Artificial Intelligence and Law Project: AI and Employment

Summary of Research Visits November – December 2018

Introduction

In late 2018 we visited the United Kingdom and Brussels for two weeks to understand more deeply how different sectors of society were responding to the emerging issues of AI and employment and what, if any, new forms of regulatory or policy approaches were being developed. We met with 21 people from 12 agencies including representatives of government, universities, civil society groups, education providers, research bodies and the European Parliament.This brief report summarises the highlights from those visits in relation to research, employment issues, emerging responses of workers and regulators, some recent government initiatives and the views of civil society.

Research

A variety of new research initiatives are underway and we met with one, the Ada Lovelace Institute, to better understand the drivers for these. The Institute is a newly established independent research body "with a mission to ensure data and AI work for people and society." Funded by the Nuffield Foundation (with 5 million pounds over 5 years), the Institute plans to focus on research and to work closely with the Centre for Data Ethics and Innovation (see further below). The Institute is in the process of establishing its Board and released its prospectus in December 2018. The Institute was proposed by learned societies, fora and academies which saw a gap in various law and government inquiries (for example inquiries by the UK Office of the Information Commissioner). The Institute does not have an advocacy role, focussing instead on developing high quality research and ensuring the role of statisticians is well understood.

The Institute emphasised the need to be careful of terminology in this area and noted some frustration in the maths community about those with 'stars in their eyes' about AI, emphasising a cautious approach is needed. In relation to data access and use, the Institute noted there has been recent pushback by corporations on ideas of "data ownership" in the AI area, as more is understood about data sources and how best to share data and permit access.

The Institute observed some strong parallels with the situation in the UK and what appears to be happening in New Zealand in that it is difficult to grasp the whole picture of what government is doing and at what level they define algorithm use; that government AI procurement policies are very important and not well understood; that it is harder to find whether algorithms are being used in central or local government which have different divisions of service delivery (compared to New Zealand); and finally in that agencies are nervous about saying AI is being used in certain contexts. The Institute's newly convened Board will develop research strategies and release these in 2019.

The Oxford Internet Institute also offered insights into other areas of research. Sandra Wachter and Brent Mittelstadt provided a very useful and detailed commentary on their analysis of the implications of the 'right to explanation' in the GDPR and its relevance to AI related decision-making. We learned of their thorough background work on the negotiation of draft GDPR text and the

evidence which supports their argument that the GDPR contains no enforceable right to explanation. They were very interested in the project team's recent articles on control and transparency issues and offered that this aspect of our project work is timely and very relevant to the work of other academics in this area.

Employment issues for workers

An academic workshop on industrial relations at Leeds University provided a timely insight into how trade unions are responding to the emerging gig economy, platform-based work and issues related to the use of AI in workplaces. Participants noted that trade unions are still highly regulated and that this regulatory framework may need more detailed consideration of whether it is fit for purpose for 'digital economy workers'.

University of Leeds Workshop (photo J Liddicoat)

There was a useful critique of social movements on specific issues (such as #MeToo or #TheLivingWage) and how these were engaging to mobilise workers (in contrast to how unions were doing so) and the impact of these movements on working conditions. Professor Jane Holgate of Leeds University Business School considered it important to consider the impact of AI in the workplace, how the use of AI might affect employer/employee relationships, the role of trade unions and policy issues that might arise in employment law.

On more specific issues for workers, Mark Graham, Professor of Internet Geography at the Oxford Internet Institute and a Faculty Fellow at the Alan Turing Institute, provided a helpful overview of some of the issues for workers experiencing new forms of working conditions in the gig economy. New forms of work include platform-based work in which companies are "near-shoring" or "off-shoring" workers to, for example, review images to assist AI technologies for image recognition purposes. Working conditions issues for these workers include: physical wellbeing (where home workplaces are not well set up or are not secure); flexibility (while offering advantages has also resulted in some people working up to 90 hours per week); and mental health concerns (workers may be looking at images that contain objectionable material (eg explicit violence) and do not have supervision or support to deal with the effects - as well as health risks this may also have data quality consequences where image recognition quality is comprised).

Some of the regulatory issues mentioned in this area were: how to challenge working conditions especially across borders/jurisdictions; which law/regulation to apply – that of the worker's home country or the country of incorporation or the country of primary out-sourcing; and whether there

can be a uniform regulatory standard for working conditions where a company has multiple workers in multiple countries doing the same task.

Emerging Responses from Workers and Regulators

In response to concerns about new forms of employment and the need for protection of vulnerable workers, we were advised several initiatives have been developed. For example, the Frankfurt Declaration on Platform-Based work references a network of European and North American unions, labour confederations, and worker organizations "calling for transnational cooperation between workers, worker organizations, platform clients, platform operators, and regulators to ensure fair working conditions and worker participation in governance in the growing world of digital labor platforms such as Clickworker, Amazon Mechanical Turk, Jovoto, and Uber". One German union focused on "crowd work" http://faircrowd.work/what-is-crowd-work/ is attempting to rate working conditions on different platforms working with affiliated unions in the UK, Austria, Sweden and the United States. In the UK the London-based Couriers and Logistics Branch of the Independent Workers of Great Britain is defending the rights of workers in the British courier and logistics industry, including self-employed workers for major courier companies and food delivery companies such as Deliveroo and UberEats.

Project Team members (left to Right)
Colin Gavaghan, James Maclaurin, John Zerilli and Joy Liddicoat

We learned that there are specific concerns about regulation for fair pay rates particularly for workers in countries which do not have a minimum wage or where there are different minimum wages in different countries where workers are doing the same task for the same company. We were asked whether, for example, companies using these work practices can be required to pay the minimum wage in the country of incorporation, or to pay the minimum wage in the country of the worker. We were told workers may be particularly vulnerable where companies do not abide with employment laws or the relevant law does not meet international minimum standard.

The Law Society advised us about the work they are doing and the position they are taking in relation to AI research and regulatory options. They see four main elements to current discussion in the UK: AI augmentation of work rather than replacement of work or workers; a focus on what AI cannot do; concerns about bias; and the need for stronger ethics. They noted it is clear the practice of law will change but it will affect the law profession unevenly (eg most law firms are small and are

not able to keep pace with technological change compared to larger firms with more resources). The Society recently surveyed lawyers on issues of new technologies, finding that most lawyers are not ready for these changes and do not think that they will need advanced skills in this area, such as statistics or coding or other areas.

On the question of how regulators are responding to the current context, they considered regulators are generally struggling to keep up with changes. The result is, for example, that their members are nervous of making changes to practice using AI. The Solicitors Review Authority (the regulator of lawyers in England and Wales) for example, has been very slow to respond. However, this is in strong contrast to the area of financial technology where the regulator has been a driver of adoption by setting out rules on roboadvice.

In relation to regulators' approaches, the Society noted a Legal Services Board survey in 2015 which found that regulation was seen as a barrier to adopting new technologies, but the Society thought this was much less of a concern in 2018. On the contrary, regulation is not seen so much as a barrier to innovation, but more of a support to assist adoption (for example by creating rules certainty so that companies can invest with more confidence). We thought this view appeared to be in contrast to the technical exceptionalism view taken to regulation of other forms of technology (namely, the view of 'permissionless innovation', that technology should not be regulated). The Law Society also mentioned the rise of RegTech – technology that will help regulatory compliance – as an example of how there is less tension between regulation versus not regulating new areas of technology.

Professor Marina Jirotka, Professor of Human Centred Computing, focusses her research on how new machine learning developments and AI can be shaped to respect human agency, to ensure accountability of systems and the digital rights of individuals and communities. Professor Jirotka is at the forefront of work on Responsible Innovation, an initiative being developed in the United Kingdom and the European Union to take a softer regulatory approach to AI and machine learning technologies. We discussed Professor Jirotka's research, which focuses on:

- the theoretical and conceptual underpinnings of new forms of governance for RI - new methods for the dissemination of materials and innovative ways of engaging the public in debates on RI in ICT;
- unpacking the practices and concepts of innovation of digital systems in the context of professional organisations;
- investigating new, and enhancing existing methods for RI practice for digital system developers; and
- creating a social charter for embedding novel platforms into Smart Societies to provide enhanced agency for people and communities.

Government Initiatives

The UK Government Office for Artificial Intelligence (OAI) was established in April 2018. We learned that it is still developing its work programme, but has a strong initial focus on promotion and adoption of AI across government. The OAI has a different regulatory focus from the Centre for Data

Ethics and Innovation (CDEI), which has been set up with the support of the British Prime Minister, partly in response to public concerns about AI. The mission of the OAI is to drive adoption of AI and its use to develop new services and uptake of related technologies.

By way of background, we were advised that early work was done to map the roles of different existing UK regulatory bodies in order to determine whether to regulate in relation to AI and, if so, how might be best. For example, the role and powers of the Information Commissioner's Office and the ccTV Commissioner were considered along with other options, but the Government determined that a new body was needed. This decision appeared to have broad, if not universal, support.

The OAI had already identified some barriers to adoption, particularly for small and medium-sized enterprises (SMEs) such as lack of access to data to use to develop AI services and SMEs being unaware of business models and how to calculate returns on investment. Tool kits and other resources to assist SMEs are planned. The Office is also monitoring whether there were any legislative barriers to adoption and is working with others on innovative responses. For example, in response to concerns about intellectual property laws restricting access to data, the Open Data Initiative was establishing Data Trusts, where data could be shared with SMEs.

Joy Liddicoat

The OAI work programme is still developing and current workstreams include the proposed AI review, data, skills, AI adoption and a government AI review.

This review will comprise an audit of AI use (rather than a stocktake which has been done in New Zealand). The aims of the audit are to provide baseline information about existing of AI use, enable assessment of opportunities for AI adoption and to show that it is safe to use AI. Other areas of work for the OAI include a proposed procurement policy and a survey of the government's 3,000 data scientists to elicit potential areas for testing and deployment of AI related services.

The UK Government has recently established a new Centre for Data Ethics and Innovation (CDEI). We were fortunate to secure a meeting with the Centre, which is still nascent. A Ministerial consultation about its role started in November 2018.

The CDEI is currently hosted in the Department of Culture, Media and Sport and aims to be a statutory body in the next 2-3 years if it is clear current measures are insufficient and that a new statutory body is needed, for example, for education or other purposes. CDEI is reviewing in more detail the current gaps in regulation and possible levers for regulation and will assess evidence and may propose regulation where it thinks this is needed. Eventually, they will be an independent advisory body rather than a regulator, although they could advise about the need for regulation in a particular area or alternatively about regulations that appear to be barriers to innovation. CDEI advised us that their main functions are to:

1. Analyse and anticipate: horizon scanning, looking for opportunities and risks.
2. Take deep research dives into particular issues: initially at the issue of bias and micro-targeting and the harms it might have in particular domains (e.g. advertising promoting gambling to individuals at risk of addiction).
3. Bring people together: helping to develop networks involving government, commerce and diverse other groups.

CDEI did not see their role was to develop ethical standards, considering instead that "the hard ethical work" for government and commercial users of AI would need to be done by others. In terms of regulatory measures, CDEI noted there is very little appetite in the UK for regulation of AI technology of the kind recommended by Mady Delvaux. However, we learned that there is more of a general appetite for AI regulation in the UK than there used to be and considered regulation sector-by-sector as some sectors were more developed than others. Despite their likely lack of regulatory powers, they do have some including requesting information from agencies and giving advice.

European Parliament

Mady Delvaux, European Parliament MP provided valuable insights into her work as Rapporteur author of the Parliament's 2017 report that proposed, inter alia, the recognition of a limited form of legal personhood for autonomous robot workers. Ms Delvaux reflected that in response to that report a large number of working groups had been established, but it was unclear how effective these have been. In particular, the diffusion of focus across a number of working groups that needed to consult with each other, appeared to be slowing progress and diluting effective use of scarce resources.

Ms Delvaux also reflected that since the 2017 report the demands of industry groups had changed significantly. Many (more than two-thirds) were now seeking regulatory certainty to protect investments in the long term and to reduce risk of adverse regulatory findings. This was a marked change from two or three years ago when there was strong demand for no regulation and a climate of 'first mover disadvantage' among EU Member States considering regulatory measures.

Civil Society Views

We met with a small number of civil society groups, who expressed concern about the rapid development of AI technologies with little critical appraisal of risks and strategies to mitigate these. Privacy International (PI), for example, outlined its current litigation strategy which involves the filing of seven cases to challenge companies that are using different sets of personal information for business purposes. Their strategy was to emphasise that the right to privacy and data protection, while very important, was only one of the rights engaged in issues of AI and employment. While PI supported the work of the UK Information Commissioner's Office, they felt much more needed to be done by other human rights related groups. Access Now echoed this view and shared with us their AI and human rights research and their advocacy strategies for raising concerns about use of AI, the need for transparency and for better rights protection. Both groups commended the work of the

Special Rapporteur on Freedom of Opinion and Expression, David Kaye, whose 2018 report focused on freedom of expression and AI called for a human rights approach to artificial intelligence.

Conclusion

We were very grateful to all of the people we met with, many of whom were very much at the international cutting edge of the work that is taking place around the policy considerations raised by AI. They reflected that our project's research was ahead of them in some respects as several were only just starting to consider the deeper regulatory issues we were discussing with them. In addition, none were considering the impact of AI on the regulation of the professions as a whole, nor were they aware of any research in this area. The insights from the research visits have been very helpful in informing the project about options to consider for New Zealand, and will be particularly helpful for reflecting on the objectives for and participants in the Dunedin workshop planned for February 2019.

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Project information can be found at: https://www.cs.otago.ac.nz/research/ai/AI-Law/

January 2019