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Evolving Norms Governing AI Engagement in Legal Practice and the Prospective Alignment of Law School Curriculum

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Abstract

As artificial intelligence (AI) applications transcend to yield generative outcomes, the significance of its engagement to enhance productivity in legal practice and dispute resolution forums is increasingly emphasised. With the recent advent of an impressive array of generative AI programs, the urge to harness the technology in the legal profession is difficult to resist. Professional standards of AI engagement are being introduced to respond to the increasing engagement of generative AI in serving legal clientele. Normative prescriptions governing the use of AI in legal practice are crucial to ensure that the right balance is achieved between the benefits offered by the technology and the rights of the clients served. The paper aims to investigate pioneering professional standards regulating AI use in US legal practice and assess how they achieve a balance of interests and adhere to some fundamental principles. The paper calls for a contextual understanding of the technological functioning of AI for its effective professional engagement and the development of governing standards. The paper assesses a range of specific professional and judicial standards governing generative AI use in the US and explores their relevance for other jurisdictions. The paper argues the limitation of continuing legal education to produce AI-empowered lawyers. It proposes the significance of the need for law schools to step in with the necessary curriculum and pedagogical alignment with emerging AI applications and regulatory standards. The paper concludes by examining its key findings and underscores the significance of upholding the right to access AI.

Keywords: Artificial intelligence, legal profession, regulatory standards, legal education, curriculum alignment.

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Introduction

The legal profession is no ordinary profession. It has a special status due to its distinctive role in perpetuating the rule of law in each society. Unlike other professional pursuits that may be subjected to state-enacted regulatory regimes, the grant of self-regulatory privilege to the legal profession is crucial to ensure the independence of the vocation. However, with autonomy comes accountability, which the licensing agencies should incessantly ensure through the enactment and effective enforcement of comprehensive professional conduct rules. In circumstances of any lackadaisical response of the licensing agencies to emerging concerns, a consequential question of whether other pertinent bodies like the judiciary or even the state regulatory entities should step in and seek to introduce necessary checks and balances becomes relevant. The caveats of caution upon any intrusion into the self-regulatory sphere arguably enhance the onus upon the licensing agencies to effectively gauge regulatory needs and act on time to avoid circumstances warranting intervention from external bodies.

Beyond the question of regulatory prerogative, the construction of standards governing the conduct of lawyers should be a very delicate process balancing diverse needs and interests, including the rights and interests of the served clientele, the integrity of the profession, the pursuit of seeking justice and upholding rule of law, the facilitative function for judicial determination or decision making by other redressal forums, the modernisation of professional practice to respond to changing social realities, and the protection of privileges and interest of legal practitioners. However, on certain emerging issues facing the legal profession, like embracing technological evolution to enhance the effectiveness and efficiency of legal services, professional standards governing modern technologies are sparse and difficult to evaluate.

With the advent of Artificial Intelligence (AI) and its recent resurgence, especially in the form of generative AI, the potential engagement of the technology in the legal profession is perceived to have far-reaching implications affecting the role of lawyers in serving clients. While the proponents of engagement of generative AI in legal practice emphasise the importance of reaping the benefits of generative AI to serve the best interests of the clients, the critics are highly concerned about the potential risks undermining the

rights of clients, including the basic expectation of receiving legal advice or service from a natural person legal practitioner rather than from an artificially permeated technological intelligence. Considering such unique concerns, the need to develop regulatory standards governing the use of generative AI in legal practice, balancing the benefits and risks of its engagement in the legal profession, has gained particular significance.

The present paper aims to identify and assess some of the pioneering professional standards in the US promoting and streamlining the use of AI, particularly generative AI, in legal practice. It investigates how formal legal education that forms part of the upstream inculcation of professional skills and knowledge should embrace generative AI-related curriculum enhancements. To address the shortage of AI-informed legal curriculum and pedagogy, the present paper argues that promoting responsible use of generative AI in the legal profession can only be achieved if lawyers are trained to tame the technology to suit the needs and integrity of the profession from the formation years during their time at law schools. The paper reviews some pertinent scholarly works examining specific issues of the prerogative of the legal profession to self-regulate the practice of law and the nature of the ensuing accountability of the profession. The paper briefly examines the nature and types of AI technology along with its functional characteristics to call upon the need to enhance the basic understanding among the legal fraternity for the effective use and regulation of AI in the legal profession. The paper identifies some emerging regulatory standards governing the use of AI in American legal practice to determine how the early attempts to regulate AI engagement in the legal profession seek to balance the related rights and interests. The paper argues the limitations of continuing legal education programs providing AI training for lawyers and calls upon the need for law school initiatives incorporating AI elements in legal curriculum and pedagogy. The concluding part of the paper highlights the relevance and limitations of the American experience for other common law jurisdictions preparing to embrace AI in legal practice.

Literature Review

One of the important works tracing the evolution of autonomy and self-regulation in the American legal profession and the subsequent emergence of competing external controls was produced by Powell as early as 1985 (Powell, 1985). Although the findings of the work revealed evidence of some erosion of the prerogatives of the profession, the study argued that any external regulatory controls were only supplementary and were, after all, initiated under the auspices of the profession itself. The study concluded that the external controls only redefined the autonomy and the self-regulatory powers but did not replace them. In contrast, Macey's subsequent work argued against the need to sustain the system of self-regulation due to the increasing ineffectiveness of internal sanctions and growing competition in legal practice (Macey, 2005). In her work examining the role of accountability in the legal profession, Fortney exposed how limited liability characteristics of law firm partnerships dented accountability and recommended relevant remedial measures (Fortney, 2012). The work pointed out the distinctive features constituting law as a unique profession, where collective responsibility to uphold common values and the development and application of self-regulatory measures were found to have the potential to enhance accountability in the profession. The work highlighted the importance of introducing specific measures like professional indemnity insurance, as required in some common law countries, to fill the void and protect clients' interests.

On the other hand, Rhode's exploration of accountability had a broader mandate of exploring the question from a comparative perspective and examining its nexus to the higher goal of access to justice and legal services (Rhode, 2003). The work signified the importance of professional accountability to quell some prevalent perspectives of lack of credibility and ethical adherence among the legal community. The significance of credibility as an inevitable trait in enhancing lawyers' professional accountability was the core of Wendel's thesis (Wendel, 2003). His interesting work explored a range of informal methods that could strengthen accountability among lawyers. In particular, articulating the unique role non-legal sanctions could play in regulating certain professional behaviour, was an important contribution of Wendel's work.

The research of Margulies has an interesting exposition of the accountability of lawyers representing the state and the need to regulate the actions initiated by the state organs in terrorism cases (Margulies, 2005). Addressing questions like prosecutorial accountability in this work added much-needed attention to the measures essential to ensure lawyering for the state does not escape the inevitable standards of accountability. Similarly, while exposing serious shortcomings in internal and external mechanisms seeking accountability of prosecuting lawyers in various jurisdictions worldwide, Wright and Miller called for enhanced transparency and bureaucratic supervision to achieve prosecutorial accountability in the US (Wright & Miller, 2010).

Ellis's work went one step further by calling upon the significance of nurturing universal principles and ethical standards governing the legal profession to enhance accountability (Ellis, 2002). The work emphasised a range of ethical tenets essential for improving accountability and developing a new era of accountability in the twenty-first century. The prescribed tenets included training young legal minds, which is relevant for the present paper exploring the role of law schools in taming budding lawyers to adopt AI technology in legal practice yet remain accountable.

Another pertinent work on the subject matter of enquiry of the present paper was published by Simshaw well before generative AI became prominent. In 2018, Simshaw systematically took stock of some fundamental ethical issues arising in the use of AI and revealed the inadequacy of the existing rules of the American Bar Association (ABA) and other State Bars to address the unique challenges posed by AI (Simshaw, 2018). The work categorically called upon the need to introduce standards governing the development and deployment of AI in the legal profession. Just preceding Simshaw's work, Arruda explored an interesting question of whether lawyers had an ethical obligation to engage AI in legal practice to ensure effective legal services are rendered to clients (Arruda, 2017). The work, while identifying the key attributes of AI that will be pertinent for various applications in the legal field, argued against the fears of AI overtaking the works of a lawyer and urged the need for developing relevant practice standards to ensure professional accountability. Similar calls for reforming professional conduct rules to accommodate the use of AI in legal practice were

also made by other scholarly works during the same period (Medianik, 2017-2018).

Medianik proposed that the ABA adopt rules mandating continuing legal education for lawyers to obtain speciality credit for using legal technology involving AI and that law firms provide in-house training to promote the use of AI. Finally, on the issue of law schools playing a fundamental role in fostering the use of technology during the formation years of legal education, Otey's work is a notable contribution. In response to the technologically inspired younger generation of law students, as well as the changing realities and expectations of the legal profession, Otey's work mainly recommended that law schools adequately equip law graduates with the necessary technological skills essential to prepare the students for a new kind of legal practice (Otey, 2014). As part of the proposal, the study emphasised the importance of designing a law school curriculum embedded with essential elements of technology and teaching technological professionalism using the pedagogy of clinical legal education.

The Nature of AI Technology and the Determination of the Functional Parallels

As the AI applications in various fields of services are growing by leaps and bounds, especially after the power of generative AI became accessible to the masses since the introduction of LLM-based interactive bots like ChatGPT in late 2022, some key benefits AI can offer for legal profession are generally evident. However, the full range of potential benefits it could provide to legal practice or the gravity of the inherent risk of their engagement are not yet fully discernible. A brief analysis of the scope of some emerging AI technologies and identifying certain positive or negative implications for the legal profession will set the stage for assessing the integrity of early regulatory standards governing the use of AI in legal practice. A detailed examination of AI technology, every benefit it offers or the specific risks it poses to the practice of law are not relevant to the present discussion. However, some of the distinctive features of AI, in particular the dynamic elements of generative AI and their potential impact on the practice of law, are essential to the discussion. This is mainly to demonstrate why, unlike any other information technology

embraced by the legal profession in the past, AI's engagement could alter the basic equation of the legal service provision itself. Based on AI's potential to influence some fundamental traits of the legal profession, it is arguable that its regulatory standards should not remain static and should be adapted to suit the transforming realities.

As AI's potential continues to be redefined with the rapid evolution of technology, it will not be possible to fully assess the future scope of AI applications in legal practice. Firstly, it is arguable that any regulatory standards governing the use of AI in the legal profession should be formed to imbibe this very state of flux of AI technology. Secondly, any regulatory standards governing AI use in the legal profession should effectively reflect its distinctive technological capabilities and how they could alter the fundamental characteristics of the legal services provision. In this regard, the regulatory stocktaking of the technology does not need to take a micro approach of reviewing the implications of every AI technology developed for the legal profession. Alternatively, ordaining the regulatory standards should take a technologically neutral approach, analogous to the experience of well-renowned international legal harmonisation initiatives governing AI (UNCITRAL, 2023).

The advantage of taking a technologically neutral approach would shift the focus on certain common characteristics underlying the technological processes of AI to determine the development of relevant regulatory standards instead of requiring a review of individual AI applications. In addition, it is also crucial to choose certain foundations for regulatory development, as it would provide a common thread to comprehend the diversity in technological processes and related intricacies in designing relevant professional standards governing AI. In this regard, a principles-based approach will be highly relevant, utilising some of the proven principles adopted in national regulatory enactments governing technologies in the past, like the functional equivalency principle. The successful regional experience in the European Union (EU) in developing an effective liability regime for the use of AI in general, utilising a principles-based approach, is a good example that merits consideration (Durante & Floridi, 2022).

In line with the need to determine how different AI could impede the functions of the legal profession, it is essential to have a broad understanding of the technological processes underlying AI.

Firstly, the licensing agencies seeking to regulate AI use in the legal profession should restrict the functioning of conventional AI and generative AI. Although the latter is a subset of the former, some fundamental differences exist in their underlying technological processes. Traditional AI is primarily designed based on pre-designed algorithms, which can make decisions or predictions utilising prescribed rules in interpreting certain inputs or data. They can process or analyse data per the pre-defined rules and provide recommendations or sort underlying information or content. However, they do not, as such, generate any new content or creative works. Therefore, their function and behaviour are relatively explicable, although advanced AI systems could be designed to evolve from experience that could even result in enigmatic behaviour. In comparison, however, generative AI systems are characterised by their capacity to produce or create new works or content that did not exist before. They are more sophisticated in self-evolution with an inherent capacity to learn from unlimited or large data sets. They are more capable of reinforcing their algorithms and prescribing rules of behaviour from the experiences gained. They could evolve even faster given the exposure to large data sets. Therefore, any regulatory standards developed to govern AI applications in the legal profession should give due regard to the distinctive characteristics of the AI as well as its generative iterations.

As alluded to already, regulatory initiatives governing the use of AI in the legal profession could take a principles-based macro approach, for which a clear understanding of some essential characteristics of the AI domain is crucial. Identifying distinct types of algorithms and generative AI applications and appraising their potential impact on the fundamental traits of the legal profession are especially vital. Firstly, a clear understanding of different types of algorithms and their characteristics is essential because of the central role they play in any AI technology. As algorithms form the core part of AI technology and are infused with the fundamental rules directing AI learning and its functioning, understanding them is essential in developing algorithmic regulations. As key jurisdictions like the EU and China have started to enact specific rules governing algorithms embedded in information recommender systems used by online platforms and search engines, the significance of developing specific professional standards targeting

algorithms in other service frontiers like legal services need not be overstated (Roberts, et al., 2023).

Three distinct characteristics are discernible from common types of algorithms, namely those algorithms that are developed to achieve learning from categorised and labelled data sets subjected to supervision, algorithms that are constructed to freely learn from large sets of unlabelled data without any supervision and algorithms that are primarily designed learn from interactions in each environment and thereby achieving a reinforced learning from various real-world experiences. Such algorithms may interact with data sets by employing different learning and processing techniques. While various machine learning techniques using unprogrammed statistical functions are typically employed by algorithms, some deep learning techniques using multi-layered neural networks handling complex data sets could be utilised by sophisticated algorithms. On the other hand, algorithms that are used in interactive AI systems commonly adopt a Natural Language Processing (NLP) technique that can comprehend human communication and languages and generate responsive outputs.

Finally, with the onset of ChatGPT, it is crucial to understand various types of generative AI to ascertain the potential impact they could have in legal practice. The types of generative AI transcend beyond ChatGPT, as typical generative AI models can produce creative, original content by interpreting and combining attributes of large sets of preexisting data through algorithmic executions. ChatGPT, a specific type of generative AI, specialises in reacting to human prompts in conversational exchanges and producing real-time responses and outputs. It also permeates into the sphere of user-prompted alterations and choices, enabling any customisation to the point of satisfaction. Such technical capabilities have even prompted judicial claims involving contentions of intellectual property rights protection for the works produced by generative AI (Stephen Thaler v. Shira Perlmutter and US Copyright Office, 2023). Moreover, while the techniques typically employed by ChatGPT are based on Large Language Models (LLMs) embedding an NLP, other generative AI models could use a range of techniques, including Convolutional Neural Networks (CNNs), Recurrent Neural Networks (RNNs) and Generative Adversarial Networks (GANs). Although examining and distinguishing the characteristics of these key techniques employed by generative AI

models is not necessary here, gaining the relevant understanding to determine the impact they could distinctly have on the legal profession is crucial for the formulation of the regulatory standards based on a functional equivalence approach alluded to earlier.

Before moving to assess some of the emerging professional standards governing the use of AI in the legal practice, a brief narrative of how the understanding of the technical aspects of AI to determine its functional status impacts the legal profession could come into play concerning some judicial decision pertinent to the question would be apposite here. Some of the American judicial decisions determining what activities could constitute the function of practising law would be a useful reference to draw an analogy in assessing whether the functions of AI could constitute the legal practice and hence be subjected to the professional rules of practice in a particular jurisdiction. One of the US cases, the dictum of which is used to draw some comparisons in this regard, is the case of *David Lola v. Skadden, Arps, Slate, Meagher & Flom and Tower Legal Staffing* decided by the Second Circuit Court of Appeal (Lola v Skadden and others, 2015). Based on the judicial dictum laid down by the US Court of Appeal, while reversing the finding of the US District Court, on whether the acts of reviewing legal documents amount to legal practice in the State of North Carolina, studies have drawn analogies for the use of AI in the legal profession (Simon, Lindsay, Sosa, & Comparato, 2018).

The potential implications of *Lola v Skadden and Others* for the use of AI are found to include the possibility of machines narrowing the sphere of activities considered as part of legal practice, the consequential fallout of such activities from the application of professional rules and the need for legal practitioners to adapt to the impact of the technology by focusing more on innovative work and professional judgment that may not be considered a mechanical tasks and easily replicated by the machine. When the Court of Appeal in the Lola case was asked to determine whether the task of document review carried out by the plaintiff amounted to an engagement in the practice of law, to decide whether or not it could be exempted from the application of rules governing overtime work, the interpretative process of the court in that context is arguably good evidence of a functional approach. The court's approach, in this case, draws some parallels between the task carried out by the plaintiff and the functions that can be exclusively

discharged by a lawyer under his license to serve as an attorney in a particular jurisdiction, which could serve as a useful model in assessing the increasing role of AI in the legal profession.

In particular, the court's reference to some key points like the impossibility of legally practising law without a license, what can constitute the unauthorised practice of law, whether a lawyer could ethically outsource legal support services from non-lawyers or lawyers not licensed to practice in the jurisdiction in question, and can any review of legal documents carried out by a non-lawyer under the supervision of a licensed attorney could automatically amount to legal practice, are highly relevant for assessing the nature of the tasks carried out by AI engaged by a licensed legal practitioner. Similarly, the key departing point between the District Court and the Court of Appeal in Lola's case concerns the distinct emphasis of the former that any level of review of legal documents will constitute a legal practice, in contrast to the conclusion of the latter that only review of legal documents that warrant an exercise of independent legal judgement in making decisions for a client will fall in that class, should serve as a very pertinent methodology in assessing the functional nature of the AI use in the legal profession.

Emerging Standards Governing AI Use in the Legal Profession

As a jurisdiction which primarily recognises the autonomy of the legal profession to regulate itself, new standards or reforming existing standards governing legal practice are expected to be developed more responsively in the US than in other jurisdictions, where external organs like state regulators are empowered to issue regulatory standards. Especially in critical situations like the sudden onset of generative AI, widely perceived as a disruptive technology, and the possibility of its wider adoption in the profession, standards should swiftly arrive. This expectation is met by the range of initiatives that have recently emerged in the US, and a selective review of some of the distinct provisions in the remainder of this section should provide important insights into how the first generation of standards seeks to achieve a balance between the benefits and risks of generative AI use in legal practice. Notably, the pioneering US initiatives transcend beyond those developed by the professional licensing bodies, as some dispute settlement institutions have also promptly issued relevant directives. It is

important to note that some of the AI-related standards in these initiatives are prescribed to guide judges to ensure that AI use related to the judicial process is indeed in compliance with relevant laws and rules of the court. This phenomenon arguably evidences the significance of the matter, and the use of generative AI in legal practice is a common concern of practitioners and dispute settlement forums.

Moreover, in the US, the jurisdiction where the first iterations of generative AI like ChatGPT and others were widely made available, some bitter experiences resulting from the use of generative AI in legal practice have prompted wider regulatory responses, providing useful references for other jurisdictions. For example, the infamous case of *Mata v Avianca Inc.*, where the New York Southern District Court had to sanction the attorneys who ended up citing fake cases fabricated by the generative AI tools, exacerbated the concerns of irresponsible use of generative AI prompting the need for wider response by professional agencies and dispute settlement bodies (Mata v. Avianca Inc., 2023). A similarly grave error of citing fictitious cases produced by generative AI was also sanctioned by the Superior Court of Massachusetts in a recent case of *Darlene Smith v Matthew Farwell and Others* in February 2024 (Darlene Smith v Matthew Farwell and Others , 2024). The latest case evidences the continued risk of using generative AI in legal practice and reinforces the need for effective regulation.

Various national and state-level bodies issue the US standards governing the use of AI in the legal profession. Firstly, the AI-related resolutions of the American Bar Association (ABA), being a multifaced institution serving in several capacities, including as a voluntary professional association at the national level, a key law schools accreditation body, a continuing legal education provider and a program organiser to assist lawyers and judges, gains prominence. In addition to the AI-specific resolutions, the general rules of professional conduct prescribed by ABA will also have implications and warrant adaptation in using AI in legal practice. For example, one of the pertinent provisions of the professional conduct rules can be found in ABA Model Rule 1.1, amended in 2012. Comment 6 of the Rule is a classic example of a balancing mandate imposed on the use of technology by legal practitioners. It imposes a clear responsibility on lawyers to be knowledgeable about the benefits and risks associated with using

technology in law practice. Although this is a broad obligation related to the use of technology in general, the balancing characteristic mandating the tapping of technological potential and the fortification against its inherent risks will serve as a basic pillar of the ABA standards governing AI use in the legal profession.

One of the ABA initiatives specifically relating to AI was its 2019 Resolution No. 112, which called upon lawyers and judicial organs to take stock of ethical concerns and legal issues arising in using AI in legal practice (ABA, 2019). It called upon the need to address three specific sets of concerns. The first set of worries consisted of the risks of AI bias, the challenges of explainability, and the lack of transparency in its automated decision-making. The second concern was how AI could be ethically and beneficially used in practising law. The final concern highlighted the need to exercise sufficient control and oversight of the functioning of AI and the vendors that supply the AI. Being one of the earliest professional directives on the specific use of AI in legal practice, the three sets of concerns will continue to influence the conduct of lawyers and judicial organs in the USA. The ABA Resolution 604 passed in February 2023 is not just specifically aimed at legal practitioners but a range of allied stakeholders who may be involved in the design, development, deployment, use and regulation of AI in various contexts of operations in a legal system (ABA, 2023).

Resolution 604 promotes three core principles: transparency, traceability and an ultimate emphasis on overall accountability. It calls for human and enterprise accountability and denounces attempts to transfer legal responsibility to an algorithm. It mandates exercising human authority, oversight and control of AI systems. It guides legal practitioners in assessing the compatibility of AI systems with the three core principles. Resolution 604 also aims to enhance the capacity of the courts and legal practitioners to evaluate and resolve legal questions in dispute resolution through the specification of the necessary information required in any engagement with AI. On the auspices of passing Resolution 604, concerns were also expressed about the struggles faced by law professors regarding the use of generative AI like ChatGPT by law students (White, 2023).

Finally, another resolution of ABA which has great potential to prompt the development of AI applications in the justice system is the ABA Resolution 700, passed in February 2022. This

Resolution, although it does not directly refer to AI calls upon the criminal justice system to refrain from using risk assessment and pre-trial release assessment tools that are flawed due to inherent racial or economic bias. Integrating such tools has the potential to motivate the development and use of AI tools and applications capable of identifying and eradicating boggling bias (ABA, 2022).

Beyond ABA, several state bar associations in the USA have issued standards governing AI use in legal and judicial practices. Reference to the initiatives of some key representational Bar Associations would suffice to ascertain distinct characteristics of the emerging standards governing AI use at the state level. On the West Coast, the Californian Bar Association made a prominent effort. The guidelines issued in November 2023 by the California Bar specifically address the use of generative AI in legal practice by prescribing four distinct duties and five specific obligations (California State Bar, 2023). To uphold the duty of confidentiality, lawyers using AI are required to anonymise client information before inputting it into a generative AI system, ensuring that client information is not shared with others or used for training purposes or system improvement.

Calling for a duty of competence and due diligence, overreliance on AI systems compromising the application of trained judgement of the practising lawyer is not permitted. Any output from generative AI should be supplemented with professional scrutiny and verification by the lawyer, and the delegation of professional judgment to a generative AI system is prohibited. Lawyers are subject to comply with all laws, including privacy laws, cross-border data transfer laws, and intellectual property laws, while using generative AI. A duty of overall supervision of the use of generative AI in law firms, along with a prohibition of impinging upon subordinate lawyers' professional responsibility during their use of generative AI is also recognised under the 2023 Californian Guidelines. It imposes a very important obligation upon the lawyers to communicate to their clients about any use of generative AI in the legal services rendered, as well as the risks involved, and adhere to any instructions given by clients that have a limiting or restricting effect on engaging generative AI.

The lawyers are obliged not to charge their clients based on the number of hours potentially saved by generative AI and only charge for the actual hours spent using generative AI. Lawyers

engaging in generative AI should review all the output generated by the AI to ensure accuracy before submitting any related work to the judiciary and strictly follow the rules mandating the disclosure of the use of generative AI. Lawyers must seek a continuous understanding of the potential bias inherent in the functioning of generative AI systems and take sufficient measures to prevent the risks of bias. Californian guidelines also prescribe that lawyers licensed in multiple jurisdictions adhere to relevant laws and regulations imposing any pertinent professional responsibilities.

Having reviewed the ABA and Californian professional rules in detail to highlight the major values and guarantees emphasised in streamlining AI use in the legal profession, a brief reference to some key regional and judicial initiatives in the US, in the remainder of this section, will point out to other distinct provisions and standards. In the East, a very recent initiative of the New Jersey Supreme Court in 2024 has taken a different approach, which, instead of issuing a new set of rules, issued temporary guidance on how attorneys could use AI in consonance with the existing rules of professional conduct. Although the New Jersey initiative, more or less, reflects those of the Californian standards discussed earlier, they are found to differ concerning the requirement of mandatory disclosure of the use of AI, as such a duty is imposed only in the event of demand or enquiry by a client (Brennan, Stone, Kampfe, & Zogby, 2024).

In the North, the 2023 Ethics Opinion of Michigan State Bar JI-155 issues guidance on understanding technology and artificial intelligence to judicial officers. It requires them to take all reasonable measures to ensure that any use of AI tools to form their judgments is proper and complies with the law and the rules of the court. It also imposes a duty on them to gain relevant technological competencies in AI and understand its ethical implications to attain efficiency and to not to compromise the quality of justice. It mandates an understanding of benefits and risks, including pitfalls of algorithms in AI systems used by the courts and the lawyers appearing before the courts (Michigan State Bar, 2023).

In the South, the Florida State Bar initiative would be a befitting example for completing the representative initiatives on using generative AI in the US. In January 2024, the Florida Bar issued the Ethics Opinion 24-1 that systematically addresses the use of generative AI in legal practice on several pertinent issues (Florida

Bar, 2024). Although many principles found in the Californian Guidelines 2023 are present here, several specific concerns are addressed in depth, which exemplifies the intricacies that may occur in the practical use of generative AI in legal practice. In addition, the Florida Opinion adds an obligation not to transgress the restrictions on advertising legal services using generative AI. While the use of generative AI by a law firm could be advertised, unverified claims of superiority of the generative AI system used by comparing with the AI systems used by other law firms are not permitted.

Some unique, in-depth issues arising in the Florida Opinion will be a useful reference for other jurisdictions. Generative AI chatbots used to communicate with clients and third parties mandate that lawyers incorporate prescribed disclaimers. It also alerts the possibility that the use of AI chatbots in law firm websites to solicit clients could inadvertently create an attorney-client relationship, referring to the judicial dictum in *Bartholomew v Bartholomew* that held that such a relationship depended upon the belief of the client rather than the intent of the attorney (Bartholomew v. Bartholomew, 1992.). It imposes a duty on lawyers to maintain technological competence and get educated on AI risks and benefits.

Interestingly, to enumerate the specific duties of lawyers using generative AI, the Florida Opinion recommends drawing an analogy from the responsibilities of lawyers arising in the context of engagement of nonlawyer assistants in legal practice. For example, one of the offshoots of such a duty is the need to verify all works produced by nonlawyer assistants or generative AI, and lawyers will bear the primary responsibility for the accuracy of such work despite being created by either of the former. It recommends seeking informed consent from clients to use generative AI to disclose confidential information. Specific duties of confidentially are prescribed for generative AI with self-learning abilities. Again, the Opinion recommends drawing an analogy from guidelines governing other technologies or services like cloud computing or remote paralegal services. The Florida Opinion ultimately makes a crucial suggestion for mitigating confidentiality concerns by referring to the possibility of using in-house generative AI in law firms instead of third-party tools.

In addition to the above, there are initiatives recommended by judicial institutions that can provide more specific insights.

Prominent initiatives include the 2023 Order on AI issued by the US Court of International Trade (Vaden, 2023), the Advisory Opinion No.2023-22 issued by the Judicial Investigation Commission of West Virginia on the purposes for which judges may use AI in the discharge of their duties (JIC, 2023) and the Standing Order for Civil Cases Before A Magistrate Judge in the District Court for the Northern District of Illinois (Fuentes, 2023). A closer review of these initiatives reveals that their major objective is to streamline the usage of AI by attorneys in matters involving interactions with the judicial process, and the usage of AI by judges on issues relating to the discharge of their functions. Moreover, a comparative assessment of the specific provisions from these initiatives reveals how legal practitioners' regulatory perspectives of AI usage may manifest differently based on their respective roles in relation to clients and the judiciary.

Alignment of Law School Curriculum and Pedagogy

From the analysis of the concerns of AI usage in the legal profession and the emerging standards governing the same, some core findings could be derived that signify law schools' imperative role in promoting the fundamental regulatory spirit. First and foremost, it is important to note that, unlike any other technologies previously found useful in law practice, AI is perceived as indispensable to guarantee that clients are not denied the incomparable and invaluable benefits AI could offer. This realisation, arguably, will perpetuate a wider recognition that the engagement of AI in legal services is almost a matter of the client's rights and the duty of the lawyers. Such a recognition will not leave the question of using AI in the legal profession a matter of choice. Under such circumstances, lawyers will inevitably need to be equipped with essential skills for the creative and responsible use of AI in law practice.

The onus of training lawyers with the fast-evolving AI applications and tools could primarily be seen as a domain of continuing legal education. However, it is highly questionable whether the demands of AI training for lawyers could be met with continuing legal education programs due to their limited scope. Moreover, analysing some emerging standards reveals that the spirit transcends beyond simple training using existing AI tools. As

discussed earlier, some standards prescribe developing and using in-house AI tools instead of utilising external or commercially available ones. Such inspiration warrants a more systematic and in-depth training of lawyers to ensure a deeper engagement in the construction, training and use of any in-house AI tools. Continuing legal education cannot cater to learning needs in such contexts, and the need for law schools to step in to fill the void is inevitable.

Like the legal profession, law schools are also increasingly called upon to engage in AI orientation (Reid, 2019). The role of law schools in this regard should be twofold. Firstly, to meet the needs of qualified lawyers, offering an appropriate level of higher degree or diploma programs based on AI-enriched curricula. Such a curriculum should be carefully constructed by incorporating AI-oriented components aligned with professional standards governing AI. Inculcating associated AI skills essential for speciality legal practice will particularly enable the possibility of tapping into numerous potential generative AI offers. In addition to the speciality, offering interdisciplinary higher degree programs like master's in data science and law, which some institutions already provide, can serve as an effective platform to nurture a mixed set of essential skills and the knowledge required for effective AI engagement in any field of legal practice.

Secondly, it is highly suitable for law schools to consider refurbishing basic law degree curricula to address the emerging needs produced by generative AI. Besides, incorporating generative AI for various pedagogical purposes to enhance effective learning in law schools is also becoming a trend. As law schools are more open to allowing students' usage of generative AI tools for learning and producing works for assessment, redesigning curriculum and pedagogy in line with the professional expectations of AI use and standards governing the same will ensure that graduating students can cope very well with the expansive demands of the profession driven by the inexplicable opportunities and risks of generative AI.

Law schools should ensure that their reformed curriculum and pedagogy sufficiently align with and reflect the emerging professional standards governing the use of AI in legal practice and judiciary as discussed in the previous section. Moreover, law schools should also ensure that the conventional elements of legal acumen are not impaired in the pursuit of AI skills training.

Introducing specific pedagogy and assessment tools capable of confirming that law students can use AI tools in a responsible and accountable manner is highly desirable. For example, law schools should ensure that the students can verify the results of generative AI-produced legal works with conventional legal wisdom and knowledge instead of merely reproducing them. A combination of modern assessment tools like AI writing detection and verification tools, along with traditional legal education tools like the Socratic method, mooting and open presentations subjected to expert scrutiny, should all be able to test the acquisition of personal legal traits. Moreover, students should also be able to demonstrate how they framed and modified the relevant parameters and inputs fed into a generative AI system, and the output in question resulted from their creative (and not mechanical) engagement with the AI tool. Engaging such specific pedagogy and assessment tools by law schools is highly recommended to ensure that the new generation of AI-era lawyers can achieve the essential balance between human and AI roles in legal practice articulated earlier in this paper. Studies suggest that such a call for law schools to step in with AI and law orientation is beginning to receive positive responses from top-ranked US law schools, and their specific experiences of AI-enriched curriculum development and related pedagogical experiments should provide invaluable references (Johnson & Shen, 2021).

Conclusion

From the analysis of the major issues relating to the use of AI addressed in this paper, some key findings and conclusions emerge. These are pertinent for providing the future directions; the individual jurisdictions may take in governing the engagement of AI in the legal profession. First, there is a theoretical question of whether the widespread response of US Bar Associations to the emerging use of AI in US legal practice could be attributed to the autonomous characteristic of the legal profession. However, the findings of this paper challenge the premise of classifying the US legal profession as totally autonomous. Two specific findings from this paper could be considered as potential grounds for challenging the conclusion of total professional autonomy of the legal practice in the US. Firstly, the findings emerging from the scholarly debates

surrounding the accountability and self-regulatory characteristics of the legal profession cast some serious doubts as to the autonomous character of the legal profession in the US. Studies challenging the myth of US legal professional autonomy, and those arguing the eroding nature of self-regulation and the increasing intervention by some state legislative bodies, represent the first set of grounds that could shake the belief of legal professional autonomy in the US.

Secondly, some direct evidence of judicial intervention and attempts to streamline specific practices of the legal profession also contribute to the challenges. Trends of courts and individual judges issuing directions to practitioners regarding the use of AI in legal practice, identified and analysed in this paper, could be perceived as evidence of the dilution of the professional autonomy that legal practitioners are believed to possess in the US. Although these findings raise some reasonable doubts about the scope of autonomy, none of them are groundbreaking to deny the predominantly autonomous characteristic of the legal profession in the US. Moreover, the concerns emerging from these findings are either internal trepidations from within the profession or academic deliberations that fail to go deep enough to shake the foundations of professional autonomy in legal practice. As argued earlier in the paper, the interventions of the judiciary, like the recent judicial directions on the responsible use of AI, are mainly confined to the matters that could potentially affect the judicial function and were, as such, not intended to restrain or regulate the autonomy of the profession, especially issues that fall within the exclusive attorney-client relationship. Moreover, it can be concluded that in comparison with other jurisdictions, the relatively high number of pioneering initiatives governing the use of generative AI from both the federal as well as state bars across the US would not have been possible without enjoying a very high degree of autonomy and will to self-regulate.

The conclusion that the autonomous nature of the US legal profession is a major driving force behind the conception and development of the regulatory standards governing AI in the legal profession should also enhance its utility as a key reference for comparative studies seeking to propose first-generation regulatory standards in other jurisdictions out the US. The enhanced significance of the US standards should arise from several factors. The fact that these US AI regulatory standards are conceived by the

legal professional bodies and not by the state or other extraneous agencies should motivate a wider acceptance of these standards among legal practitioners in different jurisdictions. They should be well convinced of the inherent ability of the US standards to effectively balance the interests and benefits of legal professionals vis a vis others. The relevance of the US AI initiatives inspiring the development of legal professional standards outside the US should be more palpable in other common law jurisdictions. However, they do not need to emulate the regulatory standards of the US and can customise relevant standards considering the needs of their respective legal profession.

The appeal of the US standards, specifically for other common law jurisdictions, is due to unique elements in the AI regulatory standards examined in this paper. As specific benefits of generative AI technology recognised by the US initiatives are more congenial to the nature of common law legal practice, the related standards should be more suited to the demands of common law practice in other jurisdictions. From the detailed examination of various generative AI standards in this paper, it can be concluded that they fundamentally adhere to the principles of technological neutrality and functional equivalence. Especially the rules limiting the professional role of AI only to the functions equivalent to those discharged by the lawyer and non-lawyer assistants while retaining the indispensable tasks of a lawyer intact are some of the key strengths of the US standards capable of inspiring regulatory transplants to other common law jurisdictions. Finally, the directives of the US courts on the use of AI in matters impacting the functions of common law courts should also inspire common law courts in other jurisdictions to initiate similar measures.

As a core conclusion emerging from this paper, it is crucial to underscore the significance of some key elements warranting a clear understanding of the functioning of AI technology and the need to teach and develop basic AI knowledge and skills among existing and budding legal practitioners. The exposition of various types and designs of AI technologies in this paper reveals how the clarity about the functioning of the essential elements of AI technology like the basic algorithms, different types of data sets, neural networks, large language models, self-learning abilities and the related possibility of data retention will enhance the skills of legal practitioners to potentially identify specific vulnerabilities and

pitfalls in the use of AI and to take necessary precautions. However, it is important to point out that the measures enhancing the basic understanding of the technological process of AI, particularly its generative iterations, are essential to safeguard against risks and, more importantly, fully exploit its untapped potential.

Deriving from the above inspiration, the training of the legal fraternity in AI should transcend beyond continuing legal education programs and involve law schools in nurturing current and budding lawyers. In this regard, the need to design new higher-degree AI-inspired legal specialisation programs or interdisciplinary law and technology programs targeted at developing deep AI capabilities among licensed lawyers is fundamental. More significantly, the need to redesign law school degree programs to nurture future lawyers with the necessary curriculum and pedagogical alignment with the emerging AI professional regulatory standards is highly significant. All the efforts to develop AI capabilities and to streamline the use of AI by legal professionals and the judiciary should be cognisant of an important principle that no one should be denied the benefits of AI. This principle is fundamental to avert the risk of triggering any potential AI divide in human society.

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