

TECHNOLOGY – THE LAST FRONTIER – FRIEND OR FOE FOR BAR AND BENCH?

Clive Elliott QC

And

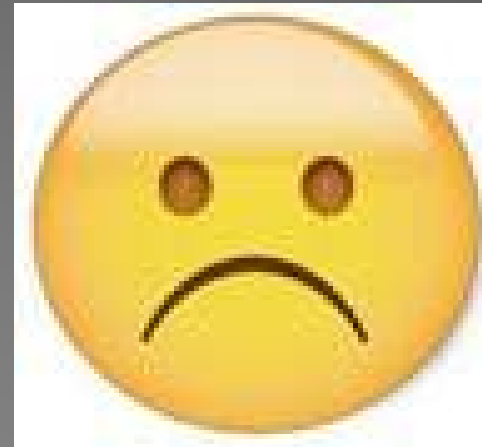
Ron Paschke

WILL IT AND TECHNOLOGY GENERALLY HELP OR HARM THE RULE OF LAW, ACCESS TO JUSTICE, THE LEGAL PROFESSION AND ITS PRACTITIONERS?

Techno-Optimists



Techno-Pessimists



COMPETING VIEWS

- ▶ A - Impact of technology on the rule of law and access to justice
- ▶ Clive - An advantage - aiding the rule of law and access to justice
- ▶ Ron – A threat to the rule of law and broader democracy
- ▶ B - Impact of technology on practice at the Bar
- ▶ Clive - The end of the independent bar as we know it
- ▶ Ron - We can and will adapt and survive

BACKGROUND COMMENTS

THREE QUOTES

- ▶ “Mankind will change more significantly in the next 20 years than it did in the last 300”
- ▶ “Success in creating AI could be the biggest event in the history of our civilisation but it could also be the last unless we learn how to avoid the risks”
- ▶ “Tomorrow belongs to those who can hear it coming”

SOME STATS

- ▶ By 2020 70% of all humans will own a smart phone
- ▶ In 2030, computers will become more intelligent than humans
- ▶ IBM Watson, basic legal advice - 90% accuracy v Humans 70%
- ▶ 70-80% of jobs will disappear in next 20 years
- ▶ 2050 - 50% of the workforce – new “useless class”
- ▶ 2.5 quintillion bytes of data created every day
- ▶ 90% of all data created within last two years
- ▶ 80% of data unstructured
- ▶ Uber /Airbnb

TECHNOLOGY IS ADVANTAGE/AID TO RULE
OF LAW AND ACCESS TO JUSTICE

ADMINISTRATION OF JUSTICE

Traditional

- ▶ Imposed by national laws
- ▶ Judge and statute made
- ▶ Justice paramount
- ▶ Adversarial
- ▶ Universal
- ▶ Lawyer driven
- ▶ Large and complex
- ▶ Slow and expensive

E- Justice

- ▶ Contractual/multijurisdictional
- ▶ Codified/forms based
- ▶ Return on investment
- ▶ Inquisitorial
- ▶ Purpose-built/targeted
- ▶ Lay/self represented
- ▶ Simple/small
- ▶ Fast/cheap

TECHNOLOGY ISSUES

Traditional

- ▶ Analog/hard copy
- ▶ Human
- ▶ Face-to-face/in person
- ▶ Traditional legal reasoning
- ▶ Specialist
- ▶ Arcane/jargon filled
- ▶ Unregulated/opaque
- ▶ Proprietary/secret

E Justice

- ▶ Digital
- ▶ Technological
- ▶ Online/remote
- ▶ Rough and ready/machine learning
- ▶ Routine/general
- ▶ Accessible/natural language
- ▶ Regulation – International Treaties
- ▶ Open source

JUSTICE GAP – THE “MISSING MIDDLE”

- ▶ Public disenfranchisement
- ▶ Cost and delay
- ▶ Imperfect - but quick and cheap

- ▶ eBay ODR process
- ▶ Consumer trust
- ▶ WIPO - UDRP

LORD JUSTICE BRIGGS

- ▶ *Inadequate access to justice*
- ▶ Technology - streamlining procedure
- ▶ Dispute resolution online
- ▶ Future proofing
- ▶ More inquisitorial
- ▶ Initial online interactive process
- ▶ Simplified pleadings

COURT MODERNISATION

UK

- ▶ £1bn over six-years
- ▶ Modernise outdated processes
- ▶ Create swifter, more accessible and more efficient justice system for public

NZ

- ▶ Video links - 25% fewer prisoner escorts in 2015
- ▶ 25,000 online fine dispute applications 2015
- ▶ 98% resolved in 24 hours

- ▶ *MOJ economy drives*
- ▶ Flexible working practices
- ▶ Civil cases - divorce, probate and small claims
- ▶ *Low-level offences*
- ▶ *Online justice forms*

AUTOMATION V AUGMENTATION

- ▶ Watson - level playing field
- ▶ Junior 25-year-plus archive experience v 25 years experience
- ▶ *Law firm surveys*

FUNDAMENTAL CHANGE NEEDED

► BATHURST CJ.

Technology is changing and will continue to change at a fundamental level the practice of law, its application, its administration and potentially the nature of the rule of law itself. As a profession we must **open our minds to these great questions of our century and encourage interdisciplinary dialogue** that will seek to ensure that those technologies facilitate access to justice, and do not diminish the ethical duties that attach to the practice of law

GORDON J.

.....our legal system was facing great challenges in providing appropriate mechanisms for the resolution of civil disputes;

.....trial courts and the Australian legal profession not only faced these challenges, but had a **responsibility to meet** them. Why? Because unless the challenges were faced and met, the **courts risked being sidelined**. And if that happened, the development of the rule of law risked being stifled.

PRACTICAL SOLUTIONS

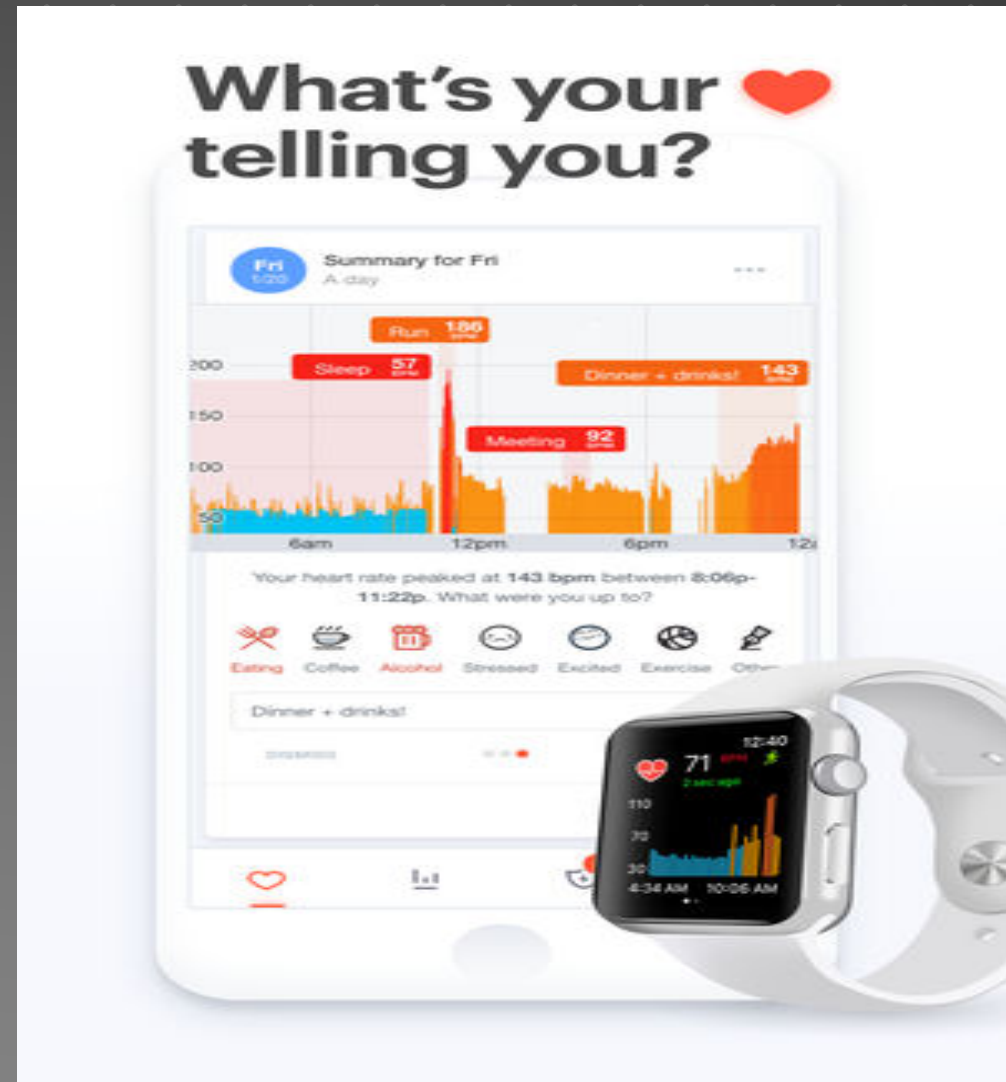
- ▶ Technology not all bad
- ▶ Automation - enhance rule of law
 - ▶ Observe hearings online
 - ▶ Disseminate information online
 - ▶ Automated online complaint systems
 - ▶ Self help and engagement
- ▶ Consumer Action Law Centre - Victoria
- ▶ DemandARefund.com

PROFESSOR ERIC TOPOL

- ▶ Smartphones/big data/technology
- ▶ Revolutionising and democratising health care

CITIZEN SCIENCE

- ▶ *Medicine online*
- ▶ *Calming influence of hands*
- ▶ *Stethoscope - app*
- ▶ Educational and intimate experience
- ▶ Augmenting intelligence of Dr - better decisions

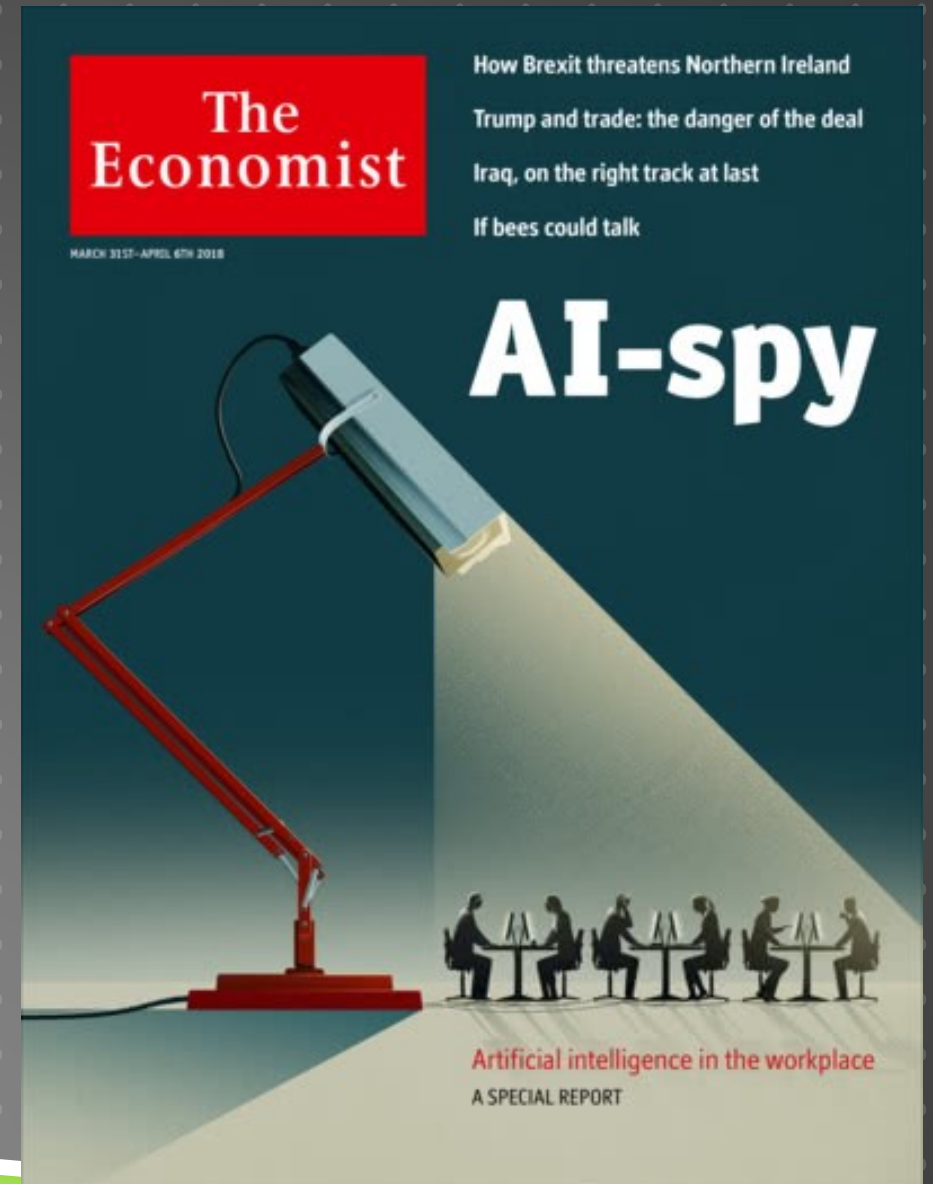


WOODSIDE

- ▶ Increasing complexity – augment decisions
- ▶ 6/8 weeks – 6 minutes
- ▶ 80% of time - collect info - 20% value add
- ▶ Now the opposite

TECHNOLOGY AS A THREAT TO THE RULE OF LAW AND DEMOCRACY

(a deliberately techno-pessimistic perspective)



Artificial intelligence (AI)

A computer system which can perform tasks that normally require human intelligence



Machine learning

A dynamic computer program which can learn from its mistakes and can adjust itself without human intervention



HOW AUTOMATION MIGHT THREATEN THE RULE OF LAW

- ▶ lack of reasons
- ▶ diminished accountability
- ▶ bias
- ▶ side-lining courts
- ▶ lack of transparency
- ▶ inequality of arms

THE END OF THE INDEPENDENT BAR AS WE
KNOW IT!

THE ISSUE

- ▶ LCA - overloaded courts, chronic funding shortfalls, lack of legal services
- ▶ 2016 Edinburgh Declaration - independent referral bars - crucial role - efficient functioning of courts

COMFORT IN THE FAMILIAR

▶ 1979 Laurie Southwick QC

“...[t]here must be no scope for the employment of computers in **applying the law, or in predicting the outcome** of a Court case. Any attempt to do this must be resisted”

▶ 2018 Iain Morley QC:

“As for DIGITAL material, there is more and more of this. You have really got to develop a system for keeping on top of it...if you are a courtroom advocate, print everything out!Get used to it. **TURN DIGITAL MATERIAL INTO PAPER.**”

SOME PREDICTIONS

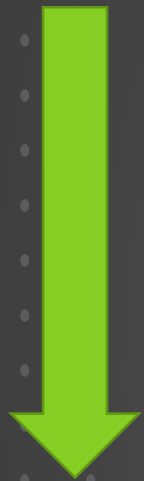
- ▶ “If you study law, stop immediately. There will be 90% less lawyers in the future, only specialists will remain”
- ▶ 70 - 80% of jobs disappear (20 years) barristers?
- ▶ Moodies – moods
- ▶ 2020 apps facial expressions – lying

FUTURE FOR LAWYERS?

- ▶ Paralegals and legal assistants – high-risk
- ▶ Lawyers leveraging off legal assistants – low risk
- ▶ New work practices
- ▶ New breed of practitioner
- ▶ *Technical prowess v ignorance*

HOLLOWING OUT

Sinking Lid /Smaller Pie



- ▶ Govt funding
- ▶ Unregulated competition
- ▶ Solicitor advocates
- ▶ Dumbing down
- ▶ Exclusion
- ▶ Technology creep

Rising Expectations

- ▶ Client expectations
- ▶ Rigid regulation
- ▶ Legal aid provider
- ▶ Pro bono services
- ▶ Training
- ▶ Mentoring



MORAVEC'S PARADOX

- ▶ High level reasoning v simple/routine tasks
- ▶ Logic/algebra v Sensormotor skills
- ▶ Computers - trillion bits per second
- ▶ Humans - 10 bits per second
- ▶ Outgunned
- ▶ Merge with machines - Musk
- ▶ *High bandwidth* interface to brain

SOCRATES – HALLMARKS OF A GOOD JUDGE

- ▶ Courtesy
- ▶ Wisdom
- ▶ Sobriety
- ▶ Impartiality

SURVIVE/PROSPER

- ▶ Rule of law
- ▶ Democratic institutions
- ▶ Adversary system
- ▶ Increase access to justice
- ▶ Court craft
- ▶ Support junior bar
- ▶ Reclaim tech from big-tech
- ▶ Restructure Justice sector
- ▶ Govt – govern and fund
- ▶ Bar – understand tech
- ▶ Embrace/master
- ▶ Small window

IMPACT OF TECHNOLOGY ON PRACTICE

A techno-optimistic perspective

THINGS THAT CANNOT BE AUTOMATED (YET)

- ▶ determining the interests of the client
- ▶ interpretation
- ▶ creative reasoning
- ▶ discretion and judgement
- ▶ persuasion



Augmented intelligence

The use of technology to enhance the ability of the human mind



PRACTICAL USES OF TECHNOLOGY

- ▶ paper digitised
- ▶ cloud services
- ▶ software to aid case analysis
- ▶ digital note taking

Coming attractions

- ▶ voice-to-text transcription
- ▶ data analytics
- ▶ AI-assisted legal research