The Rise of the Interdisciplinary Lawyer: Defending the Rule of Law in the Age of AI

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MANY PROMOTE THE IMPORTANCE OF THE RULE OF LAW.[1] Its mainte-nance, or lack thereof, can substantially affect a democracy: "If you can weaken the Rule of Law, you can weaken democracy," explains Asha Ran-gappa.[2] Similarly, protection of the Rule of Law[3] can foster economic growth. In recent decades, international development efforts led by the World Bank, for instance, have included investments in the Rule of Law.[4] Finally, the Rule of Law can facilitate societal well-being. As pointed out by Cass Sunstein, "When cases are settled in advance, people are able to plan their affairs and to do so with knowledge of what government may and may not do."[5]

Safeguarding the Rule of Law,[6] though, is no easy task. The Rule of Law, like a garden inundated with slugs and bugs, requires constant vigilance

1. *See, e.g.*, Cass R. Sunstein, The Rule of Law 1, 32 (Mar. 30, 2023) (unpublished prelimi-nary discussion draft) (on file with Harv. L. Sch.) ("An enthusiastic celebration of the rule of law is very much in order.").

2. Asha Rangappa, Keynote Speaker, Keynote Remarks at the Rule of Law Conference (Jan. & Feb. 2019) *in* Conn. Law., Jan. & Feb. 2019, at 14.

3. Following the lead of Professor Jeremy Waldron, I capitalize the Rule of Law "to distin-guish it from the phrase 'a rule of law' which may be used to refer to a particular legal rule such as the rule against perpetuities . . . ." Jeremy Waldron, *The Concept and the Rule of Law*, 43 GA. L. REV. 1, 3 n.1 (2008).

4. *Global Program on Justice and Rule of Law*, WORLD BANK, https://www.worldbank.org/en/programs/global-program-on-justice-and-rule-of-law [https://perma.cc/F2ES-X6Q4].

5. Sunstein, *supra* note 1, at 29.

6. The legal community has yet to agree on a definition of the Rule of Law. Some stake-holders argue that "the Rule of Law [is] indefinable." *See Rule of Law*, COUNCIL EUR., https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN [https://perma

because of the numerous ways to undermine it. One of the surest ways to chip away at the Rule of Law is to foment mistrust in the judicial and law enforcement system.[7] Consequently, the legal profession has an obligation to identify and respond to potential sources of mistrust. Theoretically, this obligation pervades the profession: Law schools introduce aspiring lawyers to the Rule of Law;[8] practitioners select cases and defend clients in alignment with the Rule of Law;[9] judges look to the Rule of Law to inform their decisions.[10] Despite agreement in the legal world that lawyers have the "special and exclusive role of protecting individual rights,"[11] far fewer have set forth the duties associated with that responsibility.[12] So, in practice, the legal profession often fails to identify and respond to threats to the Rule of Law.

One such threat is the development and deployment of emerging technologies.[13] From autonomous vehicles ("AVs") to geoengineering and, now, artificial intelligence ("AI"), emerging technologies have the potential to improve as well as impair the Rule of Law.[14] Generative AI tools, for example,

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.cc/EB5T-YBZA]. Others think that the Rule of Law is best thought of as a lofty principle. *See, e.g.*, *The Rule of Law*, CT. APPEAL ALTA., https://albertacourts.ca/ca/about/role-and-operation/the-rule-of-law [https://perma.cc/H98K-SPEA] (quoting Justice Jack Watson of the Court of Appeal of Alberta, who maintains that "[t]he rule of law is actually imaginary. . . . It is a thing which is around us all the time. . . . But, it is not visible per se and its importance is hard to define."). Given these definitional difficulties, this essay does not attempt to define narrowly the term but instead proceeds down the same path taken by other scholars—relying on a set of principles to pin down the meaning of this important concept, at least partially. *See also* Eric J. Segall, *Justice O'Connor and the Rule of Law*, 17 U. FLA. J.L. & PUB. POL'Y 107, 109–10 (2006).

7. *See* Sunstein, *supra* note 1, at 28–31; *see also* Christoph K. Winter, *The Challenges of Artificial Judicial Decision-Making for Liberal Democracy*, *in* JUDICIAL DECISION-MAKING: INTEGRATING EMPIRICAL AND THEORETICAL PERSPECTIVES 179, 190 (Piotr Bystranowski, Bartosz Janik & Maciej Próchnicki eds., 2022) ("While nowadays citizens and policymakers alike have to trust their (often unreliable) intuitions to assess the situation, the clarity of the trade-offs, for example between public safety, discrimination, and detention rates, as in the case of bail decisions, will become clearer with the implementation of AI.").

8. John E. Cribbet, *Legal Education and the Rule of Law*, 60 AM. BAR ASS'N J. 1363, 1364 (1974).

9. *See, e.g.*, John H. Quinn, Jr., *Rule of Law – What is It?*, AM. BAR ASS'N BUS. L. SECTION (Sept. 3, 2021), https://businesslawtoday.org/2021/09/rule-of-law-what-is-it/ [https://perma.cc/L5QH-RG5W].

10. Sunstein, *supra* note 1, at 28–29.

11. Leonard C. Heath Jr., *Lawyer Independence: Atticus Finch, Emerging Technology, and the American Lawyer*, 67 VA. LAW. 26, 28 (2018).

12. The absence of such specification likely results from the litany of definitions of the Rule of Law and its conception as an abstract ideal more so than something that can be intentionally and specifically pursued. *See* Segall, *supra* note 6, at 109–10 ("Many academics have suggested that the rule of law is a general concept not subject to precise definition.").

13. *See* Aziz Z. Huq, *Artificial Intelligence and the Rule of Law* 11 (U. Chi. L. Sch., Working Paper No. 764, 2021).

14. *Id.*; *see also, e.g.*, Charles M. Mathias, Jr., *New Technology, New Law*, 9 COMMC'N & L. 3, 3 (1987) (exemplifying the need to "impose a rational rule of law" on new technological and legal

can assist pro se litigants with legal research,[15] thereby increasing individuals' abilities to defend themselves fully and forcefully in court.[16] Relatedly, integration of AI into some judicial processes may increase transparency in furtherance of Rule of Law principles.[17] Eventually, it may be common practice for judges to use generative AI tools to author judicial opinions; this use of AI may lead to opinions being written in a "clearer and more easily accessible" and more consistent style than opinions written by humans.[18] Those same tools, however, can ease the creation and dissemination of mis- and disinformation that cause the public to question verifiable information.[19]

The speed and spread of AI mandates an all-hands-on-deck approach to defend the Rule of Law from the effects of this unpredictable and poorly understood technology.[20] The legal system, as currently situated, is not up to this task for two reasons: First, as described above, there is still widespread dissensus as to what constitutes the Rule of Law and what responsibility lawyers have to defend it;[21] second, the system discourages the very sort of interdisciplinary thinking that lawyers with minimal understanding of emerging technologies will need in order to anticipate and mitigate the threats to the Rule of Law posed by AI.[22]

Consequently, the legal profession must take responsive action to the spread of AI. First, lawyers must reach a consensus around the principles of the Rule of Law; this will ease education of the ideal to law students, enable lawyers—as guardians of the Rule of Law—to identify and act on their

developments, such as intellectual property law).

15. Brooke K. Brimo, *How Should Legal Ethics Rules Apply When Artificial Intelligence Assists Pro Se Litigants?*, 35 GEO. J. LEGAL ETHICS 549, 550, 552 (2022).

16. *See* Sunstein, *supra* note 1, at 4 (listing "hearing rights" as a core part of the Rule of Law).

17. Winter, *supra* note 7, at 190.

18. Kevin Frazier, *The Honorable ChatGPT: How AI Systems Could Alter and Perhaps Improve the Judiciary*, RICH. J.L. & TECH. (2023), https://jolt.richmond.edu/2023/02/09/the-honorable-chatgpt-how-ai-systems-could-alter-and-perhaps-improve-the-judiciary/ [https://perma.cc/AS9G-TB7G]. Some judges have already deployed AI to assist with authoring legal judgments. *See, e.g.*, Hibaq Farah, *Court of appeal judge praises 'jolly useful' ChatGPT after asking it for legal summary*, GUARDIAN (Sept. 15, 2023, 8:58 AM), https://www.theguardian.com/technology/2023/sep/15/court-of-appeal-judge-praises-jolly-useful-chatgpt-after-asking-it-for-legal-summary [https://perma.cc/92MG-U5XU].

19. Tate Ryan-Mosley, *How generative AI is boosting the spread of disinformation and propaganda*, MIT TECH. REV. (Oct. 4, 2023), https://www.technologyreview.com/2023/10/04/1080801/generative-ai-boosting-disinformation-and-propaganda-freedom-house/ [https://perma.cc/QN5L-3P6V].

20. David Beer, *Why humans will never understand AI*, BRIT. BROAD. CORP. [BBC] (Apr. 7, 2023), https://www.bbc.com/future/article/20230405-why-ai-is-becoming-impossible-for-humans-to-understand [https://perma.cc/FDF9-NATE].

21. *See* Segall *supra* note 6, at 109–10; *see also supra* note 12 and accompanying text.

22. *See* Thomas D. Barton, *Re-Designing Law and Lawyering for the Information Age*, 30 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1, 6, 9 (2016).

duties, and allow jurists to integrate the Rule of Law more consistently and clearly into their decisions. Each of these developments will have the cumulative effect of increasing public awareness of the Rule of Law and, assuming each member of the legal profession attempts to complete their duties, increasing public trust in legal institutions and actors.

Second, lawyers must realize that defending the Rule of Law in the Age of AI is inherently an interdisciplinary endeavor and adopt responsive reforms.[23] As discussed by Thomas Barton, "the legal system [has] constructed a strong container for itself, largely detaching from the world."[24] Barton identifies five barriers to the legal profession incorporating the lessons and insights of other disciplines:

> (1) a "specialized vocabulary" that can be "unreadable" for the public and others lacking legal training;
> (2) allocating exclusive authority of legal interpretation to judges, who often lack deep understanding of the complex topics involved in litigation, such as emerging technologies;
> (3) procedures that limit consideration of the full scope of relevant information;
> (4) professional norms and rules that reinforce the siloed nature of the legal profession; and
> (5) "[a] detached, self-referencing rationality that measures the validity, success, and justice of legal decisions against the very rules generated from inside the container."[25]

Each of these barriers must collapse if the Rule of Law will withstand an assault by AI.

This essay calls for the legal profession to embrace interdisciplinary thinking, education, and institutions to defend the Rule of Law against emerging technologies. Part I argues for universal adoption of Cass Sunstein's seven principles of the Rule of Law and details how emerging technologies threaten the application of those principles. Part II outlines why the legal system is currently ill-suited to protect the Rule of Law from the aforementioned threats. Part III proposes several interventions to make the legal system more interdisciplinary to increase the capacity of students and scholars, advocates, and adjudicators to understand emerging technologies and take anticipatory actions to protect the Rule of Law.

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23.   The Age of AI refers to the period with innovations such as ChatGPT, the first generative AI tool to achieve mass adoption. *See* Cheyenne DeVon, *On ChatGPT's one-year anniversary, it has more than 1.7 billion users—here's what it may do next*, CNBC (Nov. 30, 2023, 5:03 PM), https://www.cnbc.com/2023/11/30/chatgpts-one-year-anniversary-how-the-viral-ai-chatbot-has-changed.html [https://perma.cc/Q8UZ-LAMF]; *see also* Bill Gates, *The Age of AI has begun*, GATESNOTES (Mar. 21, 2023), https://www.gatesnotes.com/The-Age-of-AI-Has-Begun [https://perma.cc/UCS3-YAPK].

24.   Barton, *supra* note 22, at 9.

25.   *Id.*

I.   Why Lawyers Should Adopt Cass Sunstein's Seven Principles to Address Emerging Technologies

The Rule of Law, like a functioning democracy, is widely known, widely desired, widely disputed, and, therefore, wildly difficult to make progress on. For some, the Rule of Law—as a popular, yet vague, concept—is a useful cover to justify self-interested policy and legal decisions.[26] Authoritarian leaders, according to Stephen Cook, commonly use legal processes and terms to mask their pursuit of malicious ends.[27] In turn, it is easy to question if reforms presented under the guise of advancing the Rule of Law are instead poorly disguised efforts to further ideological ends.[28] The uncertainty surrounding the Rule of Law and justifiable skepticism as to whether its self-labeled defenders are instead trying to protect their own interests must come to an end.

Given the imminent and significant threats posed to the Rule of Law by emerging technologies, there is no time to host a conference, organize a symposium, or conduct an informal election to isolate a definition that at once reflects the unquestioned importance and scope of the Rule of Law while also not becoming so expansive to be rendered meaningless.[29] Thankfully, Cass Sunstein has set forth seven characteristics of the Rule of Law that avoids attaching it to any particular ideology, any other theory, and any specific end; those seven characteristics include:

(1) clear, general, publicly accessible rules laid down in advance;
(2) prospectivity rather than retroactivity;
(3) conformity between law on the books and law in the world;
(4) hearing rights;
(5) some degree of separation between (a) law-making and law enforcement and (b) interpretation of law;
(6) no unduly rapid changes in the law; and
(7) no contradictions or palpable inconsistency in the law.[30]

This essay will not engage in a defense as to the superiority of this definition over alternatives, other than to say that Sunstein's characteristics avoid

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26.   *See, e.g.*, Steven A. Cook, *Why Dictators Always Pretend to Love the Law,* COUNCIL ON FOREIGN RELS. (Nov. 29, 2021, 1:10 PM), https://www.cfr.org/article/why-dictators-always-pretend-love-law [https://perma.cc/VW2A-2G3N].

27.   *Id.*

28.   *See* Dawn Brancati, *Democratic Authoritarianism: Origins and Effects*, 17 ANN. REV. POL. SCI. 313, 314 (2014) (summarizing literature on authoritarian states suggesting that they "adopt nominally democratic institutions in order to protect themselves against potential threats from both within the regime and within society at large. . . .").

29.   *See* Erica L. Green, *Harris Warns That the 'Existential Threats' of A.I. Are Already Here*, N.Y. TIMES (Nov. 1, 2023), https://www.nytimes.com/2023/11/01/us/politics/kamala-harris-ai.html [https://perma.cc/U9K7-FXZH] (reporting that Vice President Kamala Harris warned global leaders about imminent AI risks).

30.   Sunstein, *supra* note 1, at 1.

the main pitfalls that lessen the value of potential rivals.[31] First, he does not regard the Rule of Law as exclusive to a specific kind of governance model, such as democracy.[32] Second, he explicitly distinguishes the Rule of Law from concepts with which it commonly intertwines, such as the idea of the free market.[33] With the threats posed by emerging technologies and the heaps of evidence that lawyers cannot agree as to the scope and substance of the Rule of Law—now is the time to *choose* to rally behind a specific definition.[34]

II. Why the Legal System Is Ill-Suited to Protect the Rule of Law Based on Cass Sunstein's First Principle

Using Sunstein's principles, it becomes obvious that emerging technologies have the potential to impair the Rule of Law. A full examination of how emerging technologies might challenge each characteristic would exceed the scope of this essay, so I will instead focus on the applicability of the first characteristic to generative AI tools: "clear, general, intelligible, publicly accessible rules laid down in advance."[35]

The complexity of generative AI tools prevents the development of such "clear, general, intelligible, publicly accessible" rules.[36] Lawyers, like the rest of society, were caught by surprise in November 2022 when OpenAI released ChatGPT.[37] From students to scholars, few to no members of the legal profession had the requisite level of understanding to issue rules confining its use.[38] Moreover, even if lawyers had such an understanding, the complexity

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31. *See, e.g.*, *What is the Rule of Law*, UNITED NATIONS, https://www.un.org/ruleoflaw/what-is-the-rule-of-law/ [https://perma.cc/Q8KN-LDPE] (providing an alternative definition of the Rule of Law).

32. Sunstein, *supra* note 1, at 32; *Rule of Law*, USAID, https://www.usaid.gov/democracy/rule-law [https://perma.cc/53RW-BFHT] (stating that the Rule of Law is incompatible with certain forms of government).

33. Sunstein, *supra* note 1, at 14.

34. *See* Segall, *supra* note 6, at 109–10.

35. Sunstein, *supra* note 1, at 2.

36. *Id.*; *What is Generative AI?*, U. PITT. (Dec. 20, 2023), https://teaching.pitt.edu/resources/what-is-generative-ai/ [https://perma.cc/QE9X-6PY8] ("Generative artificial intelligence (AI) tools use machine learning models trained on massive pools of information to learn patterns from data to create novel content like text, images, audio, or video in response to a prompt.").

37. *See, e.g.*, Benjamin Weiser & Nate Schweber, *The ChatGPT Lawyer Explains Himself*, N.Y. TIMES (June 8, 2023), https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html [https://perma.cc/5YUQ-YQQB]; DeVon, *supra* note 23 ("Nov. 30[, 2023] marks ChatGPT's one-year anniversary. . . .").

38. *See* Carl Smith, *States Act, but Can Legislation Slow AI-Generation Election Disinformation?*, GOVERNING (Oct. 27, 2023), https://www.governing.com/policy/states-act-but-can-legislation-slow-ai-generated-election-disinformation [https://perma.cc/77SD-VHRY] ("Artificial intelligence (AI) is hardly the first breakthrough technology released into society before its impact was understood.").

of the technology makes it difficult to issue rules that the public could easily grok and follow.[39]

The proliferation of AI models with different use cases also complicates efforts to issue general rules. Some models, for instance, present minimal risk to individual and societal well-being while also carrying the potential to benefit persons and communities around the world; surely, no one wants to limit the deployment of such models.[40] On the other hand, some models, especially those that are "open source,"[41] may cause significant, widespread, and irreversible harm.[42] Yet, due to the aforementioned lack of technical understanding, lawyers and others have yet to develop reliable and commonly accepted ways to distinguish "safe" models from those with unacceptable risk.[43] If this lack of knowledge continues, AI models may be subject to rules developed in an ad hoc fashion when lawyers learn more about the benefits and risks of that specific model.

Finally, unexpected releases of and advances in generative AI models defy anticipatory rulemaking.[44] Since ChatGPT ushered in the Age of AI, AI labs continue to research, develop, and deploy AI models with unknown capacities, unknown processes, and unknown impacts.[45] The pace of such releases has continued to surprise and, perhaps, delay the establishment of meaningful regulation—though the EU Artificial Intelligence Act may partially resolve this clash with the Rule of Law.[46]

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39.   *See* Noam Hassanfeld, *Even the scientists who build AI can't tell you how it works*, VOX (July 15, 2023, 7:00 AM), https://www.vox.com/unexplainable/2023/7/15/23793840/chat-gpt-ai-science-mystery-unexplainable-podcast [https://perma.cc/QVF5-EPN4].

40.   *See* Katharine Miller, *Should AI Models Be Explainable? That depends.*, STAN. UNIV.: HUM.-CENTERED A.I. (Mar. 16, 2021), https://hai.stanford.edu/news/should-ai-models-be-explainable-depends [https://perma.cc/HQ4J-CJSD].

41.   Will Knight, *The Myth of 'Open Source' AI*, WIRED (Aug. 24, 2023, 12:00 PM), https://www.wired.com/story/the-myth-of-open-source-ai/ (last visited Jan. 18, 2024) (suggesting open source models are those that allow outsiders to access the model's "underlying code as well as the 'weights' that determine how it behaves.").

42.   Cade Metz, *How Could A.I. Destroy Humanity?*, N.Y. TIMES (June 10, 2023), https://www.nytimes.com/2023/06/10/technology/ai-humanity.html [https://perma.cc/FBT6-RVS9].

43.   *See, e.g.*, Fla. Bd. Rev. Comm. on Pro. Ethics, Proposed Advisory Opinion on Lawyers' and Law Firms' Use of Generative Artificial Intelligence (Oct. 13, 2023), https://www.floridabar.org/the-florida-bar-news/proposed-advisory-opinion-on-lawyers-and-law-firms-use-of-generative-artificial-intelligence/ [https://perma.cc/6KBL-T4B4] (announcing the consideration of an advisory opinion nearly a year after ChatGPT's launch).

44.   Tom Wheeler, *The three challenges of AI regulation*, BROOKINGS (June 15, 2023), https://www.brookings.edu/articles/the-three-challenges-of-ai-regulation/ [https://perma.cc/QK58-P563].

45.   *See* David Pierce, *Google launches Gemini, the AI model it hopes will take down GPT-4*, VERGE (Dec. 6, 2023, 7:00 AM), https://www.theverge.com/2023/12/6/23990466/google-gemini-llm-ai-model [https://perma.cc/3WHT-M7EZ].

46.   *See* Aaron M. Levine, *Is the EU AI Act Faltering?*, NAT'L L. REV. (Nov. 30, 2023),

This brief exercise makes clear that application of the Rule of Law to emerging technologies such as AI necessitates fundamental changes to legal education and practice. If the prior analysis did not make that clear, consider how the Rule of Law would have advanced if, before the Age of AI, more lawyers had a strong understanding of AI, deep connections to those working on its development, and significant practice developing rules to mitigate risks posed by AI and similar emerging technologies. In this alternative universe, ChatGPT's release may have been—at minimum—anticipated, and—more likely—the cause of a proactive regulatory response to shape its release and integration into society. The challenge for the legal profession, then, is to lower the barriers preventing the legal profession from developing that understanding, establishing those connections, and completing that practice.

III. How to Make the Legal System More Interdisciplinary

There is a fundamental mismatch between advancing the Rule of Law in the Age of AI and the incentives of the legal system. The former, as described earlier, requires lawyers open their ranks, include more insights from experts in other disciplines, and decrease the complexity of their professional rules, norms, and diction;[47] yet, with respect to the latter, legal professionals benefit financially and, perhaps in terms of prestige and popular perception, by making the legal system as inaccessible as possible.[48] For now, I will focus on one way to limit this conflict: making the inclusion of technical experts a more regular and robust part of litigation.[49]

Presently, judges with minimal understanding of AI and other emerging technologies have near exclusive authority to "say what the law is."[50] This authority is especially important given that legal disputes over emerging technology often precede regulation of that technology—effectively giving judges the first strike at the regulatory piñata.[51] Despite judges having the chance to shape the direction of emerging technologies with the capacity to alter

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https://www.natlawreview.com/article/eu-ai-act-faltering [https://perma.cc/DME7-Q7TA].

47.   *See* discussion *supra* Part II.

48.   *See* Barton, *supra* note 22, at 14–15 ("The legal system ensures its rewards by perpetuating its own inaccessibility.").

49.   Melissa Whitney, *How to improve technical expertise for judges in AI-related litigation*, BROOKINGS (Nov. 7, 2019), https://www.brookings.edu/articles/how-to-improve-technical-expertise-for-judges-in-ai-related-litigation/ [https://perma.cc/T27Q-8ZJG].

50.   Barton, *supra* note 22, at 8 (listing the allocation of interpretative power solely to judges as one of his five barriers to a more interdisciplinary legal profession); Marbury v. Madison, 5 U.S. 137, 177 (1803).

51.   Melissa Heikkilä, *How judges, not politicians, could dictate America's AI rules*, MIT TECH. REV. (July 17, 2023), https://www.technologyreview.com/2023/07/17/1076416/judges-lawsuits-dictate-ai-rules/ [https://perma.cc/B6TH-QDCC].

society, they often do so without making full use of available tools to understand those technologies.[52] In some jurisdictions, such as the United States, judges rarely exercise their clear authority to consult experts in cases pertaining to complex and technical issues.[53] This lack of consultation directly contravenes the Rule of Law by increasing the likelihood of inaccurate and inaccessible decisions.[54] Put bluntly, "[s]cientifically illiterate judges," as coined by David Faigman, "pose a grave threat to the judiciary's power and legitimacy."[55] Notably, Faigman warned of this threat in 2006, far before the Age of AI.[56] Decades of technological progress later, many judges continue to opt not to seek out education nor expertise on the complexities presented by emerging technology cases.[57]

Two proposals could correct this troubling tendency among judges. The most straightforward option would be to mandate that judges consult independent experts in certain cases. In the United States, realization of this proposal could come about through a simple amendment to Federal Rule of Evidence 706.[58] Rule 706, in relevant part, states, "On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations."[59] An amendment that removed a judge's discretion and instead mandated judicial appointment of an expert witness in certain cases could realize a long-accepted principle "that the law should in some way effectively use expert knowledge wherever it will aid in settling disputes."[60] The judicial system should assess which cases qualify for such mandatory appointment on an annual basis to ensure that the mandate reflects an uptick in judicial consideration of emerging technologies.

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52.   *See generally* Daniel L. Rubinfeld & Joe S. Cecil, *Scientists as Experts Serving the Court*, 147 DAEDALUS 152, 153 (2018); *Debating merits of court-appointed experts*, L. TIMES (Jan. 22, 2007), https://www.lawtimesnews.com/archive/debating-merits-of-court-appointed-experts/260049 [https://perma.cc/V5QY-YZ6W] (discussing the use of experts by Canadian judges).

53.   Tahirih V. Lee, *Court-Appointed Experts and Judicial Reluctance: A Proposal to Amend Rule 706 of the Federal Rules of Evidence*, 6 YALE L. & POL'Y REV. 480, 481 (1988) (identifying a "natural reluctance of judges to appoint experts" under Rule 706 of the Federal Rules of Evidence).

54.   *Id.*; *see* David L. Faigman, *Judges as "Amateur Scientists,"* 86 B.U. L. REV. 1207, 1207 (2006).

55.   Faigman, *supra* note 54, at 1207.

56.   *Id.*

57.   Kevin Frazier, *"We Really Don't Know." Now is the Time for a New Approach to Judicial Education*, RICH. J.L. & TECH. (2023), https://jolt.richmond.edu/2023/03/28/we-really-dont-know-now-is-the-time-for-a-new-approach-to-judicial-education/ [https://perma.cc/4YWC-GJJA].

58.   FED. R. EVID. 706.

59.   *Id.* § (a).

60.   Learned Hand, *Historical and Practical Considerations regarding Expert Testimony*, 15 HARV. L. REV. 40, 40 (1901).

The second, more ambitious, and potentially complementary proposal would be to require all decisions made in qualifying cases be subject to limited and highly deferential review by a panel of judges who have received extensive training on the applicable emerging technology. This proposal, of course, would require a much larger legislative effort and investment. A litany of outstanding questions arising from this proposal deserves more attention including, but not limited to, which judges would be eligible to serve on this emerging technology panel and what sort of education they would need to remain on that panel.

These two proposals are by no means a complete list of possible interventions to decrease the odds of judges making decisions based on flawed understandings of emerging technology. I welcome and encourage more proposals. In fact, such proposals should become a regular part of legal scholarship in the coming months and years. This sort of scholarship would contribute to the Rule of Law by suggesting ways to include relevant expertise in the operation of law—expertise that our legal education systems and professional norms do not currently guarantee gets incorporated into legal advocacy and adjudication.[61]

Conclusion

The Rule of Law is not self-sustaining.[62] Every member of the legal profession has an obligation to defend and further it.[63] Yet, as threats to the Rule of Law have grown more complex, the legal profession has doubled down on practices and norms that may benefit its bottom line; society, though, demands a more interdisciplinary legal system. A first step to redirecting the legal profession toward societally beneficial ends is to identify and accept a shared definition of the Rule of Law. Thankfully, Sunstein offers a set of seven principles that should be universally adopted. [64] Next, the legal system must be reformed to accept more regular and substantial inclusion of experts in other disciplines.[65] Realization of this step would empower students,

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61. *See, e.g.*, Sheila S. Jasanoff, *Science, Common Sense & Judicial Power in U.S. Courts*, DAEDALUS (2018), https://www.amacad.org/publication/science-common-sense-judicial-power-us-courts [https://perma.cc/7J6S-ZHBM]; Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319, 319 (1999).

62. *See, e.g.*, Don McKinnon, *The Rule of Law in Today's Africa*, 32 COMMONWEALTH L. BULL. 649, 654 (2006) (providing instances in which conflicts in certain countries have resulted in "the complete breakdown of the rule of law. . . .").

63. *See* MODEL RULES OF PRO. COND. pmbl. (AM. BAR. ASS'N 1983) ("A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.").

64. Sunstein, *supra* note 1, at 1.

65. *See* discussion *supra* Part III.

scholars, advocates, and adjudicators to further the Rule of Law as emerging technology continues to evolve. To conclude, I want to stress that lawyers alone cannot realize this transformation of the legal profession; members of the public should speak out and demand that the legal system evolve as is required to protect the Rule of Law.