
Law, Technology and Legal Critique

A Review of Ben Golder, Marina Nehme, Alex Steel and Prue Vines (eds.), *Imperatives for Legal Education Research: Then, Now and Tomorrow*, Routledge, 2020. 295 pp. £120.00 (HB). ISBN: 978-1-138-38780-5

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How should major changes to law school curricula come about? Where should the inspiration for the strategies that propel change lie? How should education reform strategies be sustained? The frequently argued position that Artificial Intelligence (AI) systems will alter how law is constituted and, by extension, how law is understood, taught and practised is as good a place as any to explore these questions.

Among notable advocates of the position that AI and other new legal technologies will present a number of challenges to designers of legal curricula is Richard Susskind, who, in two publications in particular, *Tomorrow's Lawyers: An Introduction to Your Future* (2017) and *Online Courts and the Future of Justice* (2019), has sought to make the case for, among other innovations, changes in legal education that will enable the next generation of lawyers to “...displace and revolutionise conventional working habits...doing new things, rather than old things in new ways...” (Susskind 2019, p. 34). While the impact of legal technology on legal practice is Susskind’s main concern, others have explored how the legal academy will be affected; suggesting that new legal technologies will force universities and other legal education and training centres to ask “[w]hat can educators do that others cannot? What task do legal academics do despite being overqualified for those tasks? What can others do so that legal educators don’t have to?” (Lieman 2020: 258).

Legal education reform ideas of the kind that Susskind propounds are interrogated from a variety of perspectives in the thirteen chapters which make up *Imperatives for Legal Education: Research: Then, Now and Tomorrow*. Drawing inspiration from the legal education systems of Australia, Canada, the United Kingdom (UK) and the United States (US), the book invites readers to consider whether the field of legal education research should occupy a privileged place whenever legal education reform - curricula reform in particular - is contemplated. The general tenor of the chapters is that, as one of the authors puts it, legal education research “...has...played an uncertain and historically undervalued role in the reform story” (Webb 2020: 196).

Imperatives for Legal Education Research offers many valuable insights into how “...to raise the standing of legal education scholarship, particularly the scholarship of learning and teaching...” (Greaves 2020: 116-7) so as to enable reform to take place on the basis of knowledge “...of what legal education has been doing in the past and how it is operating now...” (Golder, Nehme, Steel and Vines 2020: 4). For Burdon, this would require researchers to better connect “...legal education to broader political/economic trends...” (Burdon 2020: 39), while for Dixon, research that is more optimistic about the state of legal education, and does not merely “...accumulate problems so that they seem unsurmountable...” (Dixon 2020: 64) would encourage more academics, managers and regulators to draw inspiration from legal education research when contemplating curricula and other education reforms.

The case for a greater role for legal education research in legal education reform rests on the assumption that reform is properly conceived of in terms of a series of revolutions or “...big bang moments...” (e.g. Menkel-Meadow 2020: 224). Conceived thus, it would be possible for a tightly defined field of scholarship to drive such reforms. However, as I think Bradney’s (Bradney 2020: 143-158) and Kift’s (Kift 2020: 159-195) chapters demonstrate, reform is a constantly iterative process, which defies capture by any one genre of legal research. It is a process in relation to which the “mimicry” (Webb 2020: 202), the “... ironing out of creases...” (Webb 2020: 196) and the “...reproduction of past conventions...” (Greaves 2020: 107) - which Webb and Greaves, respectively, find so disquieting - play important roles. Moreover, the contributors to the volume do not attempt to disguise the fact that what might be composed within the field of legal education research is far from being self-evident. For some authors, the field announces itself in the form of “... research which identifies best practice analyses [of] potential changes in legal education...” (Cownie 2020: 12), and which, crucially, achieves prevailing standards of originality, significance and rigour (see generally, Cownie 2020: 12-28). For others, it is characterised by its underpinning in “...either educational theory or educational research” (Webb 2020: 197), and usually finds a home in specialist journals like *The Law Teacher* (UK) and the *Journal of Legal Education* (US). Some prefer to draw loose boundaries between legal education research and other scholarly fields. For them, “[l]egal education research takes many forms: discourse analyses, jurisprudential studies, histories of institutions and movements, studies of educational interventions, empirical studies, theoretical studies and much else” (Maharg 2020: 271). It is “...bound together by...the desire to transform or redirect the current state of things” (Greaves 2020: 117) and includes “...all valuable scholarly outputs...such as blog posts, podcasts, and items shared on social media” (Greaves 2020: 109).

It is tempting when considering potential changes to legal curricula in response to technological innovations to look for inspiration from relatively new research on law and technology - not least because recent years have seen a “...consistent rate of publication on the topic...” (Steel 2020: 80). However, it would be unwise for curricula designers to ignore more established fields of research simply because they do not explicitly address either pedagogy or digital technology. In this regard, Maharg helpfully reminds us that “[i]f we understand technology in the widest sense to mean the use of any material object or cultural arrangement, then perhaps the first point we should make about technology in legal education is that it is, comparatively speaking, history-less” (Maharg 2020: 275).

In what follows, I suggest that there are good reasons to suppose that legal research which foregrounds and critiques positions of dominance in modernity (for example, critical race and feminist legal research) is as likely to form the core learning outcomes for a future generation of law graduates who will routinely deal with AI systems as is the ability to “...write code; and design apps...for smart phones and computers to deliver [justice]” (Menkel-Meadow 2020: 224).

There are at least three challenges to legal education design which will flow from AI and other technologies. First, new forms of legal skills will need to be embedded, so as to give students the wherewithal to deal effectively with the various innovations which will impact the legal terrain. In fact, “[m]any law schools are now radically adding to or transforming their curricula to include law and technology (intellectual property, law and engineering, law and machine learning, and legal artificial intelligence)...” (Menkel-Meadow 2020: 236). Second, students need to be prepared to negotiate an altered social environment in which questions over “...the value of lawyers...in a legal industry replete with new business models, and transformed by technology...” (Liemann 2020: 248) will increasingly unsettle both the professional standing of lawyers and some hitherto taken for granted assumptions underpinning the organisation of the legal services market, such as the lawyer’s right to exclusive competence over certain areas of work. Third, law students must be prepared for an increasingly antagonistic relationship between the *lawyer* (whether academic or practitioner) and the *law* - brought about by the fact that lawyers will almost certainly feel more empowered to confront injustices that appear to be embedded in machines than when those same injustices are meted out by human agents.

Arguably, the so-called fourth industrial revolution (Leiman 2020: 246) will be the final event that explodes the myth on which current legal education is largely based. According to this myth, when a lawyer encounters injustice it is because a *just* law very occasionally fails to achieve justice as a consequence of its interpretation and application, and not because it is actually *designed* to produce the injustice which the lawyer encounters. Of course, various forms of criticism have dulled the myth - bearing witness to the fact that the ethics of law as it functions in the world and the ethics of law as it is taught in the classroom are frequently out of step with each other.

Whilst I do not subscribe to the position that AI systems will produce greater levels of injustice than currently exists in the world - because, as Ruha Benjamin has demonstrated, AI systems embed "...existing social prejudices into a technical system" (Benjamin 2019: 96) - I do entertain the prospect that lawyers will feel better empowered to challenge injustices that they perceive to be produced through artificial forms. What Benjamin refers to as "coded inequity" (alternatively, the "datafication of injustice") is, thus, particular as to its *form* rather than its *essence*. Yet, in confronting the form, a future generation of lawyers may come closer to confronting those injustices that have long predated the digital age - *provided*, that is, that law students are given the necessary educational resources.

As Galloway, Castan and Steel assert "[t]he purpose, content, and approach of legal education together create the lawyer many of our students will become. Beyond discipline knowledge, the skills and attributes the law graduate brings to the profession find their foundation in the experiences of the student in law school. In turn, through their actions in legal practice, the law graduate-cum-lawyer turns dry words into real social structures and powers and so performs, and arguably, creates the law" (Galloway, Castan and Steel 2020: 120. For more than forty years, various movements within the legal academy have been producing a rich intellectual resource. What are today seen as "marginal" or "outsider" theories and criticisms may come to form the core knowledge requirements for those graduating to an AI dominated legal world.

References

- Benjamin, Ruha, *Race After Technology: Abolitionist Tools for the New Jim Code*. Polity Press, 2019.
Susskind, Richard, *Tomorrow's Lawyers: An Introduction to Your Future*. Oxford University Press, 2017.
Susskind, Richard, *Online Courts and the Future of Justice*. Oxford University Press, 2019.