The reinvention of legal method

Mireille Hildebrandt, FBA

Abstract. This article examines the transformative impact of legal technologies and artificial intelligence on legal method, arguing that law should not be surreptitiously reshaped by technology but consciously re-invented by legal scholars and practitioners. Drawing on the notion of *distant reading* developed in the digital humanities, the author shows how modern law, as a text-driven and contestable practice, relies on affordances that are central to the Rule of Law. By contrast, code- and data-driven systems tend to scale the past and constrain future development. The article proposes a typology of legal technologies, critically assesses institutional guidelines on the use of AI, and advances criteria for their deployment that preserve legality, judgment, and legal protection.

Key words: Justice – Technology – AI - Rule of Law – Legal method – Automation – Legal Judgment

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1 Introduction

Maybe the most interesting question is whether the influx of legal technologies is surreptitiously reinventing legal method, or whether we, who practice and/or study the law, will reinvent legal method to address the impact of legal technologies. In this brief paper, I will argue for the latter, warning against the first. The argument is built in five sections. After this introduction, in the second section, I remind the reader of the salient work of the Italian literary historian Franco Moretti, one of the founding fathers of the 'digital humanities'. His concept of 'distant reading' offers an excellent lens to better understand the role of legal technologies in the context of the making of law, including its interpretation and execution. I explain how the deployment of these technologies will be *constitutive* for speaking the law in the broad sense of the enactment of legislation, the application of the law by public administration and adjudication by independent courts. In the third section, I argue that text-driven law has specific affordances that enabled the rise of modern positive law and the Rule of Law, noting that we cannot assume that code- and/or data-driven law has similar affordances. In the fourth section, I inquire into the different types of legal technologies. While their affordances are very different, what they have in common is that they tend to scale the past, while freezing the future. In the fifth section, I discuss the most relevant recommendations for courts, public prosecutors and practising lawyers for the purchase and/or development and/or deployment of legal technologies. In the sixth and final section, I conclude that although these guidelines demonstrate an acute awareness of the

many challenges that legal practice faces, there is no attention to the constitutive impact of AI on the making of law, meaning that legal method may indeed be *surreptitiously* reinvented. As means co-define ends, legal methods co-constitute the law. Thus, the nature of modern positive law as-we-know-it will be transformed with major implications for the Rule of Law. The curricula of legal education and the training of legal professionals should pay explicit attention to the text-driven nature of legal protection as-we-know-it and should contribute to the reinvention of legal method in ways that secure legal protection. This will require a rearticulation of the checks and balances of the Rule of Law, offering legal protection *by design*.

2 Distant reading

Lawyers have been trained in close reading, paying keen attention to relevant detail, both on the side of the potentially relevant legal norm and on the side of potentially relevant facts, noting that in law, the facts count as recounted in text.[1] To decide which legal norm is indeed relevant, requires a decision on the relevant facts – *and vice versa*. Overlooking details, such as other relevant legal norms, relevant case law or relevant facts and circumstances can have major impact on the foreseeable outcome of a case, noting that language cannot speak for itself, which implies an inescapable measure of ambiguity as to its meaning. Such ambiguity has triggered the adversarial model of legal discourse, enabled by the possibility to challenge the meaning of legal concepts and legal norms, thus intensifying the need to engage in close reading.

Though the study of law is now often seen as part of social science, the need to engage in a process of interpretation makes law more akin to the humanities. In law, as in the humanities, both the semantics (meaning) and the syntax (relationships between concepts, norms and domains of law) define the practice of law and the study of law, noting that in law the pragmatics of language-usage takes pride of place. Legal decision making has legal effect, which is – in terms of Austin and Anscombe – a performative effect.[2] Legal effect transforms the legal status, rights and/or duties of one or more legal subjects, enabling them to act in law. Such effect is neither due to the application of logic nor to the attribution of causality, even though both play an important role in legal decision making. To decide on the attribution of legal effect, the meaning of the relevant norms, concepts and domains of law must be explored and the relationships between them. This, in turn, requires close attention to both fact and law, involving close reading.

Franco Moretti, a professor of literary history, developed new, data-driven methodologies to analyse literary texts.[3] He amassed corpora of literary texts, conducting complex statistical and mathematical research on the data, to find patterns that are not visible to the naked human eye. He based himself on graph theory, network analysis and other computational methods to mine patterns that emerge from the distribution of the data, offering new insights based on the output of computational systems. In light of his research, he distinguished between the traditional method of *close reading* and his own method, which he coined *distant reading*. The main difference is that distant reading adds a layer of software between the text and its reader that mediates the output that becomes available for the reader. The output becomes a proxy for what has not been read.[4]

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[1] On the idea that law is text: James Boyd White, 'Law as Language: Reading Law and Reading Literature', *Texas Law Review* 60, no. 3 (1981): 415–46, https://heinonline.org/HOL/P?h=hein.journals/tlr60&i=437.

[2] J. L. Austin, *How to Do Things with Words*, 2nd edn (Harvard University Press, 1975); G. E. M. Anscombe, 'On Brute Facts', *Analysis* 18, no. 3 (1958): 69–72, https://doi.org/10.2307/3326788.

[3] Franco Moretti, *Graphs, Maps, Trees. Abstract Models for a Literary History* (Verso, 2005); Franco Moretti, *Distant Reading*, 1 edition (Verso, 2013).

[4] On the notion of proxies in the context of computational systems, see Mireille Hildebrandt, 'The Issue of Proxies, And Why EU Law Matters for Recommender Systems', preprint, SocArXiv, 4 October 2021, https://doi.org/10.31235/osf.io/45x67.

Legal technologies basically boils down to the same approach; those who deploy them will be *distant reading* large corpora of legal text, thus avoiding cumbersome search and interpretation. It is, however, key to understand that the design of these systems involves a number of technical decisions on what should be deemed relevant in terms of facts, norms, analogy, scope and the more. Such decisions are inevitable, whether made by human hand (e.g. labelling) or by the system itself (e.g. when using generative AI). Though technical, these design decisions are also normative,[5] as they afford to calculate what is essentially a matter of judgement. Different design decisions will result in other output models that could result in other outcomes of the tasks carried out.

The output produced by legal technologies can be used to *automate* legal decision making (meaning that the output is executable code) or to *prepare for* legal decision making (using the output to inform the application of the law). The difference is crucial, but can be negligible, depending on how those who deploy legal technologies have been trained. Confirmation bias, automation bias and a host of other inclinations may create a dependence on the output of legal technologies that eradicates the difference between fully automated legal decision making and 'merely' using it as an aid. In fact, much will depend on whether those who use the technology have been trained in close reading and will not just check the outcome but continue to practice the close reading of legal text instead of making themselves fully dependent on the proxy. The proxy, as a matter of fact, remains stuck in data or code that asserts the past, with no imaginative ability to rethink previous interpretations or develop new insights. Legal technologies, if applied without caution, will scale the past while freezing the future.[6]

If we learn, nevertheless, to deploy legal technologies as proxies in a way that does not distract from actually engaging with the underlying textual and factual realities, we may find ways to secure positive law and the checks and balances of the Rule of Law. Instead of these new 'technologies reinventing us as we invent them',[7] we should actively and deliberately reinvent legal method with keen attention to the role of computational technologies in the making of law.

3 The adaptive nature of text-driven law

Language is not self-executable. It does not speak for itself and its performative effects should not be understood as the aggregate of mental states of individual brains, nor as part of a social system that overdetermines the scope of our ability to act. Speech acts, such as the law, whether written or spoken, 'live' in between us, co-defining meaning while we define it. Legal effect largely hinges on written speech acts (text) that enact the meaning – the consequences – of legal decisions. In other work,[8] I have

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[5] P. N. Meessen, 'On Normative Arrows and Comparing Tax Automation Systems', *Proceedings of the Nineteenth International Conference on Artificial Intelligence and Law* (New York, NY, USA), ICAIL '23, 7 September 2023, 432–36, https://doi.org/10.1145/3594536.3595160. Masha Medvedeva et al., 'The Danger of Reverse-Engineering of Automated Judicial Decision-Making Systems', *arXiv:2012.10301 [Cs]*, 18 December 2020, http://arxiv.org/abs/2012.10301. Masha Medvedeva and Pauline Mcbride, 'Legal Judgment Prediction: If You Are Going to Do It, Do It Right', in *Proceedings of the Natural Legal Language Processing Workshop 2023*, ed. Daniel Preoțiuc-Pietro et al. (Association for Computational Linguistics, 2023), https://doi.org/10.18653/v1/2023.nllp-1.9.

[6] Mireille Hildebrandt, 'Code-Driven Law: Freezing the Future and Scaling the Past', in *Is Law Computable?: Critical Perspectives on Law and Artificial Intelligence*, 1st edition, ed. Christopher Markou and Simon Deakin (Hart Publishing, 2020).

[7] Don Ihde, *Ironic Technics* (Automatic Press, 2008).

[8] Mireille Hildebrandt, 'The Adaptive Nature of Text-Driven Law', *Journal of Cross-Disciplinary Research in Computational Law*, 16 September 2020, https://journalcrcl.org/crcl/article/view/2.

argued that we should cherish the fragility of natural language, its foundational ambiguity and contestability, including the ingenious long-term effects of printed text.

French philosopher Paul Ricoeur has described the move from orality to text in terms of three distanciations.[9] This is very interesting, because it asserts that the technologies of text also put a layer between us and reality, noting that text reads and interprets reality, just like the output models of legal technologies do. The point is never to deny this, but always to highlight the difference that makes a difference between the nature of that layer (text, code or data). We will explore and specify the difference in the section on 'Scaling the past and freezing the future'.

Ricoeur's first distanciation is that between author and text, noting that text, once read, begins to emancipate itself from its author, being co-defined by the response of the reader. In the end, this will afford the autonomous meaning of a text. The second distanciation refers to the distance in both time and space between author and audience. Once the text is available, exteriorised by the author, it can reach its audience across geographical distance and across decades or even centuries. Text thus affords a much larger reach of speech acts than the spoken word ever could. The third distanciation, that between text and meaning, challenges the autonomy of the text, noting that a text cannot speak for itself and will forever remain dependent on how it is read. This affords the transformation of meaning and the ambiguity of text, which in turn effects the contestability of its meaning.

We can now see how the rise of the printing press and the concomitant proliferation of printed text afforded (1) the relative autonomy of modern positive law, (2) large scale jurisdictions and (3) the foundational contestability of the law. The latter, in turn, resulted in the need for legal certainty to stabilise meaning, which resulted in the institution of an independent judiciary, capable of deciding the meaning of legal text, precisely because such meaning can always be contested. Both the positivity of law and the checks and balances of the Rule of Law are thus affordances of the era of the printing press.[10] The prior period of the handwritten manuscript was less prone to contestation because relatively few text was available, and its meaning could more easily be controlled by either the author of the text or by teachers who controlled access to the texts.

The foundational contestability of text goes hand in hand with its adaptiveness, an affordance it shares with spoken natural language. Both subtle and more grotesque shifts in the meaning of words, sentences and norms imply a continuous flux of meaning that is, however, less explicit in spoken discourse than in written or printed text. Because text, especially when printed, seems to be identical with itself, whereas its meaning remains dependent on the way its audience engages with it, shifts in meaning become more visible. Modern positive law thus becomes both an argumentative practice and a hallmark of state centred authority. The flux of meaning is arrested by the authority to decide meaning, by giving the last word to the court. This enables an adaptiveness that is, however, not a matter of 'anything goes', as this would result in anomia or chaos. Instead, the adaptiveness of modern positive law is part of a slow process of attuning legal norms to the circumstances of their application. Positive law, thus, also affords a measure of imagination about how we want to live together, offering an opening for alternative visions of the future. Not as a mere extrapolation of the present or past, but

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[9] Deborah M. Geisler, 'Modern Interpretation Theory and Competitive Forensics: Understanding Hermeneutic Text', *The National Forensic Journal* III, no. Spring (1985): 71–79. Paul Ricoeur, 'The Hermeneutical Function of Distanciation', *Philosophy Today* 17, no. 2 (1973): 129–41, https://doi.org/10.5840/philtoday197317233.

[10] For an in-depth historical analysis of the affordances of the printing press see Elisabeth Eisenstein, *The Printing Revolution in Early Modern Europe* (Cambridge University Press, 2005); Sabrina Alcorn Baron et al., eds, *Agent of Change: Print Culture Studies after Elizabeth L. Eisenstein* (University of Massachusetts Press, 2007), https://www.jstor.org/stable/j.ctt5vk8sv. For its relevance for the law, see Mireille Hildebrandt, *Smart Technologies and the End(s) of Law. Novel Entanglements of Law and Technology* (Edward Elgar, 2015)., chapters 7 and 8, available in Open Access: https://www.elgaronline.com/monobook-oa/book/9781849808774/9781849808774.xml?rskey=CD51Fh&result=1

as a form of natality,[11] of new beginnings. We do not, indeed, want to be defined by the past, nor by a future that is imposed upon us by what we considered a good thing in the past.

Highlighting the importance of modern positive law, understood from the perspective of interpretation theory (hermeneutics), should not be equated with formal legal positivism. The latter has always been keen on seeking the author's intention, in an attempt to achieve a rigid type of legal certainty, in fear of losing control. Even the Roman Emperor Justinianus prohibited the interpretation of the *Corpus Iuris Civilis* in an attempt to prevent the development of law beyond his control.[12] In the US, the interpretation of the US Constitution and the Bill of Rights is often restricted to the Framers' intention, based on literal interpretation, endorsing the idea that the past (the historical intention of the authors of the Constitution) should rule the present. This narrow conception of interpretation is called originalism and despite the underlying idea that we should stick to that original intent, reality teaches us that the adaptive nature of natural language means that to decide on the original intent nevertheless requires interpretation, which inevitably invites contestation and argumentation. Originalism aligns with a specific understanding of the nature of positive law, called formal legal positivism, where law, morality and politics are separated as if mutually exclusive. This so-called separation thesis invites lawyers to ignore and hide the 'inner morality' of the law, while – at the same time – declaring their own ideological preferences to convey the 'true meaning' of the law.[13] Some have argued that the use of generative AI to simulate legal reasoning based on large corpora of legal text is an extrapolation of this type of originalism, thus reinforcing formal legal positivism in a way that denies and ignores the foundational contestability of the law as key to the Rule of Law.[14]

4 Scaling the past and freezing the future

Legal technologies come in different shapes and designs that generate different affordances. In the context of my ERC Advanced Grant project on *Counting as a Human Being in the Era of Computational Law* (COHUBICOL),[15] we broadly distinguished between code- and data-driven technologies, where the first included knowledge- and logic-based systems and the second referred to various types of machine learning, including prediction of judgments. Code-driven systems can be aligned under the heading of 'Rules as Code',[16] a movement intended to develop systems capable of automating parts of decision making by public administration, for instance by way of domain specific programming languages.[17] Data-driven systems build on large corpora of legal text, notably case law but also

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[11] Hannah Arendt, *The Human Condition* (University Press of Chicago, 1958).

[12] The ban on interpretation did not work as intended. Jana Koprlová, 'The Fate of the Roman Law in the Eastern Europe since the Death of Justinian the Great until the Fall of the Byzantine Empire', *SOCIETAS ET IURISPRUDENTIA*, n.d., accessed 8 March 2026, https://sei.iuridica.truni.sk/international-scientific-journal/archive/issue-2020-03/the-fate-of-the-roman-law-in-the-eastern-europe-since-the-death-of-justinian-the-great-until-the-fall-of-the-byzantine-empire/.

[13] Mireille Hildebrandt, 'Radbruch's Rechtsstaat and Schmitt's Legal Order: Legalism, Legality, and the Institution of Law', *Critical Analysis of Law* 2, no. 1 (2015), http://cal.library.utoronto.ca/index.php/cal/article/view/22514.

[14] Zachary Catanzaro, 'The Dead Law Theory: The Perils of Simulated Interpretation', SSRN Scholarly Paper no. 6164388 (Florida Law Review, forthcoming 2027), https://papers.ssrn.com/abstract=6164388.

[15] See www.cohubicol.com.

[16] Matthew Waddington, 'Rules as Code', *Law in Context. A Socio-Legal Journal* 37, no. 1 (2020): 179–86, https://doi.org/10.26826/law-in-context.v37i1.134.

[17] Denis Merigoux et al., 'Catala: A Programming Language for the Law', *Proceedings of the ACM on Programming Languages* 5, no. ICFP (2021): 77:1-77:29, https://doi.org/10.1145/3473582.

legislation, doctrine and/or other types of legal decisions, to generate summaries of cases, to mine relevant arguments, to predict case outcome or to write briefs or draft judgments. Whereas code-driven systems are built on symbolic logic, data-driven systems are built on sophisticated statistical and mathematical modelling. In the context of the COHUBICOL project we have developed an online webtool that presents a *Typology of Legal Technologies*,[18] with a set of filters and a set of definitions of key legal and computational concepts. The idea was not to offer an exhaustive listing of available legal tech, as this would mean the tool would be outdated almost immediately, but rather to offer a methodology and a mindset for dealing with the different *types* of tools. The webtool allows the user to play around with the filters, to focus on tools supporting for example, a specific audience (e.g. law firms or legislators), on the kind of support they offer (e.g. drafting of legislation, preparing for litigation, case law analysis, prediction of judgments) or on the type of system design (e.g. data- or code-driven, application/dataset/scientific paper), while offering insights in access rights (e.g. open source, open access, licensing). As part of the method, the *Typology* lists technical and/or legal issues, based on collaboration between researchers from both law and computer science, indicating how the actual functionality differs from what is claimed by the provider. Though generative AI exploded after the *Typology* was finalised, the underlying methodology helps to understand both the affordances and the disaffordances of the use of large language models (LLMs) in law, whether for search, drafting or summarising, as exemplified in one of the research blogs of the project.[19]

Perhaps the most important point to be made here, is the fact that both code-driven and data-driven systems rely on and extrapolate the past. Though it is often suggested that the law is slow and backwards, having trouble to keep up, whereas digital technologies are advanced and far ahead of the law, in the case of legal technology the opposite is true. Code-driven systems depend on translating text-driven legal norms into computer code, thus halting their development. Data-driven systems cannot but train on past data. Both cannot but extrapolate past instructions or past behaviours.

5 Practicing law with legal technologies

There is now a plethora of guidelines on how to use legal technologies in legal practice, notably at the global level we have the UNESCO *Guidelines for the Use of AI Systems in Courts and Tribunals*, and at the European level we have the *Guidelines on the Use of Generative Artificial Intelligence for Courts* of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, the *Guide on the Use of Generative AI by lawyers of the Council of Bars and Law Societies of Europe* (CCBE), and the *Artificial Intelligence Strategy* of the Court of Justice of the EU (CJEU).[20] It is fascinating to see that the CJEU was the first (2023) and, like UNESO, does not restrict itself to generative AI. Though it is understandable that the CCBE and the CEPEJ focus on the use of generative AI, considering its rapid

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[18] Laurence Diver et al., 'The Typology of Legal Technologies', COHUBICOL, 2022, https://publications.cohubicol.com/typology/.

[19] Pauline McBride and Masha Medvedeva, 'Casetext's CoCounsel through the Lens of the Typology', *COHUBICOL*, 4 July 2023, https://www.cohubicol.com/blog/casetext-cocounsel-openai-typology/.

[20] Juan David GUTIERREZ, *UNESCO Guidelines for the Use of AI Systems in Courts and Tribunals* (UNESCO, 2025), https://www.unesco.org/en/articles/guidelines-use-ai-systems-courts-and-tribunals; *CCBE Guide on the Use of Generative AI by Lawyers* (Council of Bars and Law Societies of Europe, 2025), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Events/20220331_AI4L/EN_IT_Law_2022_Guide-AI4L_web.pdf; *Artificial Intelligence Strategy* (Court of Justice of the European Union, 2023), https://curia.europa.eu/site/upload/docs/application/pdf/2023-11/cjeu_ai_strategy.pdf; *Guidelines on the Use of Generative Artificial Intelligence for Courts* (European Commission for the Efficiency of Justice (CEPEJ), 2025), https://rm.coe.int/cepej-2025-18final-en-draft-guidelines-on-the-use-of-generative-ai-for/48802a4ad1.

uptake by individuals on all counts and the difficulties of detecting its deployment, what we need is a genuine investment in an AI strategy that addresses both code- and data-driven AI systems.

Most guidelines offer a set of laudable principles that those who take 'liberal democracy' for granted could not possibly disagree with. There seems to be a keen awareness of risks and challenges, addressed by a variety of organisational measures. All the guidelines are aware of the risk approach of the EU AI Act, notably with regard to the risks of unreliability, discrimination, privacy, automation bias, confirmation bias and deskilling. AI systems to be deployed by the judiciary when interpreting and speaking the law are by definition qualified as high risk systems. in the Act. This implies detailed obligations to set up risk management and quality management systems, data governance and substantive approaches to human oversight (instead of the usual lip service to the 'human in the loop'). The detailed legal obligations in the AI Act demonstrate a willingness and ability to deal with the affordances of these technologies, demanding demonstrable attention to the *downstream* implications of *upstream* design decisions, where 'upstream' refers to decisions taken by developers whose technical design defines what is and what is not made possible for those who deploy the output systems, while 'downstream' refers to the actual deployment which directly impacts those targeted by these systems. The guidelines offer domain specific approaches with regard to the purchase/development and deployment of AI systems, including those that integrate generative AI models (LLMs).

Most of the guidelines kick-off with the usual laudatory words on how the innovation will bring efficiency and effectiveness to legal practice, often coupled with warnings against risks of bias and discrimination, privacy and so on. The framing of the uptake of AI in the making of law is thus biased toward an assumed need to engage in a full-scale digital transformation, portraying the risks to the constitutive checks and balances of the Rule of Law as incidental challenges to be 'managed'. Though the AI Act takes a risk approach, its legal obligations demonstrate that the risk approach is very much a precautionary approach that requires advance assessment of potential threats to health, safety and fundamental rights, and the design and development of AI systems or models in ways that pre-empt or mitigate such risks. The guidelines mirror this approach, with concrete organsational measures, though little attention is given to upstream technical choices that define downstream affordances.

The *Typology* introduced above, when understood as a method and mindset, will contribute to a more informed assessment, paving the way for a pertinent and genuinely cross-disciplinary conversation between lawyers and computer scientists. To reinvent legal method in a way that sustains both legal order and legal protection, computer scientists will have to learn about the law in new ways, understanding that law is more than a bag of rules, highlighting the contestability that is at the core of text-driven law.[21]

I have been arguing that we must learn to ask three specific questions before investing in legal technologies. These questions will make our assessment of whether, and if so how, we should invest in legal technologies, both more concrete and better attuned to the real world issues we face. The first question would be what problem a specific legal technology can *actually* solve, and whose problem this *actually* is. The second question would be what problem it does not solve, and whose problem that is. The third question would be what problem this specific legal technology creates and for whom. Imagine if these technologies could solve part of the administrative burdens that plague the courts, but not the problems that those who seek justice actually have, because the automation results in them not recognising the way their problem is transformed to fit the vicissitudes of the relevant computational system. Engaging with these three questions will force those in charge to deal with technology push, noting that software and AI systems often do not solve the problems we have but a proxy-problem

[21] Mireille Hildebrandt, *Law for Computer Scientists and Other Folk* (Oxford University Press, 2020), https://global.oup.com/academic/product/law-for-computer-scientists-and-other-folk-9780198860884?cc=be&lang=en&.

that lends itself to computational solutions.[22] In the meantime, the technological 'solution' creates a plethora of additional problems, from climate change to unwarranted dependencies, exorbitant maintenance costs and a dehumanising efficiency resulting in people not being heard. That is why only asking the first question will not do;[23] only explicit attention to the second and third question will offer a balanced assessment that should inform any decision to purchase and/or develop and/or deploy legal tech.

The CJEU does not only expect gains in both efficiency and effectiveness, but also higher quality and consistency of its judgments, as well as better access to justice, all due to the integration of generative AI into its workflow. These are high expectations that raise many questions as to the precise problems that must – supposedly - be addressed. Questions such as 'what is meant with quality?' and 'how generative AI could enhance it in a way that human engagement could not?'. Also, one wonders what is meant with consistency, considering that computational systems can only deal with logic and statistical regularities, not with ambiguity, normative integrity and judgement. As discussed above, law is an argumentative practice;[24] legal certainty is not about calculation but about the elusive competence to judge. And as computer scientist Smith has explained, judgement cannot be achieved by way of reckoning.[25] Nevertheless, even if one can doubt the optimistic approach of the Court to the potential gains of deploying generative AI, the Court does signal awareness of key drawbacks, listing biases that may generate involuntary discrimination, disclosure of sensitive data especially when using cloud computing, false or inaccurate (or irrelevant) information depending on low quality training data or as a result of so-called hallucinations, over-relying on technology that may reduce the ability for humans to filter and correct the outcome and/or their ability to take over when the technology fails, hyper abuse due to premature deployment of systems that are not fit for purpose, disinformation censorship and control when AI systems end up in the wrong hands and sophisticated cyberattacks capable of corrupting output models. The Court offers a range of 'solutions', starting with the SIGA, 'the case management system that aims to be the unique platform in which all cases are managed end-to-end, both for the Court and the General Court' and the Innovation Lab, 'aiming to explore emergent technologies and the way in which the Court can leverage them'. The Court has underpinned the three goals (efficiency and effectiveness, quality and consistency of judgments and access to justice) with a number of more detailed and concrete objectives. Both the goals and the objectives can be read as a summing up of problems to be solved, where the objectives are more or less framed in terms conducive to computational solutions. Articulating the problems by means of such proxies may be helpful but also raises the question of whether they solve the problem or merely its measurable proxy. One decision, however, must be applauded, namely not to resort to cloud computing, which, if implemented, would not only solve but pre-empt a range of substantial risks.

6 Conclusions

When reading the various listings of immense, costly and disruptive risks that are inherent in the digital transformation one wonders whether the investment of capital, time, energy and workload is worth the assumed and unproven benefits.

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[22] On the issue of proxies in computational systems: Mireille Hildebrandt, 'The Issue of Proxies and Choice Architectures. Why EU Law Matters for Recommender Systems', *Frontiers in Artificial Intelligence* 5 (2022), https://www.frontiersin.org/article/10.3389/frai.2022.789076.

[23] See e.g. the *Guidelines on the Use of Generative Artificial Intelligence for Courts*. of the CEPEJ at p. 6 ff.

[24] JEREMY WALDRON, 'THE RULE OF LAW AND THE IMPORTANCE OF PROCEDURE', *Nomos* 50 (2011): 3–31, JSTOR, https://www.jstor.org/stable/24220105.

[25] Brian Cantwell Smith, *The Promise of Artificial Intelligence: Reckoning and Judgment* (The MIT Press, 2019).

More importantly, there is little or no awareness of the foundational nature of the digital transformation that is unfolding. In other work, I have called upon lawyers to get their act together,[26] inviting my colleagues to become curious and interested in the assumptions, limitations and operations of computational systems to better understand how *upstream design decisions* shape and reinvent legal method. I urge those holding a legal office to get this right in terms of the protection that law offers both society and individuals, sustaining the dynamic balance between legal certainty, justice and instrumentality,[27] insisting that the curricula of legal education must, in part, be reinvented.[28]

I hope that this brief article offers some incentives and some directions for legal scholars and legal practitioners to take a critical, adversarial stance towards legal technologies, without rejecting them upfront.

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[26] Mireille Hildebrandt, 'Law as Information in the Era of Data-Driven Agency', *The Modern Law Review* 79, no. 1 (2016): 1–30, https://doi.org/10.1111/1468-2230.12165; Mireille Hildebrandt, 'Law as Computation in the Era of Artificial Legal Intelligence: Speaking Law to the Power of Statistics', *University of Toronto Law Journal*, 9 March 2018, 12–35, world, https://doi.org/10.3138/utlj.2017-0044.

[27] Mireille Hildebrandt, 'Radbruch's Rechtsstaat and Schmitt's Legal Order: Legalism, Legality, and the Institution of Law', *Critical Analysis of Law* 2, no. 1 (2015): 42–63.

[28] Mireille Hildebrandt, 'Grounding Computational "Law" in Legal Education and Professional Legal Training', in *Research Handbook on Law and Technology*, ed. Bartosz Brozek et al. (Edward Elgar Publishing, 2023), https://www.elgaronline.com/edcollchap/book/9781803921327/chapter7.xml.