

Review Essay

The Legal Profession in the Digital Age

The Impact of Technology and Innovation on the Wellbeing of the Legal Profession by Michael Legg, Prue Vines and Janet Chan (eds) (2020), Intersentia, 340 pp, ISBN 9781780689555

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Abstract

New technologies have made their way into legal practice. *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession*, a collection of essays edited by Michael Legg, Prue Vines, and Janet Chan, provides an overview of the changing conditions under which law is practised in Australia and beyond, and of the impact that these changes may have on the wellbeing of the legal profession.

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I Introduction

Where is the legal profession heading? Are innovation and new technologies changing the conditions under which law is practised in Australia and beyond? Will the gig economy, artificial intelligence, and the new organisational structures facilitated by technology aid the legal profession in exiting the hole in which it seems to have sunk during the last decades in terms of life-quality, wellbeing, and work satisfaction? These and other related compelling questions are addressed in *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession*, a volume edited by Michael Legg, Prue Vines and Janet Chan.¹ The book is structured in twelve engaging, well-written, and well-researched chapters. It provides an original narrative on the Australian legal profession by joining two, often surprisingly, separated academic discourses: the one on the wellbeing of lawyers and the one on the impact of technology on legal work.

II Overview

Chapter 1 of the book, the introduction, presents in a concise, effective way the main dynamics characterising the contemporary changing field of lawyering and how these are altering legal practice.² The chapter begins by recapitulating the well-known stories of the expanding nature of the legal field and its globalisation, with a glimpse of how the ongoing global COVID-19 pandemic is creating a range of additional stressors for lawyers. The chapter then presents some relevant aspects of the impact of digital technology on legal work. Here, it is compellingly argued that the digitalisation of law has not revolutionised the legal field, as far too often it is argued by law and technology scholars. Rather, the claim is that the availability of new digital solutions provides lawyers with opportunities to become more efficient and to increase revenue; a fact that the authors consider to have a potentially positive impact on the overall wellbeing of the legal profession.

The authors, however, are also not blind to the fact that the digitalisation of law may have negative repercussions, for instance, by decreasing the need of certain professional figures (such as junior lawyers) or by pushing lawyers to work around the clock. New technologies are also facilitating the rise of new business structures for practising law, such as incorporated legal practices, listed law firms, and multidisciplinary practices. An emergent example is the virtual law firm; a technology-based firm that provides access to a network of lawyers who can be located almost anywhere and often use alternative fee arrangements as new ways of practising law. Finally, the introduction claims that the dynamics of the gig economy may bring significant innovation in the market of legal service providers and the ways in which legal work is performed. The focus is on what has come to be known as ‘NewLaw’, which the authors note can take different forms. It can be a dispersed

¹ Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020).

² Michael Legg, Prue Vines and Janet Chan, ‘The Changing Field of Lawyering and its Impact on Practice and Wellbeing’ in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 3.

law firm that assists individual lawyers conduct their individual practices by providing regulatory and administrative support. Alternatively, NewLaw may take the shape of a legal marketplace providing an online platform to connect lawyers and clients. NewLaw firms can also be tech-enabled labour hire services, typically providing more junior or less experienced lawyers to law firms and corporate clients on an as-needed basis.

The remainder of the book is divided into two parts. Part II, 'Change, Stress and Wellbeing', provides the readers with several empirical studies on the wellbeing of different categories of lawyers. Part III, 'Technology, Innovation and the Structure of Legal Practice', has a more direct focus on the impact of technology on lawyers, law firms, and organisational structures.

The empirical chapters in Part II provide a (rather grim) picture of the Australian legal profession. In Chapter 2, Prue Vines and Alex Steel present the result of a survey of law students and draw general conclusions on why they are prone to depression and stress.³ They point to the fact that this inclination may be due to law students' characteristics; more specifically, their tendency to use external, rather than internal, motivating factors. The survey also shows that younger students are more autonomous, a factor that according to the authors would suggest that they may be more resilient during their career. In Chapter 3, Suzanne Poynton and Janet Chan discuss the results of a survey of Australian lawyers concerning the relationship between distress, satisfaction, and work-related aspects.⁴ They conclude that several variables, such as 'effort-reward imbalance', 'over-commitment', and 'work-family conflict' are the main triggers of depression, stress, and anxiety in lawyers. In Chapter 4, Alison Wallace and Imogen D'Souza analyse data from a large national study of Australian lawyers to explore mental health issues and the extent of bullying and sexual harassment among lawyers.⁵ They show that a significantly large number of lawyers has been bullied (46%) and has experienced sexual harassment (one in five).⁶ Chapters 5 and 6, authored by Janet Chan and Holly Blackmore and by Colin James, Caroline Strevens, and Rachel Field respectively, analyse the impact of neoliberalism on public sector lawyers and academics.⁷ Chapter 5 suggests that public sector and community lawyers suffer similar negative psychological symptoms as those working in the private sector due to the commodification, economisation, and increased competition. The former, however,

³ Prue Vines and Alex Steel, 'Student Attitudes to Legal Education: Revisiting the Pointers to Depression and Anxiety?' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 31.

⁴ Suzanne Poynton and Janet Chan, 'The Paradox of Satisfaction and Distress Among Lawyers: Implications for a Changing Field' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 57.

⁵ Alison Wallace and Imogen D'Souza, 'Stress, Bullying and Harassment in the Legal Profession: A Risky Business' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 77.

⁶ *Ibid* 88–90.

⁷ Janet Chan and Holly Blackmore, 'Public Sector Lawyering Stress and Wellbeing: Neoliberalism at Work?' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 105; Colin James, Caroline Strevens, and Rachel Field, 'Law Teachers Speak Out: What do Law Schools Need to Change?' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 131.

score better in terms of job satisfaction than their private sector counterparts, most likely due to the meaningful, socially oriented nature of their job. Chapter 6 presents the qualitative results of national surveys conducted in the United Kingdom ('UK') and in Australia on law teachers' experience of wellbeing and stress. While the authors report that the majority of respondents in both countries were overall satisfied with their work, they were also critical of the 'neoliberal' turn of their universities, which they perceived as detrimental, not only to law teachers, but also to the student experience and their university's performance.

The Part III chapters have a more direct focus on innovation and technology. In Chapter 7, Jennifer Robbennolt examines the connection between ethics and professionalism in legal practice and the wellbeing of lawyers. She suggests that these two concerns are related, with one influencing the other and vice versa.⁸ She also identifies several factors that influence both ethics and wellbeing, such as the adversarial nature of legal practice, time and financial pressures, as well as the leadership and culture of legal workplaces. In Chapter 8, Margaret Thornton discusses how the growth of the gig economy is likely to affect lawyers' wellbeing.⁹ She argues that NewLaw firms, by refusing to use traditional hierarchical structures and time-based billing, seem to fare better in terms of job satisfaction among their lawyers; suggesting that what she labels the 'uberisation' of legal practice may impact positively on the overall wellbeing of the legal profession. But as she also points out, the dynamics of the gig may have negative repercussions, as they are likely to put lawyers in a position of having to overwork and do not create the possibilities and incentives for them to progress in their careers. In Chapter 9, Tahlia Gordon discusses the changes created by legislation passed in New South Wales, which allowed law firms to incorporate their practices and to receive financing by non-lawyers.¹⁰ Gordon welcomes this innovation as having the potential to increase the health and wellbeing of lawyers. However, Gordon also notes that the same developments may have a negative influence on lawyers, especially as they pose threats to the professional and ethical obligations of lawyers and will likely foster bureaucratisation. In Chapter 10, Felicity Bell, Justine Rogers and Michael Legg discuss the potential impact of artificial intelligence on legal work.¹¹ They focus on wellbeing and professionalism from two conflicting perspectives: the traditional model of the profession as a calling and the more modern commercialistic focus of the profession as a business. Through these two models, they explain that artificial intelligence may enhance those aspects of professionalism associated with wellbeing, such as engagement in meaningful work and serving the community,

⁸ Jennifer K Robbennolt, 'Behavioural Legal Ethics and Attorney Wellbeing in Contemporary Practice' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 155.

⁹ Margaret Thornton, 'Is "Uberisation" the Path to Lawyer Wellbeing?' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 177.

¹⁰ Tahlia Gordon, 'Do Law Firm Structures Matter? Incorporated Legal Practices and the Health and Wellbeing of Lawyers' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 199.

¹¹ Felicity Bell, Justine Rogers and Michael Legg, 'Artificial Intelligence and Lawyer Wellbeing' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 239.

through increased efficiency and being able to promote access to justice more widely. Yet, artificial intelligence may also exacerbate existing pressures in the profession such as increasing competitive tensions and giving rise to greater precarity of employment. In Chapter 11, Michael Legg and Justine Rogers assess different fee arrangements in light of lawyers' wellbeing. They argue that the classic billable-hour has adverse effects on wellbeing, due to its focus on performance monitoring.¹² The chapter then considers alternative fee arrangements as the future for legal practice, although they are clear that those alone cannot provide the panacea for the evils of the legal profession.

The book ends with some concluding remarks by Richard Collier in which the connection between legal practice and legal academy is drawn.¹³ By relying on the experience of the UK, Collier acknowledges that for both the professional and the academic lawyer the identification with a professional ideal can harm not only the person, but also the profession and academy themselves. He concludes by noting that, while there seems to be a move to address the wellbeing of legal academics, the road is still long and its systemic nature must be recognised in order to come up with long-term solutions that would be able to address the problems in a satisfactory way.

III The Legal Profession in the Digital Age

This book provides an interesting and timely contribution to the discussion of the legal profession in the digital age. It does so from the relatively unexplored, but meaningful, perspective of lawyers' wellbeing and the extent to which it may (or may not) be impacted by technological changes. It makes two important contributions. First, the book provides a comprehensive, empirically grounded, and up-to-date overview of Australian lawyers' wellbeing in contemporary society. Importantly, the empirical analysis is not limited to the usual suspects of the legal field (BigLaw lawyers), but it also covers those sectors of the profession that often remain unexplored, such as academics, public sector lawyers, and law students. Although it is not entirely clear to what extent these findings are generalisable to other jurisdictions, this is a valuable contribution. This is particularly true in the light of the fact that the collective findings of the first five chapters clearly show that the identity and wellbeing crisis of the legal profession is systemic. Frankly, nobody would be surprised to read that the more commodified and business-oriented lawyers fare poorly in terms of wellbeing, work-life balance, and so on.¹⁴ It is, however, surprising, and rather troubling, to discover that stress, anxiety, dissatisfaction, bullying, and marginalisation hit hard also those sectors of the profession that, at least on paper, have chosen a more community oriented, socially meaningful professional path. It is even more concerning to find out that it involves even law

¹² Michael Legg and Justine Rogers, 'Lawyers' Fee Arrangements and their Wellbeing' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 267.

¹³ Richard Collier, 'Reflections on the UK Experience of Legal Academic Wellbeing and the Legal Professions: Moving Across Silos' in Michael Legg, Prue Vines and Janet Chan (eds) *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* (Intersentia, 2020) 267.

¹⁴ A situation that has been explored extensively in the literature: see, among many others, Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Belknap Press, 1993).

students — a fact that reveals that there is something inherently flawed in the way in which legal studies are structured and organised. More generally, the findings of the first part of the book reveal that the hyper-competitive, neoliberal spirit of our contemporary society has managed to colonise all forms of legal practice, from teaching to research, from public sector law to the classic forms of advocacy. These findings are important. A broad and widespread neoliberal turn of the legal profession, such as the one portrayed by this book, is likely to generate new, and reinforce already existing, forms of inequality and stratification among classes of lawyers, with negative consequences for the overall wellbeing of the legal profession.

The second important contribution of the book is that it provides a comprehensive overview of the issues that are presently salient given the growing use of technology in legal practice. These issues are: the future of professionalism in an increasingly commodified market of legal service providers; the geographical distribution of legal practice; the changing organisational structures of the legal service ecosystem; and the conceptual relationship between technology and professional expertise. Such dynamics are often said to challenge classical sociological conceptions on the agency and the form of the law, and, as such, they may be deemed responsible for disrupting long-established processes.¹⁵ By providing a comprehensive and empirically grounded analysis of such developments, the authors meaningfully contribute to existing debates on the relationship between the legal profession and technology. Particularly significant, in my view, is the transversal discussion on the changing nature of professionalism in a technological world and the extent to which the existing developments are altering power and organisational structures within the profession. Although from different perspectives, all the chapters in Part III of the book address the evergreen question of the sociology of the legal profession; that is, whether the practice of law is a vocation or a mere business, and whether the recent technological developments are leaning in favour of one or the other. As expressed by Evetts, the big question here is whether new technologies are pushing the legal profession toward the classic form of occupational professionalism, characterised by autonomy and collegiality, or whether they are fostering organisational professionalism, which is constituted by a discourse of control imposed by managers in work organisations incorporating rational-legal forms of authority and hierarchical structures of responsibility and decision-making in work procedures and practices.¹⁶ There are no easy answers to these compelling questions, and indeed the suggestions emerging from these chapters are interlocutory. The merit of the book is, however, to bring these issues to the table.

A couple of critical remarks are also worth noting. The first concerns the structure of the book. The second is more substantial and concerns the lack of overarching conceptualisation of the role of technology in law. As to the first point, there seems to be a disconnect between the two parts of the book. The empirical

¹⁵ Julian Webb, 'Information Technology and the Future of Legal Education: A Provocation' (2019) (Special Issue: Law & Human Dignity in the Technological Age) *Griffith Journal of Law & Human Dignity* 72.

¹⁶ See, Julia Evetts, 'Professionalism: Value and Ideology' (2013) 61(5–6) *Current Sociology* 778 <<https://doi.org/10.1177%2F0011392113479316>>.

chapters reporting the wellbeing of the Australian legal profession seem unlinked from the overarching discussion on innovation and technology characterising the book. Because of this disconnect, these chapters do not assess whether technological developments in legal practice are likely to foster or hinder the overall wellbeing of the legal profession. Rather, they are limited to explore the status quo of the wellbeing of the legal profession with no direct link to technology. Considering the overall scope of the book, some reflections upon the theme would have been appropriate.

Most importantly, the book does not frame the role of technology in legal practice in an entirely satisfactory way. Because of this, various chapters end up with interlocutory considerations that either provide an almost apologetic portrayal of new technologies as positive forces able to improve the wellbeing of the legal profession or merely list a number of negative consequences that derive from the application of such technologies to the practice of law. At times, they do both things at the same time, leaving the reader somewhat confused about what kind of impact technology and innovation are actually having on the wellbeing of the legal profession. It is of course possible that the application of new technologies to law may have both positive and negative effects. However, a more theoretically grounded analysis would have allowed the authors to provide a more comprehensive, and perhaps coherent view of these developments.

It has been acknowledged — and I believe that the authors of the chapters in this book would agree — that technological developments are produced within specific social, political, ideological, and economic contexts, and are not the product of universal and abstract rules of progress.¹⁷ If this is true, any work seeking to explore the role of emerging technologies in a given field is compelled to explore the politics and the societal dynamics behind the usage of these technologies. Surprisingly, however, the book refrains from doing so, although some considerations on the political and societal implications of the applications of new technologies in law emerge here and there in the narratives provided by the authors.

To corroborate my critique, I will provide a couple of examples of the usefulness of a more precise theoretical framework. Let us for a moment consider that the application of new technologies to legal practice is a manifestation of what has been labelled ‘digital capitalism’.¹⁸ That is, the digitalisation of the legal field is part of the broadest, latest transformation of the capitalist system of production in which digital technologies constitute ‘the central production and control apparatus of an increasingly supranational market system’.¹⁹ Seen from this perspective, the entrance of new technologies in legal practice, together with some of the findings of this book, become more intelligible. The digitalisation of the legal field, in fact, mainly fosters already existing profit-driven processes of outsourcing, automatisisation, dispersion, and commodification. In other words, digitalisation is further accelerating the economisation and commodification of the practice of law, whereby lawyers are decreasingly disinterested brokers in society and defenders of

¹⁷ Raymond Williams, *Television: Technology and Cultural Form* (Routledge, 3rd ed, 2003).

¹⁸ As I have recently argued: Salvatore Caserta and Mikael Rask Madsen, ‘The Legal Profession in the Era of Digital Capitalism: Disruption or New Dawn?’ (2019) 8(1) *Laws* 1.

¹⁹ Dan Schiller, *Digital Capitalism: Networking the Global Market System* (MIT Press, 1999) xiv.

the public good, and increasingly service providers at the cutting edge of the capitalist economy. Such digitalisation of legal practice will hardly bring about positive outcomes for the wellbeing of the legal profession.

Such theoretical framing allows us also to suggest that, rather than disrupting the legal field, the entrance of new technologies in legal practice is strengthening the power of dominant actors in the field; that is, the power of corporate elite large law firms. These firms are, to date, the main investors in legal technologies, as only they can afford the costly and time-consuming development of artificial intelligence solutions and big data.²⁰ The consequence is that sole, small, and medium size law firms are so far excluded from potential advantages, remaining inevitably behind. This, in turn, generates new forms of stratifications of the legal profession, while at the same time altering the spatial and temporal flows of practice by delocalising and relocating legal work. Existing cleavages between transnational law firms operating a 24/7 business culture through systems of governance that combine local and global elements of business oversight,²¹ and the offshoring of shared service centres have been, in fact, reinforced by technological developments.²² At the same time, new cleavages are arising. While a minority of firms are using technology to reduce bureaucracy in their internal structures and to provide a more meaningful work environment to their lawyers, a large majority is using technology solutions to create new forms of internal hierarchies and, ultimately, maximise revenue. A new, related trend is firms opening alternative delivery solutions teams or offices in less costly locations. These are staffed with contract attorneys, paralegals, and information technology experts, who execute repetitive tasks through more efficient methods thanks to extensive use of technology. Such dynamics are strengthening existing forms and generating new forms of inequality among classes of lawyers, contributing to an overall lack of wellbeing of the legal profession as a whole.

In sum, *The Impact of Technology and Innovation on the Wellbeing of the Legal Profession* constitutes a meaningful and valuable contribution to the field of the sociology of the legal profession in the digital era. It provides the basis for future works that build upon its findings, further deepen the analysis and provide ever more compelling accounts.

²⁰ Robert Ambrogi (2019), 'Legal Tech for the Legal Elite: Observations of Two Conferences', *Above the Law* (online, 4 February 2019) <<https://abovethelaw.com/2019/02/legal-tech-for-the-legal-elite-observations-of-two-conferences/>>.

²¹ John Flood, 'Megalawyering in the Global Order: The Cultural, Social and Economic Transformation of Global Legal Practice' (1996) 3(1/2) *International Journal of the Legal Profession* 169.

²² Julian Webb, 'Legal Technology: The Great Disruption?' (2020) University of Melbourne Legal Studies Research Paper No 897 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3664476>.