicial decision-making and quicker trials, shouldn't they be used?
- If "computer says no" would a decision maker feel bound to accept that?
- Can you foresee the judiciary being completely automated? If not, why not?
- Can computers ever be truly "ethical"? Does it matter i.e. is that just a semantic rather than substantive issue?
- Is it possible that the Judiciary will be subsumed into the other two arms of government? (and would a postal survey be required before this happens?)*
- Will regulation be redundant before it is developed?
- And the big one... do machines govern our behaviour or do we govern them? (well if you are fearful about this remember what Edmund Burke said years ago - “All that is necessary for evil to succeed is that good people do nothing”).

The changing legal environment

On the drive there I was listening to a radio report about significant changes in consumers’ retail habits due to the increased availability of online purchasing. Historically, stores have supplied goods they think customers want in the way vendors choose, but purchasers are regaining power in the market by demanding what they want and how they want it. Overall there is a move to a greater customer experience leading to an online purchase.

That situation struck me as highly relevant to the legal industry, in which lawyers (the “sellers”) have historically had more power than clients (the “buyers”) eg “you will come to my office and I will charge you an hourly rate for the advice that I determine you need”. There are many factors as to why the balance of power is shifting... but shifting it is.

Just as with changes in retail habits, we may see the demise of the typical legal shopfront, the availability of more online services or products or a combination of both to maximise clients’ experience.... an augmented lawyer?

This list is obviously not exhaustive but due to:

- shifts in client expectations;
- increasing numbers of law graduates;
- extensive and readily available information;
- discontent among (some/most?) mid-career lawyers; and
- growing awareness of the application of technology to legal services (there are some new technologies but most have existed for a while, but are being applied to a new challenge),

“digital disruption” is coming soon to a legal practice (and probably a legal education provider) near you.

Conclusion

We decided that lawyers will be around for some time yet (good news to some). However, the profession – or more accurately the provision of legal services – is undeniably evolving. This progression will not necessarily occur in a linear way. And although it is true that some aspects of lawyers’ jobs will be automated, some of the newer technologies (read AI and blockchain) may create more work for human lawyers and indeed new and different practice areas – and overall lots of opportunities for the exercise of creative human agency.

The answers to all the questions remain “under development” and unlikely to be found from any purely logical consideration of the issues. But one thing is for sure, there will be no answers without continuing to directly confront and discuss the issues and continue to ask the questions.

But it will all be okay! I agree with Geoffrey Colon, Communications Designer at Microsoft who says “I think life is more healthy when there are more QUESTIONS than ANSWERS”.

So if you are a lawyer who wants to prepare for the possibility of a future that may involve “law without lawyers” the best approach is to keep engaging – maybe you will be the one to develop some of the answers. Oh, and bring with you a good dose of resilience and flexibility ...

It was a great day and kudos to the Centre for Professional Legal Education and Bond University Research Week with its very fitting theme to "Imagine Innovate Inspire".

*Australian reference – in late 2017 the government held a postal survey whether to legalise same sex marriage at a cost of \$100M. The answer was yes and it has now been legalised.

#weareallonthejourney
 #bebraveandhavefun
 #accesstojustice
 #legaleducation
 #digitaldisruption