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TEACHING LAW IN THE AGE OF AI: TIME FOR CURRICULUM REFORM?

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Abstract

A revolution has been introduced by the introduction of generative artificial intelligence (AI). Generative AI systems can now perform activities relating to problem-solving and decision-making. University students have started using AI tools to correct language, find information and stimulate creativity. The introduction of AI questions traditional approaches to teaching and learning. AI tools bring with it a plethora of ethical issues such as academic integrity. While many have discouraged the use of AI by university students, it is also true that AI tools have increasingly been used in the legal field for legal research and drawing up legal documents. Against the background of the abovementioned developments, it is incumbent on law faculties to think about the skills that they want to impart to students. Curriculum policy documents on legal education in South Africa outline essential skills for law graduates such as reading, writing and research skills. None of these documents speak to the ethical use of AI tools. The central question of this study is: what aspects of legal curricula in South Africa should be addressed to adequately prepare law graduates for the legal profession in the age of AI? The discussion is structured into three parts. The first part consists of a consideration of the relevant skills that are needed for law graduates in the age of AI. The second part evaluates the various quality standards documents on legal education in South Africa against the findings in the first part. The final section will propose recommendations for curriculum reform. This paper concludes that legal curricula must incorporate skills training aimed at the use of AI tools. The legal curricula should as a minimum include the use of AI tools as well as the ethical issues that presents itself with the use of AI.

Keywords: *Legal education, artificial intelligence, curriculum, ethics.*

1. Introduction

The world has been revolutionised by the introduction of generative artificial intelligence (GenAI) to the public towards the end of 2022. What makes GenAI revolutionary is that it can perform tasks that were previously thought to only be performed by human beings, such as text and image generation, knowledge representation and text analysis, for example (Nowrozy and Jam, 2024). At universities, GenAI tools such as ChatGPT have been used for tasks such as language and grammar correction, information searches and text generation. The use of GenAI tools brings with it a host of ethical dilemmas including academic integrity, bias and privacy (Floridi, 2024; Mahmud 2024). The rapid introduction of GenAI questions the responsiveness of university curricula.

This paper focuses on legal education in South Africa. GenAI tools are increasingly being used by legal practitioners to draft documents and find relevant information (Magesh *et al*, 2024). The central question of this study is: which aspects of legal curricula should be adapted to adequately prepare law students for the legal profession in the age of GenAI?

The first part of the paper considers the context of legal education in South Africa and the requisite skills law graduates should have. Drawing from various studies, the second part of the paper considers the potential to use GenAI to develop some of the essential skills mentioned in policy documents on legal education. The last part recommends changes to legal curricula in South Africa.

2. Legal education in South Africa

The first democratic legal education in South Africa started in 1998 with the adoption of *The Qualification of Legal Practitioners Amendment Act* of 1997. The aim of democratic legal education was to provide quality legal education that was equitable and accessible (Gardbaum, 2015). Already, early on in the programme there were complaints from academics and legal practitioners that students were lacking

literacy skills such as writing and reading (Gardbaum, 2015). To address the concerns of various stakeholders a legal education summit was held in 2013 where a task team was constituted that would set up a standards document relating to skills and standard setting (Sedutla, 2013). The task team, after comment by relevant stakeholders and approval by the Council for Higher Education (CHE), set up a document that contained the required knowledge, skills and applied competencies that all law graduates should achieve at the end of their law degree. Students should have a basic knowledge of law subjects (LLB Standards, 2015). The skills and competencies, also known as graduate attributes, that law students should demonstrate include the following: critical thinking skills, research skills, ethics and integrity, communication skills and literacy, numeracy, information technology, problem solving, self-management and collaboration, transfer of acquired knowledge, agency accountability and service to the community (LLB Standards, 2015).

All LLB programs in South Africa were reviewed during 2015-2016 using the LLB standards as a guiding document. The report by the review panel found that knowledge of law was not found to be problematic (LLB Review Report, 2018). While most universities had various interventions aimed at research and writing, it did not always translate into success where students were not assessed on reading and writing in individual modules (LLB Review Report, 2018). Half of the law faculties were found to be lacking in the development of critical thinking (LLB Review Report, 2018). Instances where critical thinking was lacking the panel noted the presence of rote learning and a lack of robust class discussions (LLB Review Report, 2018). The report noted that there were no modules dedicated to computer literacy and based on the self-evaluative reports by the different faculties it was taken as conclusive that training was sufficient. Amongst the recommendations made by the panel was that more assessments should be set that assess reading, writing and research skills.

The abovementioned policies and reports indicate the essential skills for law students. The documents are close to silent on the ethical use of AI tools or other technological systems. This is understandable, as these tools have only been used in the last three years. However, given the rapid rate of change and development law schools should start thinking about how AI tools can enhance graduate attributes. Law schools should also continuously consider which skills remain relevant for the working world students will enter. The next section considers the potential of AI tools to enhance some of the essential skills of law students.

3. Potential skills enhancement with GenAI

As alluded to above, writing is an indispensable skill for a lawyer. Good writing is also part and parcel of good communication. For many years academics and legal practitioners in South Africa have lamented that the writing skills of law students are not up to standard (Crocker, 2018; Bangeni and Greenbaum, 2019). Some authors have argued that GenAI tools can be used for more routine tasks in relation to writing including drafting outlines, bouncing ideas, technical corrections, stylistic and grammar corrections (Costa *et al* 2024; Regalia, 2024; Alkamel and Alwagieh, 2024). In the South African context, most law students are not native English speakers. Tools such as Grammarly can be useful in assisting students to convey their ideas. If GenAI can be used for the routine tasks, such as language correction, more time can be freed up in lecture halls to focus on higher order skills such as critical thinking. Are there some possible dangers if we leave all our writing up to GenAI? There could potentially be. Writing is a process of editing and correcting, a first draft is rarely what any student submits for an assessment. Tu *et al* (2024) adds that writing is a creative process and students might lose out on the development of a (better) legal argument in the drafting process when using GenAI. Writing should be seen as a form of thinking (Tu *et al*, 2024). While GenAI can be used to correct grammar and stylistic errors in the writing process there might be potential harm if AI is expected to do the bulk of legal argumentation. GenAI should not be used as a substitute for the writing process but as tool to enhance the final product.

As mentioned above, law graduates need to demonstrate the ability to engage critically and analytically with law. The LLB Standards document includes under critical thinking skills the ability to ‘analyse, synthesize, judge critically and evaluate problems and situations’ (LLB Standards, 2015). One of the concerns about the use of GenAI tools by students is that over-reliance on it will lead to a decline in critical thinking and analytical skills (Costa *et al* ,2024; Prakasha and Nair, 2024). GenAI can be used to stimulate critical thinking. Bliss (2024) suggests asking students to prompt an answer from GenAI whereafter they are allowed to evaluate the answer given. Although GenAI is used such an assignment still develops critical thinking and analytical thinking skills. Furthermore, such an exercise acquaints students with the use of AI. Dietis (2024) suggests prompting AI to produce arguments for and against a topic and asking students to give a (substantiated) answer as to which they prefer. Youn, Park and Murphy (2024) suggest giving an article to students to read and summarise and then prompting a summary from GenAI on the article whereafter students critically engage with that summary. In this way students must evaluate the

answer given by AI. Students might also be encouraged to use AI in a socratic method (Orynnbassarova and Porta 2024). In other words, the better the quality of their questions, the better answers they will receive. Bliss (2024) suggests that law students revise and refine a draft answer produced by AI, and using AI has a debate partner rather than naively accepting the first answer given. There are some aspects to be mindful of when using GenAI tools to enhance critical thinking. Darwin *et al* (2024) note that although GenAI has the potential to enhance critical thinking, it could create 'echo chambers' as it is limited in the number of perspectives that it can produce. Other limitations identified by Darwin *et al* (2024, 15) in their study include oversimplication of concepts of AI and lack of personalisation.

There are potential benefits of using Gen AI for the development of research skills. Gen AI has been beneficial in the initial brainstorming phase of research (Songkram *et al*, 2024). An additional benefit of GenAI is that it can speed up productivity during the research process. Traditionally, a person may have to use search engines to look up literature on a topic. With the use of GenAI a person may, for example, prompt the search of the most notable works on a topic. On some search engines, Gen AI is being used to summarise key points or findings in publications. These tools can greatly assist with the initial process of finding and identifying literature. Gen AI might also be able to assist with creating an outline for a research paper. AI-powered search engines are already being used in legal practice. Examples include LexisNexis AI and Westlaw. Clearing up time with more routine tasks creates time for the actual writing process. The most significant danger in using GenAI for finding sources is that it might hallucinate and the sources might be incorrect. Sources provided by GenAI should always be verified.

Law students need to be equipped with problem-solving skills. Traditionally, clinical legal education has been used to expose students to real-life legal problems and scenarios. Moot courts and mock trials have also been used to expose students to court setups and protocols. However, law modules usually have a large amount of students and doing mock trials with large groups of students can be time-consuming. For this reason, virtual courtrooms (powered by AI) has been used by Law Faculties. The University of Johannesburg has designed a virtual courtroom that confronts students with real-life scenarios in courtrooms.

4. Ethical considerations

It is of utmost importance that law graduates conduct themselves with ethical integrity. One of the biggest challenges with GenAI is the risks it poses to ethical behaviour. The biggest risk facing students is academic integrity. It is quite easy for students to submit an assignment question into GenAI and to submit an answer as is. Plagiarism has existed even before the arrival of GenAI. However, there is no reliable tool to detect the use of AI. It should be noted that universities and institutions have differing policies on the extent to which GenAI can be used. Some universities ban it completely, while others encourage its use.

In South Africa, existing codes of conduct and policies are used to regulate unethical behaviour in relation to the use of GenAI. Two cases have dealt with the use of generative AI by legal practitioners in South Africa. In *Parker v Forsyth*, the attorney had sent a list of non-existing citations to the defendant before it was heard before a court. The citations were fictitious and it was found that Chatgbt was used. The court found that although there was no deliberate misleading of the court, that the parties were nevertheless "overzealous and careless". The matter was reported to the Legal Practice Council.

In the second matter, *Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs*, one of the parties before the court presented citations that were fictitious. The court referred to the duty on legal practitioners not to mislead the court. The presiding officer in this matter emphasised that technology should be used with independent reading. The presiding officer further emphasised that it remains the responsibility of legal practitioners to verify information that is used and if this is not done it is unprofessional. The matter was referred to the Legal Practice Council.

In these two cases, the existing code of conduct was used to deal with the matter. It remains to be seen whether any specific code in relation to the use of AI will be created.

5. Curriculum reform for AI?

The discussion above, raises the question whether law curricula need to be reformed in order to deal with the challenges and risks posed by GenAI. It is a fact that law graduates will be entering a working world where AI is already being used. In addition, as with other ethical dilemmas, there is the risk of using AI in an irresponsible manner. In South Africa, the LLB standards document speaks to requisite skills and indicates the importance of ethical behaviour. The above-mentioned cases illustrate that existing principles can be used.

However, we are in the early stages of the use of AI. Law schools will have to consider the skills that are necessary for the next generation of law students. It might be less of the old skills and more new skills, such as learning how to operate AI-operated search tools.

Based on the above discussion, the following recommendations are made. Firstly, universities should have a clear policy on the use of GenAI. The policy should not simply state that GenAI should be used ethically. Ethical use should be explained. It is suggested that law schools incorporate the ethical use of GenAI into courses on academic integrity.

Secondly, all academic staff should be trained in the ethical use of GenAI. Since it is encouraged that lecturers incorporate GenAI components into their coursework, it only follows that lecturers convey the correct information to students.

Thirdly, as discussed above, there are various ways in which skills for future lawyers can be enhanced by the use of GenAI. Lecturers should, however, give clear written instructions on the extent to which AI can be used. It is also recommended that GenAI be used in real time in the classroom before students do so independently. Students should be properly briefed about assignments related to AI and the risks of using AI (Bliss 2024).

In the last instance, it is recommended that there be a variety of assessments. While it is encouraged that the ethical use of GenAI be used, other assessments such as written tests can still be utilised.

6. Concluding remarks

GenAI tools have infiltrated university and work life. In the short time that it has existed, it has been used exponentially. Law graduates will be confronted with GenAI in their professions. This paper has found that it is possible to use GenAI in a manner that enhances existing skills needs while also exposing students to the use of GenAI. It is recommended that assignments are used which are aimed at practicing skillful working rather than a blanket prohibition. Skills that can be enhanced include writing, research, problem-solving and critical and analytical thinking. It is imperative that law curricula incorporate courses that inform students of the ethical use of GenAI tools. While GenAI can perform tasks that previously only humans could do, it does not replace humans and GenAI cannot be used ethically without human oversight.

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