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Why allowing law students to use GenAI for writing assignments is a bad idea: some reflections on the labour market orientation on HLE curriculum decisions

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Abstract

Curriculum decisions in Higher Education (HE) regarding students' use of Generative AI (GenAI) are often substantiated by arguments such as graduate employability. This labour market orientation dictates that, because GenAI will inevitably play a crucial role in their future jobs, we should prepare our students by allowing or even encouraging them to use GenAI tools for their writing assignments. A quick scan of Dutch policy documents shows that the labour market perspective dominates the agenda related to GenAI on the governmental level and in Universities of Applied Sciences. In all HE institutions, the use of GenAI is allowed (sometimes conditionally, sometimes reluctantly) or even encouraged. We observe that the regulation of GenAI in Higher Legal Education (HLE) is virtually absent and fragmented, perhaps because the labour market orientation does not always align with local HLE education objectives. In our view this regulatory gap could only be filled if room is made for other orientations on curriculum decisions related to Gen AI, such as: focus on the legal discipline itself, on students' self-development and on societal reform. This will enable HLE to make curriculum decisions aimed at training law students' writing skills and teaching them to 'think as a lawyer'.

Keywords: curriculum orientations, generative AI, graduate employability, writing to learn, institutional education policy.

Introduction

Ambivalence seems to be the adequate term to describe the sentiment in Higher Legal Education (HLE) from the moment Generative AI (GenAI) was made

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available in late 2022.[1] On the one hand, teaching staff and policy makers were enthused by its opportunities for enhancing teaching and learning[2] and impressed by the (later partly refuted) claim of OpenAI that ChatGPT had passed the bar exam.[3] On the other hand, there were serious worries about the disadvantages and risks of this new technology.[4] Increasingly, teachers were confronted with a dystopia that had become reality: they would spend hours of reading and grading written assignments or students' theses that later turned out to be not the product of a genuine writing process but had instead been 'written' by ChatGPT in a few minutes. The need to reconsider proper assessment of intended learning outcomes regarding writing skills in HLE became urgent.

By now, GenAI has proven to be a powerful driver for change in society as well as in education. But the character and direction of the changes in HLE have not yet fully crystallised.[5] Various Large Language Models (LLMs) seem to have penetrated HLE in a structural manner, especially through our students, who use it mainly as a search engine and a useful tool to write texts. In many places, there seems to be little guidance from official institutional policy to prevent 'dystopic' situations like those described above. On the contrary, at central, institutional levels, GenAI seems to be adopted in a seemingly uncritical and *ad hoc* way. Teaching staff are encouraged to adopt GenAI in HLE and to use it in all kinds of 'creative ways' in their courses, and by doing

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[1] Duuk Baten, *How big can the impact of Language Models on Education be?* SURF Communities, 8 December 2022, How big can the impact of Language Models on Education be? | SURF Communities (accessed 20 April 2025).

[2] Jack Nelson, 'The Other 'LLM': Large Language Models and the Future of Legal Education', *European Journal of Legal Education* 5.1 (2024): 127-155.

[3] Jonathan Choi, Kristin Hickman, Amy Monahan, Daniel Schwarcz, 'ChatGPT goes to Law School', *Journal of Legal Education* 71 (2022):387-400. Eric Martínez, ´Re-evaluating GPT-4's bar exam performance´, *Artificial Intelligence and Law* (2024). https://doi-org.vu-nl.idm.oclc.org/10.1007/s10506-024-09396-9 (accessed 20 April 2025).

[4] As observed in other disciplines and sectors as well: Rachel Toncelli & Ilka Kostka, 'A Love-Hate Relationship: Exploring Faculty Attitudes Towards GenAI and Its Integration into Teaching', *International Journal of TESOL Studies* Vol. 6(3) (2024): 77-94.

[5] Marjan Ajevski et al. 'ChatGPT and the future of legal education and practice.' *The Law Teacher* 57.3 (2023): 352-364. Aswathy Prakash G and Vishnu Nair, 'Integrating Generative AI into Legal Education: From Casebooks to Code, Opportunities and Challenges', *Law, Technology and Humans* 6 (2024): 60-79. For a more critical view: Juergen Rudolph, Mohamed Fadhil Bin Mohamed Ismail & Stefan Popenici. 'Higher education's generative artificial intelligence paradox: The meaning of chatbot mania', *Journal of University Teaching and Learning Practice* 21.6 (2024): 1-35.

so *de facto* to make essential curriculum reforms, in response to this new technology.[6]

Formal policy on GenAI, especially on a faculty level, seems to lag behind. Discussions on students' use of GenAI for writing assignments on this level often lead to a deadlock and, as a result, students' use of GenAI is tolerated for the time being. Official bans for students to use GenAI for their writing assignments seem out of the question, at least in some institutions, as bans are considered to be unenforceable. Still, a certain degree of unease among teaching staff prevails. And in the meantime, the Dutch student union understandably argues for (uniform) national guidelines, clarity and legal certainty for students in HE.[7]

In this paper we explore this problematic situation. We argue that stricter rules should apply to students' use of GenAI for writing assignments such as take-home exams, papers, case notes, essays and theses. We are under the impression that the absence of stricter policies can be explained by a one-dimensional perspective on the use of GenAI by students: GenAI is primarily seen as a useful and indispensable tool in the (future) legal practice and labour market: the employability argument.

We carried out a survey of policy documents by HE and HLE institutions in the Netherlands to analyse the origin of the indecisiveness and ambivalence towards GenAI and education in the HE/HLE policy landscape. We integrated our own experiences and observations on a local programme management level, faculty discussions on students' use of LLMs especially for writing assignments and the outcome of various faculty AI working groups in which we participated insofar as the outcomes were not confidential.

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[6] NPULS, *Slimmer Onderwijs met AI. Een handreiking voor docenten en andere onderwijsprofessionals*, September 2023, https://npuls.nl/wp-content/uploads/2023/09/Slimmer-onderwijs-met-AI-Npuls.pdf, (accessed 20 April 2025). Barend Last and Thijmen Sprakel, *Chatten met Napoleon. Werken met generatieve AI in het onderwijs*, Den Haag: Boom, 2024. Omid Noroozi et al, 'Generative AI in Education: Pedagogical, Theoretical, and Methodological Perspectives' *International Journal of Technology in Education* 3(7), 2024, 373-385.

[7] NOS 24 August 2024, 'Plagiaat met ChatGPT? Studenten vallen maar moeilijk door de mand', Plagiaat met ChatGPT? Studenten vallen maar moeilijk door de mand (accessed 20 April 2025).

We will use the terms GenAI, ChatGPT and LLMs interchangeably and by doing so we are referring to the same thing, including the tools specifically tailored for use by lawyers and trained exclusively on reliable legal sources.[8]

Both authors work in HLE (at an Academic University Law School and a University of Applied Sciences Law School, respectively); both are involved in local education management and innovation of legal education, and both teach courses on law and technology. Nevertheless, in this paper we aim to abstract from the specific situations at our own educational institutions and discuss challenges that every institution of HLE is confronted with.

One of the goals of the survey is to find out whether a dominant orientation on HLE curriculum decisions has determined the attitudes and policy choices regarding HLE students' use of GenAI for writing assignments. We begin by explaining the theoretical framework on curriculum decisions that we use, and the role of technology as a driver of curriculum change. We then proceed to offer an overview of the available information used in our survey: a selection of education policy documents on the use of GenAI in H(L)E published on different levels (national, institutional, local) in the Netherlands. The next section focuses on the results of the analysis of our findings through the lens of the theoretical framework on curriculum decisions described earlier. We then present the outcomes of our analysis regarding regulation of students' use GenAI for writing assignments and discuss our hesitations. We emphasise the relevance of writing skills in HLE and the importance of teaching critical thinking on the law-technology nexus – instead of encouraging or even training students to utilise these technologies. We strongly recommend writing assignments for students without GenAI to allow them to learn and to think like a lawyer. We conclude with some recommendations for future research and with the answer to the question how, in our view, different orientations on curriculum decisions could help formulating better (and less ambivalent) HLE policies on students' use of GenAI for writing assignments.

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[8] Such as Lexis+AI, see Lexis +AI | The generative AI for Lawyers, Harvey, see https://www.harvey.ai/legal, CoCounsel, see https://casetext.com/, DeepJudge, see https://www.deepjudge.ai/, Libra, see https://libratech.ai/, Nostua, see https://www.noxtua.ai/, Bryter, see https://bryter.com/, Legal GenAI in other languages (and for other jurisdictions) include: OttoSchmidtAnswers, see https://www.otto-schmidt.de/online/otto-schmidt-answers, Jupus, see https://www.jupus.de/?r=0, Septio, see https://www.septeo.com/fr/metier/avocat, GenIA-L, see https://www.rechtsorde.nl/genial/ (all accessed 20 April 2025).

Theoretical framework

Educational context: curriculum orientations

Decisions on allowing or prohibiting students' use of GenAI come down to reforms of the curriculum. Curriculum changes can be driven by several reasons, varying from new insights in pedagogical research, to declining student numbers or the results of course evaluations.[9] Also the emergence of new technological tools, like GenAI, can be an external driver of curriculum change. The scope and direction of that change depend first and foremost on the dominant view on the purpose of education.

In curriculum theory literature, views on the purpose of education are generally classified into four different perspectives:[10]

1. The scholar academic orientation, which aims to introduce students to the discipline, and where curriculum decisions focus on students' acquisition of the academic knowledge and ways of knowing,

2. The social efficiency orientation, where curriculum development and reform revolve around what society (especially the labour market) needs,

3. The learner-centred orientation which aims to help the individual student to make sense of their experiences for the purposes of self-understanding and personal growth, and

4. The social reconstruction orientation, which aims to develop students' understanding and resolving social, economic and environmental issues.[11]

Similar perspectives to curriculum change were also identified by Roberts.[12] Her study affirmed that beliefs of participants about educational purposes

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[9] Louise McAteer, Joseph Roche and Aine M. Kelly, 'Renewing an undergraduate science curriculum for the 21st century', *Frontiers in Education* 2023, https://doi.org/10.3389/feduc.2023.1270941 (accessed 20 April 2025).

[10] K. Zweeris, E.H. Tigelaar & F.J.J.M. Janssen, 'Studying curriculum orientations in teachers' everyday practices: A goal systems approach', *Teaching and Teacher Education* 122 (2023) 103969. For a critical note on conceiving academic education in instrumental terms, also Bart van Klink, 'Critical thinking in Academic Legal Education. A Liberal Conception', *Law and Method* (2023) doi:10.5553/REM/.000076 (accessed 20 April 2025).

[11] K. Zweeris, E.H. Tigelaar & F.J.J.M. Janssen (2023), p. 2-3.

[12] Pamela Roberts, 'Higher education curriculum orientations and the implications for institutional curriculum change', *Teaching in Higher Education* 20.5 (2015): 542-555 at p. 544.

defined a number of distinctive philosophical orientations or 'ideologies' to curriculum change. The most relevant curriculum orientations she discerned were the discipline-based orientation, the professional orientation, the personal relevance orientation and the social relevance and reform orientation.[13] What makes Roberts' framework interesting and also more complex, is the observation that teachers in higher education (and educational management on a faculty level, we would add) inevitably are influenced by and respond to external higher education change drivers, like institutional educational change agendas and socio-political context. Roberts identified several of such external change drivers, such as graduate employability and the skills agenda.[14] The emphasis on generic skills in the curriculum of most participants in her study suggested, according to Roberts, that these participants were indeed responding to government agendas requiring that higher education should aim at employment opportunities for graduates, even if the participants were not aware of this influence (or in any case did not explicitly mention it).[15]

We take this framework as the starting point for our own analysis of the current situation regarding the students' use of GenAI. Through a non-exhaustive, qualitative analysis of relevant policy documents, we try to unravel the underlying assumptions and perspectives on GenAI and possible dominant orientations on curriculum decisions that led to GenAI being adopted in HLE in the haphazard manner it is today, as described above.

Views on GenAI: between fear and fascination

Sentiments towards GenAI vary considerably, not only in practice (on the HLE work floor, as discussed above) but also in the literature. Some authors

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[13] Pamela Roberts, 'Higher education curriculum orientations and the implications for institutional curriculum change', *Teaching in Higher Education* 20.5 (2015): 542-555 at p. 544-545.
[14] Roberts 2015, p. 550
[15] Roberts 2015, p. 550-551.

demonstrate defeatism and fear.[16] Others show enthusiasm[17] (although it cannot be ruled out that optimistic determinist attitudes towards GenAI are to a great extent shaped by the ubiquitous lobbying and marketing strategies of the tech companies themselves).[18] Interestingly, these opposing sentiments can coexist, even in one and the same person, institution or policy document. The three sleepless nights, 'equal parts excited and nervous', as described by Mollick after his first encounter with GenAI, illustrate this.[19] We label this phenomenon as techno-ambivalence.

What most authors share is the *techno-deterministic* belief that 'these technological innovations can no longer be stopped'. Such inevitability discourse translates into statements such as 'all law firms already use GenAI' and 'if we don't allow them to use ChatGPT, our students will miss the boat in

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[16] A. Balan, 'Examining the ethical and sustainability challenges of legal education's AI revolution.' *International Journal of the Legal Profession*, 2024, 31(3), 323–348, https://doi.org/10.1080/09695958.2024.2421179 (accessed 20 April 2025); Tina van der Linden, 'AI! In het recht, in het werk van juristen en in de juridische opleiding', *Tijdschrift voor Internetrecht,* 1 (2025), pp. 13-18.

[17] Sahibpreet Singh and Pawanpreet Kaur, 'AI in Legal Education: An Ambedkarite Perspective '(April 24, 2024). *Conference: Legacy of Dr. Babasaheb Ambedkar: Analysis and Appraisal*, https://ssrn.com/abstract=5123080 (accessed 20 April 2025). K. Sloan, 'Law schools boost their AI offerings as industry booms' *Reuters* (June 18, 2024), https://www.reuters.com/legal/transactional/law-schools-boost-their-ai-offerings-industry-booms-2024-06-18/ (accessed 20 April 2025). Oli Nassau, 'Exploring generative ai and legal education', *Centre for Legal Innovation*, September 4, 2024, https://www.cli.collaw.com/latest-news/2024/09/04/exploring-generative-ai-and-legal-education (accessed 18 April 2025). Maria Paola Velásquez Restrepo, 'Proactivity in legal education for Generations Z and Alpha: a case study'. *TalTech Journal of European Studies* (2025) 15:1, 253-281. Laura Hood, 'AI transformation in the legal sector begins in law schools', March 25, 2025, https://theconversation.com/ai-transformation-in-the-legal-sector-begins-in-law-schools-252007 (accessed 20 April 2025).

[18] Marietje Schaake, *The Tech Coup: How to Save Democracy from Silicon Valley*. Princeton University Press, 2024.

[19] Ethan Mollick, *Co-Intelligence, Living and Working with AI*, WH Allen, 2024, p. xi.

their future jobs'.[20] Distinct expressions of critique or even refusal of GenAI in general are rarer.[21]

The various attitudes towards GenAI and emerging technologies in general are summarised in table 1 below.

Table 1: Attitudes towards (emerging) technologies

	Determinism	*Constructivism*
	Technology is a driving force in the development of society and mankind.	People have a choice to utilise technology as a tool for societal change, in certain ways, for certain goals.
Tech-optimism	Technology is inevitable, powerful and autonomous, humans can only be passively grateful.	There are so many ways to make the world a better place and technology is going to help us reach our goals.
Tech-pessimism	Technology is inevitably taking over and we cannot stop it however much we may want to.	People choose to use technology in certain ways for certain goals and decide when it should be stopped.

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[20] M. de Oliveira Fornasier, 'Legal education in the 21st century and the artificial intelligence', *Revista Opinião Jurídica*, (2021) 19, 1-32. PYMNTS, 'Lawyers Who Use AI Will Replace Those Who Don't', January 12, 2024, https://www.pymnts.com/news/artificial-intelligence/2024/lawyers-who-use-ai-will-replace-those-who-dont/ (accessed 20 April 2025). Michael Cross, 'In depth: AI revolution is 'inevitable' - the challenge is to embrace it ethically', *The Law Society Gazette*, February 9, 2025, https://www.lawgazette.co.uk/news-focus/in-depth-ai-revolution-is-inevitable-the-challenge-is-to-embrace-it-ethically/5122298.article (accessed 20 April 2025).

[21] See, however, I. Van Rooij et al, 'Reclaiming AI as a theoretical tool for cognitive science', *Computational Brain & Behavior*, 2024 7(4), 616-636, https://link.springer.com/article/10.1007/s42113-024-00217-5. Siri Beerends, 'Waarom we de AI-boot prima kunnen missen', *iBestuur*, April 10, 2025, https://ibestuur.nl/artikel/waarom-we-de-ai-boot-prima-kunnen-missen/. Useful sources on GenAI refusal: M. Fernandes et al, 'Resources on refusing, rejecting, and rethinking generative AI in writing studies and higher education' (2024), https://refusinggenai.wordpress.com/resources/. On responsible use of AI: International Organization for Standardization ISO, *Building a responsible AI: How to manage the AI ethics debate*, https://www.iso.org/artificial-intelligence/responsible-ai-ethics (accessed 20 April 2025). Unesco, *Ethics of Artificial Intelligence, The Recommendation*, https://www.unesco.org/en/artificial-intelligence/recommendation-ethics (all accessed 20 April 2025).

Hypothesis, materials and methods

Hypothesis

Policy decisions with regard to the utilisation of GenAI for writing assignments in HLE have thus far, in our experience, been characterised by ambiguity, by lack of clarity or have been absent altogether. It may be argued that this regulatory gap is attributable to some degree of indecision, or perhaps even techno-ambivalence. The present study assumes that there is a relationship between curriculum orientation, the attitude towards emerging technologies and the way students' use of GenAI in HLE is regulated. We hypothesise that fundamentally opposing views with respect to the objectives of curriculum change and with respect to technological developments (as described above) render consistent policy a priori impossible and therefore have a delaying effect on the development of GenAI policy especially on the local (HLE) administrative level.

Materials & methods

To test our hypothesis we utilised the qualitative information from a selection of policy documents available on three levels: the central (governmental and intermediary) level, the institutional level of Higher Education (HE: Academic Universities and Universities of Applied Sciences or UoAS) and the local (or law faculty) level (HLE).[22] We examined a total of 35 texts (webpages and documents) on GenAI, more specifically on the regulation of students' use of GenAI in higher (legal) education related to writing assignments. The selected texts were coded by hand to identify the occurrence of text elements referring to:

- specific rules on GenAI use by students (especially for writing assignments),

- the possibility or desirability of limiting students' use of GenAI, fraud, plagiarism, and the possibilities of detecting GenAI use,

- the importance of training and assessing HLE students' writing skills,

- teaching other (legal) skills like critical thinking (among others about the risks and challenges related to GenAI),

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[22] We had access to information from five of the twelve Dutch universities of applied sciences (UoAS), and all ten academic universities that offer programmes in law.

- the role and importance of GenAI in future jobs.###

Where possible we also captured and interpreted the more general tone and the sentiments towards the use of GenAI within these texts. This could help establishing an assumed direct link between a strong belief in the inevitability of GenAI (techno-determinism) and the tendency to embrace it in education, regardless of whether it was deemed as a positive addition or as 'something we cannot escape from' (see table 1). Therefore a 'light version' of content analysis was executed whereby we identified text elements regarding:

- the inevitability of GenAI (expressed by words such as: fast, swift introduction, rise, disruptive development, no holding back, including arguments such as 'a ban has no use, they will use it anyway')
- positive connotations, opportunities and advantages of GenAI,
- negative connotations, risks and disadvantages of GenAI.

Documents from the local HLE level

Our study was inspired by the situation on the faculty work floor, as we ourselves were struggling with the matter in our daily work, both as teachers and as members of faculty AI working groups. Therefore, we decided to collect more and other local data, through an online search and by using our personal networks of colleagues from law faculties of fifteen Dutch HE institutions. Our quick scan showed that only in a handful of law faculties such policy documents were available. Most faculties did not have any written policy documents on the topic, others were still working on the topic or would rely on the general GenAI and education policies at the institutional (HE) level.

Where faculty policy documents were available, they were rarely made public online. Apparently, most faculties prefer to keep their GenAI policy confidential and distribute it for internal use only. As the starting point of our study, therefore, we only had confidential information from four Dutch (academic) law faculties at our disposal.

Documents from the institutional HE level

HE institutional policy documents and guidelines are mostly composed by education policy officers from teams at the central level such as Centres for Teaching and Learning or by central AI working groups. Most of this institutional policy information on students' use of GenAI is freely available

online. For this study, we selected a total of 21 policy documents and information webpages from 15 Dutch HE institutions that offer a law degree (ten academic universities and five universities of applied sciences – UoAS's, see Appendix).[23]

Some guidelines were simply posted on the university website, others were published and available as a PDF document. The difference between webpage and PDF documents may be indicative for the extent to which GenAI policies were seen as temporary and unstable by some institutions and more consistent and sustainable by others. As Maastricht University puts it:

> 'Recognising the rapid evolution of GenAI and its accompanying legislation, this policy framework will remain a living document. Static guidelines will be supplemented by regularly updated annexes, supporting materials, and training, to reflect new developments and best practices.'[24]

The selection as shown in the table in the Appendix consists of institutional guidelines for both teachers/supervisors and students.

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[23] From seven UoASs that offer a law programme no information was available or accessible.
[24] https://www.maastrichtuniversity.nl/news/policy-framework-generative-ai-officially-published (accessed 11 August 2025)

<u>Documents from the central, national level</u>

To complete our survey, we incorporated six policy documents from a national education policy level (NPULS and SURF) and from the central, governmental level.[25]

As far as we are aware, no specific policy or guidelines on students' use of GenAI for writing assignments have been developed (at this moment) by umbrella organisations such as the Council of Deans of the Dutch Law Faculties, or the Coordinating Committee of UoAs Law Curricula, the Universities of the Netherlands (UNL) or Association of Universities of Applied Sciences (VH).

Limits of the research

It should be noted that this study must be seen as a first pilot. Especially documents from the Dutch law faculties were for the most part not available. We recommend that a systematic survey of policies and attitudes on students' use of GenAI in HLE be carried out in a more structural way in the future. Based as they are on a non-exhaustive selection of sources, the results, analysis, and conclusions in the next sections can only be of a preliminary nature.

Results and analysis

In this section we present the results of our survey regarding the following major themes: the perception of GenAI as an inevitable technological

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[25] The Ministry of Education, Culture and Science, *Strategische agenda hoger onderwijs en onderzoek: Houdbaar voor de toekomst*, 2019: www.rijksoverheid.nl/documenten/publicaties/2019/12/02/strategische-agenda-hoger-onderwijs-en-onderzoek. Rathenau Instituut, *Rathenau Scan Generatieve AI*, 2023: Generatieve AI | Rathenau Instituut. The Ministry of the Interior and Kingdom Relations, *The government-wide vision on Generative AI of the Netherlands*, 2024: Government-wide vision on generative AI of the Netherlands | Parliamentary document | Government.nl. Eimers, T. (red.) *Vandaag is het 2040. Toekomstverkenning voor middelbaar beroepsonderwijs, hoger onderwijs en wetenschap*. 2023, Nijmegen/Utrecht/Enschede/Amsterdam: KBA Nijmegen, ResearchNed, Andersson Elffers Felix, CHEPS, Kohnstamm Instituut: Vandaag is het 2040 Deel 1 | Rapport | Rijksoverheid.nl. Duuk Baten, Matthieu Laneuville, Bertine van Deyzen, *The state of AI and the modern educational institution. AI explained in the context of the educational sector*, 27 November 2023, https://npuls.nl/wp-content/uploads/2024/04/Npuls-Startnota-State-of-AI-B5-EN.pdf. NPULS, *Slimmer Onderwijs met AI. Een handreiking voor docenten en andere onderwijsprofessionals*, September 2023: Slimmer-onderwijs-met-AI-Npuls.pdf (all accessed 20 April 2025).

development and the associated 'techno-ambivalence'; the relationship between GenAI and graduate employability and the labour market orientation as dominant perspective on curriculum reforms caused by the rise of GenAI; and the various regulatory measures of students' use of GenAI for writing assignments.

Understanding GenAI: inevitability and techno-ambivalence

The majority of the investigated HE webpages and guidelines qualified GenAI as a fast, autonomous and inevitable development and more or less 'a fact of life'. This is a relevant observation as we earlier presumed that there is a direct correlation between these techno-deterministic beliefs and a labour market orientation on education. Ten out of the fifteen institutions in our survey produced evidence of clear expressions of this presumed inevitability:

> 'The use of GenAI, especially ChatGPT, is currently spreading like an oil slick among HU students. Colleagues are becoming aware of the – sometimes even disruptive – impact of GenAI on education and assessments.' (Utrecht UoAS)

> 'Generative AI will play an increasingly important role in our world and therefore also in education. VU Amsterdam therefore believes it is important that you as a student learn to use AI well.' (VU Amsterdam)

In a few sources a certain degree of techno-negativism resounded about the lack of human agency or influence on that unstoppable process:

> 'The reality is that this technology is here to stay, and we need to find a way to relate ourselves to it. The availability of these types of language models can make a positive contribution to different forms of education, but mostly also requires us to reconsider how we assess students' knowledge and insight.' (Radboud University)

An absolute majority of texts that we studied were clearly ambiguous: weighing up advantages and disadvantages, threats and opportunities, high expectations and profound concerns about GenAI in education. These elements of techno-ambivalence (otherwise a very common phenomenon in the

discourse on new technologies, in general)[26] occur so regularly that they run the risk of becoming platitudes and losing all their meaning.

> 'It is important that users of GenAI be aware of the benefits and opportunities that come with its use, while at the same time being aware of the potential risks and drawbacks.' (Maastricht University).

This kind of 'on-the-one-hand-on-the-other-hand-isms'[27] can be traced back throughout the entire chain of policy documents, starting with 'The government-wide vision on Generative Al of the Netherlands' which is so full of similar hollow phrases on 'risks and opportunities' that this led to critical questions from Members of Parliament:

> 'The members read a detailed explanation of the opportunities and risks of generative AI, but miss a clear choice between those interests (…). In her letter, the State Secretary mentions that the desirability of generative AI depends on the development, technology and intentions of the user. The members believe that this [government-wide] Vision document should serve to establish protection against undesirable use. How do you ensure that the risks are mitigated, and the opportunities are used in a responsible manner?'[28]

About one third of the institutional documents on GenAI and education that we investigated pay attention to criticisms of GenAI in general, underpinned with sometimes elaborate lists of objections to GenAI use. The most frequently mentioned objections are well known: lack of reliability of output of GenAI, lack of accountability, privacy and data protection issues,[29] intellectual property issues, bias and discrimination. Some institutions refer to the labour

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[26] On-the-one-hand-on-the-other-hand-ism: already described by Joseph Weizenbaum, 'On the impact of the computer on society' *Science* 12 May 1972 Vol 176, Issue 4035 pp. 609-614, DOI:10.1126/science.176.4035.609 (accessed 20 April 2025).

[27] Term coined by Joseph Weizenbaum, op. cit.

[28] Parliamentary documents, translation by the authors - Antwoorden op Kamervragen (SO) over Overheidsbrede visie op generatieve artificiële intelligentie (AI) | Kamerstuk | Rijksoverheid.nl 27 June 2024.

[29] Taner Kuru, 'Lawfulness of the mass processing of publicly accessible online data to train large language models', *International Data Privacy Law*, Volume 14, Issue 4, November 2024, 326-351, https://doi.org/10.1093/idpl/ipae013 (accessed 20 April 2025).

circumstances of moderators and annotators of training data (Utrecht UoAS).[30] Another university qualifies GenAI as 'boring' (EUR). A major objection against the use of GenAI is its unsustainable nature,[31] both in terms of energy consumption,[32] water use,[33] and requirements of scarce minerals.[34] In that light, encouraging or allowing students to use LLM's is hardly defensible given the fact that many Dutch HLE institutions claim to endorse the UN Sustainable Development Goals.[35] Such conclusions, however, were lacking from the texts we examined.

There are students in HE and HLE who endorse these objections - and some of the documents in our study explicitly refer to that group:

> 'Students who do not want to use AI should not be disadvantaged compared to students who do use it.' (University of Groningen)

Others emphasise that students should be told about the detrimental effect of using AI, preferably at the beginning of a course, or included in the syllabus – to simply raise students' awareness:

> 'Students receive training and instructions on the use of GenAI. (…) the trainings and instructions will include

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[30] Niamh Rowe, '"It's destroyed me completely": Kenyan moderators decry toll of training of AI models', *The Guardian* 2 August 2023, 'It's destroyed me completely': Kenyan moderators decry toll of training of AI models | Artificial intelligence (AI) | The Guardian, (accessed 20 April 2025). See for an excellent overview: M. Fernandes et al, 'Resources on refusing, rejecting, and rethinking generative AI in writing studies and higher education' (2024), https://tinyurl.com/ewwaibib (accessed 20 April 2025).

[31] For a meta-study on AI sustainability see Niklas Humble and Peter Mozelius, 'Generative Artificial Intelligence and the Impact on Sustainability.' *International Conference on AI Research (ICAIR 2024)*. ACI Academic Conferences International, 2024. https://link.springer.com/content/pdf/10.1007/s43681-023-00259-8.pdf (accessed 20 April 2025).

[32] Vries, A. de, 'The growing energy footprint of artificial intelligence', *Joule* (2023), https://doi.org/10.1016/j.joule.2023.09.004 (accessed 20 April 2025). Mél Hogan, 'The fumes of AI.' *Critical AI* 2.1 (2024). https://doi.org/10.1215/2834703X-11205231 (accessed 20 April 2025).

[33] Pengfei Li et al, 'Making ai less' thirsty': Uncovering and addressing the secret water footprint of ai models' (2023), arXiv preprint, https://arxiv.org/abs/2304.03271 (accessed 20 April 2025).

[34] Crawford, Kate. *The Atlas of AI: Power, Politics, and the Planetary Costs of Artificial Intelligence*. Yale University Press, 2021, p. 44 https://www.jstor.org/stable/j.ctv1ghv45t# (accessed 20 April 2025).

[35] See https://sdgs.un.org/goals.

> information on common misconceptions of GenAI tools, such as potential bias, subjective, and discriminatory output.' (Maastricht University)

It is typical of this techno-ambivalence towards GenAI, however, that the concerns are never regarded of such urgence that they lead to the complete rejection of GenAI in education. The concerns are mentioned and even acknowledged – but not one institution in our survey was brave enough to follow up on them. Not using AI, or as little as possible, simply does not appear to be an option.

Embracing GenAI: skill for future jobs?

Explicit reference to the need to include GenAI in education because of fear of losing the connection with the future labour market was found regularly in the investigated sources. Not surprisingly, especially in the investigated policy documents from the institutions of applied sciences considerations about the importance of an optimal alignment with future employers' demands were found. By their nature, these institutions are more focused on the demands coming from the professional field.

> 'An important starting point for tests at HU is (…) that our assessment is a reflection of what students will have to be able to do in professional practice. For some professions, the use of ChatGPT will have a major impact on what professionals do. ChatGPT, for example, generates policy advice or computer code (..) and will only get better and better at this. (…) This means that we need to find assessment methods that fit those professional activities.' (Utrecht UoAS)

Other UoASs, however, produced more restrained statements – without hardly any direct reference to the interests of the professional field:

> '(…) the HAN, where AI systems are given a place in the classroom, the professional field, research and business operations. This has major implications, both in terms of opportunities for new learning strategies and for student support. In a negative sense, it can have consequences for the values of educational quality, justice, humanity and autonomy (...) AI systems are part of our society and will continue to grow in size and potential in the near future. (…) it seems

important to be critical of this.' (HAN UoAS)

Only in three out of ten academic institutions similar references to graduate employability and the connection with and expectations from the labour market were found. In the documents of the seven other academic institutions no such references were made.

At academic universities with a relatively strong focus on professional practice we see similar arguments for implementing GenAI in education and allowing students to use it for writing assignments:

> 'The effect of GenAI on the intended learning outcomes must be evaluated per programme. The evaluation should aim to complement traditional academic skills with relevant learning outcomes that fit the developments of GenAI and to determine the relevance of the current learning outcomes in relation to the changing requirements from the professional field (work processes that are redundant or changed). (…) GenAI contributes to preparing students for a rapidly developing and changing job market.' (Maastricht University).

> 'The technology of (generative) AI is developing rapidly and the impact on our education is profound. Adjustments are required, both regarding how we shape our education and how our programmes can continue to connect with the professional field.' (OU)

Obviously, linking the deployment of GenAI to novel requirements from the professional field has major potential repercussions for current learning outcomes, and inevitably also for the continuation of learning, teaching and assessing the more traditional academic skills.

This is fully in line with the national agenda, where the employability and skills agenda are central. In the Government-wide vision on GenAI it is stated:

> 'Matching the skills of the workforce to the labour market of the future is essential.[36] (…) The government is actively promoting the acquisition of knowledge and skills. This

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[36] The Ministry of the Interior and Kingdom Relations, *The government-wide vision on Generative AI of the Netherlands*, 2024, p. 36 Government-wide vision on generative AI of the Netherlands | Parliamentary document | Government.nl (accessed 20 April 2025).

> allows us to take full advantage of the opportunities provided by generative AI. (…) the government recognizes the significance of enhancing generative AI knowledge and skills throughout society. This is achieved by supporting education to enable an adequate response to technological developments.'[37]

This labour market orientation trickles down to the institutions via documents at the intermediary level, for example from the organisation NPULS (which essentially establishes a liaison between governmental ambitions with AI and the education sector and is financed by the National Growth Fund).[38]

> 'AI impacts the expectations and requirements of education (learning about AI and preparing for AI). There is a growing societal demand for broader AI literacy or AI wisdom in which education has an important role. In addition to this, AI changes the professional fields, creating new needs and expectations of future employees. Which elements of these societal demands we see as the duty of educational institutions and how (…) the educational system [can] adjust its education to align with social and labour market needs is a crucial question and requires a holistic approach across all educational levels.'[39]

NPULS leaves no doubt: technology in education needs a boost by programmes such as 'Expedition AI' – where dealing with GenAI is seen as 'a joint journey of discovery towards the education of the future, in which we take advantage

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[37] The Ministry of the Interior and Kingdom Relations, *The government-wide vision on Generative AI of the Netherlands*, 2024, p. 40 Government-wide vision on generative AI of the Netherlands | Parliamentary document | Government.nl (accessed 20 April 2025).

[38] The National Growth Fund programme NPULS is developing a national AI point and AI vision for secondary vocational education (MBO), higher vocational education (HBO) and university education (WO). The aim is to prepare the sectors for the transformation of education and to help shape these changes in collaboration with partners and institutions: The Ministry of the Interior and Kingdom Relations, *The government-wide vision on Generative AI of the Netherlands*, 2024, p. 20 Government-wide vision on generative AI of the Netherlands | Parliamentary document | Government.nl (accessed 20 April 2025).

[39] NPULS, T*he state of AI and the modern educational institution. AI explained in the context of the educational sector*, 27 November 2023, p. 12, https://npuls.nl/wp-content/uploads/2024/04/Npuls-Startnota-State-of-AI-B5-EN.pdf, (accessed 20 April 2025).

of the opportunities that AI offers and do not shy away from challenges that AI poses.'[40]

Here, it is not a question *whether* (higher) education should embrace AI: it is considered to be the central spider in the web of the curriculum.[41] And these ambitions set the stage, as their techno-optimism and labour market orientation inevitably seeps through to the institutional education policy levels, as demonstrated above.

Regulating GenAI use for writing assignments

Setting rules regarding students' use of GenAI for writing assignments appears to be a hazardous task. It seems that all guidelines we analysed in this study have difficulty reconciling opposite objectives. Offering the opportunity to students to learn how to work with GenAI in order to be better prepared for the labour market, and at the same time offering them the opportunity to practice writing (writing to learn) and to improve their writing skills (learning to write) is virtually impossible. Especially when it is taken for granted (without any real indications to that effect) that students use LLMs for their writing anyway and that a simple ban is supposed to be ineffective, because detection of the use of GenAI in students' writing is claimed to be technically impossible.

This complexity results in a variety of lengthy, sometimes unclear, ambiguous or even paradoxical guidelines and in noticeable differences between institutions. Within the scope of this paper, we can only discuss a few aspects.

In general, we observed two major policy principles: either GenAI is allowed unless otherwise indicated by the teacher or in the course manual (found in most of the institutions), or alternatively, GenAI is not allowed unless explicitly stated otherwise (in approximately 30 per cent of the investigated guidelines). Several texts however were not clear in this respect. Our impression is that the principle of 'not allowed, unless otherwise stated' was slightly more prevalent at the academic universities than at the universities of applied sciences.

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[40] NPULS, *Expeditie AI van start*, 9 April 2024, https://npuls.nl/actueel/expeditie-ai-van-start/ (accessed 20 April 2025).
[41] NPULS, *Slimmer Onderwijs met AI. Een handreiking voor docenten en andere onderwijsprofessionals*, September 2023, p. 8 Slimmer-onderwijs-met-AI-Npuls.pdf (accessed 20 April 2025).

Moreover, allowing GenAI use can take on different forms and various degrees ranging from mere tolerating to actively encouraging students' use.

> 'You must create your text yourself: in other words, write it yourself. Therefore, keep being careful not to copy and paste information *verbatim*.' (VU Amsterdam)

> 'Saxion encourages you to use AI tools responsibly (...) Saxion certainly does not opt for a ban but for integrating it.' (Saxion UoAS)

The conditions that apply for the use of GenAI are sometimes elaborated and sometimes summarized in a couple of bullet points. Most of the time they are open to interpretation:

> 'Always *indicate whether* you used AI tools in an assignment or a test. So *not only when you have used AI to write parts of a report* but also mention that you have used AI to brainstorm and form your thoughts, for example. In addition to *using ChatGPT for writing assignments*, you can also use it as a learning tool. (…) Submitting your own work is essential for academic integrity. Do not rely on ChatGPT to write your work *entirely*. Make sure that the ideas and *the wording of the assignment are yours* and justify what you have written. It is important to be honest with yourself and others. *If you used ChatGPT when writing your assignment, mention it in your work and indicate which parts were generated by ChatGPT.* (Saxion UoAS)

> 'While programs like ChatGPT can be a useful tool, similar to spell checker or Wikipedia, *they cannot replace your own*, original work. *If you use an AI program such as ChatGPT for a writing assignment and do not mention it*, you are committing fraud and violating scientific integrity. This can have serious consequences for your studies.' (Leiden University)

Most of the texts included elaborate rules concerning fraud and plagiarism. Institutional documents typically emphasise that the use of GenAI could constitute fraud and a breach of academic integrity.

> 'The use of a chatbot can be seen as fraud. You should not
> hire a ghostwriter to have your essays written for you either.'
> (Utrecht University)

> 'Fraud occurs when GenAI is used when this is not allowed
> or when GenAI is used in another way than is permitted by
> the instruction. Plagiarism occurs when GenAI is used
> without or with incomplete or incorrect citation or when work
> generated by GenAI is presented as one's own work.'
> (Amsterdam UoAS)

Confusion lurks where some institutions expect students to refer to the
(academic) sources mentioned within content generated by GenAI, and others
expect students to also refer to GenAI as a source on its own (in which case it
should be mentioned in the body of the text or in a footnote).

Detection and prevention

It is generally stated that detection of fraud with (*i.e.* unauthorized use of)
GenAI by using digital tools is unfeasible. And such statements were indeed
found in the majority of the teachers' guidelines included in our survey (but
were for obvious reasons omitted by students' guidelines):

> '(…) The student can then easily have these texts translated
> and paraphrased or have new versions generated. However,
> the teacher cannot, or can hardly, detect that the text was
> (partly) created by a computer. And AI detectors cannot be
> used to detect such processing as they pose a privacy risk and
> are very unreliable.' (VU Amsterdam)

It is unclear whether these statements refer to insufficiencies of the plagiarism
tools that are currently in use in HE or to *all* AI detection tools in general, but
they are often presented as a fact of general knowledge. Apart from the question
whether policing GenAI use should be aspired in HE, we note that the
decisiveness by which automatic detection of GenAI use is excluded from the
'toolbox' has a major impact on the development of guidelines on GenAI.

Some institutions do, however, prescribe with some caution the use of tools,
such as Turnitin to detect AI:

> 'When students submit an assignment, you can check for the

> use of generative AI using Turnitin. Note that the score generated by Turnitin can only be used as an indication that generative AI was used but does not provide certainty. (…) Check the AI writing indicator. (...) If the AI writing indicator shows a positive percentage, click this percentage to open the AI writing report. In the report, the sections that were likely written using generative AI are highlighted. This can give you a better understanding on how students may have used generative AI.' (Erasmus University Rotterdam)

Alternative ways of recognizing plagiarism are described by focussing on indicators such as: factual inaccuracies, incorrect assertions, internally inconsistent reasoning, meaningless passages, overly structured or unnatural looking texts, sentences ending abruptly, differences in style, remarkably few or no spelling errors, a list of sources that contains many or exclusively English sources (in the case of a Dutch legal text), or URLs with a dead end or incorrect or fictitious references, or that do not mention page numbers.

More preventive measures mentioned by the HE institutions include alternative types of formative assessments such as requiring students to hand in writing assignments in multiple phases, or to give an (interim) oral presentation, or to keep a log.

The advice given by one of the UoAS to gradually move away from writing assignments *tout court* and focus on assessing other skills would in our eyes have a detrimental effect on the quality of HLE education.[42]

The ample attention to detection, prevention and rules on GenAI use for writing that we found in the documents studied suggests that great importance is attached within the institutions to the training and testing of writing skills, and that the use of GenAI for writing assignments stands in the way of the development of these writing skills.

Some guidelines take the opportunity to explain the importance of developing writing skills for the students and why GenAI should not be used for generating texts:

> 'GenAI can support as a writing aid: to start up faster, to generate ideas, as a translation aid, *etc*. But be aware that

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[42] Confidential source.

writing is more than just making a written product. The writing process helps to think critically, analyze, formulate, organize, structure and communicate. Writing is therefore a valuable (learning) process. Enough reason for many programmes to give human writing skills a permanent place in the curriculum.' (Amsterdam UoAS)

'In the end, of course, you are at the University to learn something. You do not learn anything by letting a chatbot do your work for you.' (Utrecht University)

'The other important reason not to have your assignments written by AI programs is that it hinders your academic development. After all, relying on artificial intelligence for your writing assignments will not help you develop the skills you need to graduate. For your bachelor's or master's thesis, you will have to demonstrate that you can do research and write about it under intensive supervision. If you have not developed these skills sufficiently, you will fall behind in your studies or you will not be able to graduate at all.' (Leiden University)

'The purpose of studying at VU Amsterdam is that you learn to acquire and process knowledge on your own. The writing process is important to organise your thoughts and process knowledge. You must also be able to report on this in a persuasive text (essay, written pleading, research report, *etc*.). This requires teachers and examiners to be able to assess your own level of knowledge and skill and your contribution to such a product.' (VU Amsterdam)

But none of the examined policy documents explicitly qualified GenAI as a threat to the quality of (legal) education and therefore encouraged slowing down the adoption or end the use of LLMs altogether.

Discussion

The analysis of the results of our survey led to the insight that in general policies regarding GenAI in HLE fit into a relatively strong inevitability, techno-positivist and graduate employability framework. This specific perspective on GenAI seems to have seeped downwards from the

governmental, national level where the red carpet was rolled out without any hesitation:

> 'Generative AI can be considered a powerful extension of human analytical and creative abilities. When coupled with related technologies, it has great potential to address societal and scientific issues.'[43]

Broadly speaking, we found that the greatest unease and concerns related to the use of GenAI and writing skills were felt at the faculty level (although so far little substantial policy has been developed or published):

> 'It is a fact that the students' use of AI for writing assignments does not serve any learning outcome of our teaching programmes. It deprives students of the opportunity to practice and improve their writing skills, and teachers to test that skill. On balance, no one will win from this.'[44]

Until now, only a small minority of Dutch (teaching) academics publicly demonstrated their worries, as Professor of Computational Cognitive Science Van Rooij (@Iris) did on Mastodon:

> 'Deeply troubled by seeing my Dutch colleagues — both at @Radboud_uni and elsewhere in the country — hyping up ChatGPT rather than help curb the hype, which I think is our responsibility as academics. Why do we let money-motivated AI tech dictate our academic research and debate agendas. We need rather to resist and educate on critical reflection.'[45]

This divergence in views could be a possible explanation for the striking regulatory gap and the indecisiveness on the institutional and local (HLE) administrative level. It was observed above that because of this stagnation some HLE faculties started making their own guidelines themselves.

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[43] The Ministry of the Interior and Kingdom Relations, *The government-wide vision on Generative AI of the Netherlands*, 2024, p. 3 Government-wide vision on generative AI of the Netherlands | Parliamentary document | Government.nl (accessed 20 April 2025).
[44] Confidential source.
[45] Iris van Rooij, *Stop feeding the hype and start resisting*,14 January 2023, https://irisvanrooijcogsci.com/2023/01/14/stop-feeding-the-hype-and-start-resisting/ (accessed 20 April 2025).

Critically reflecting upon the nature and effects of GenAI

We fully agree with Van Rooij's urgent appeal that HE should educate on critical reflection. At all policy levels *critical AI literacy* should be developed, as policy makers, faculty board members, teaching staff and students should be made aware what GenAI really is: applied statistics. [46]

Law students must develop an understanding of how GenAI really works, rather than learning how to work with GenAI. That GenAI does not have moral sense, for example. That GenAI can suggest all kinds of solutions for legal disputes, but that, crucially, a human needs to take responsibility (and accountability and ultimately liability) for that decision.[47] Being able to take responsibility for a moral decision ultimately requires a moral compass, a conscience, the ability to look at yourself in the mirror – that humans have, but that GenAI lacks.

Students should learn that GenAI does not have the capability to 'understand' language or human behaviour, but that many people (not only students!) do tend to attribute understanding to it.[48] And that also lay people do this, people our students will be representing in their future jobs.[49] Already before the launch of ChatGPT insiders warned that the outputs [of LLMs] resemble human understanding, and that 'this rhetorical slippage is particularly harmful in educational contexts'.[50]

As Van Rooij puts it:

> 'Academics should be a voice of reason; uphold values such as scientific integrity, critical reflection, and public responsibility. Especially in this moment in history, it is vital

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[46] Also, AI literacy is required by the AI Act (Regulation (EU) 2024/1689) in art. 4.

[47] W.B. Wendel, 'Public Values and Professional Responsibility.' *Notre Dame L. Rev.* 75 (1999): 1, https://heinonline.org/HOL/P?h=hein.journals/tndl75&i=13 (accessed 20 April 2025).

[48] See e.g. The Siren's Song of GenAI: Why legal practitioners still fall for fabricated content - Law Society Journal (accessed 23 April 2025).

[49] Frank Pasquale and Gianclaudio Malgieri, 'Generative AI, Explainability, and Score-Based Natural Language Processing in Benefits Administration', *Journal of Cross-Disciplinary Research in Computational Law* 2024; Sayash Kapoor, Peter Henderson and Arvind Narayanan, 'Promises and pitfalls of artificial intelligence for legal applications', *Journal of Cross-Disciplinary Research in Computational Law* 2024.

[50] Su Lin Blodgett and Michael Madaio. 'Risks of AI foundation models in education', arXiv preprint (2021), p. 3, https://arxiv.org/abs/2110.10024 (accessed 20 April 2025).

that we provide our students with the critical thinking skills that will allow them to recognise misleading claims made by tech companies and understand the limits and risks of hyped and harmful technology that is made mainstream at a dazzling speed and on a frightening scale.'[51]

Moreover, there is empirical evidence that use of GenAI impacts critical thinking skills negatively. Critical thinking is reduced to 'information verification, response integration, and task stewardship,' according to an empirical study interviewing 319 knowledge workers (including an undisclosed number of lawyers).[52]

The afore-mentioned aspects of 'techno-ambivalence' and criticisms on GenAI offer interesting possibilities for educational purposes and are therefore, in our view, well suited for all kinds of curriculum changes. At least two academic institutions agreed with us on integrating critical thinking on GenAI in their teaching programme:

'The most important thing is that students learn about the limitations and reservations of AI: digital literacy 2.0.' (Radboud University)

'Explore the possibilities of turning [GenAI] and its possible consequences for education, research and society as a whole into a subject of education in an educational unit (for example, in the short term already in electives).' (University of Amsterdam)

These types of curriculum reforms which fit GenAI into teaching programmes as a topic for a legal course or a class, and not as another skill or education tool, align better with the importance of critical thinking, and curriculum

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[51] Iris van Rooij, *Stop feeding the hype and start resisting*, 14 January 2023, https://irisvanrooijcogsci.com/2023/01/14/stop-feeding-the-hype-and-start-resisting/ (accessed 20 April 2025).

[52] Hao-Ping (Hank) Lee et al, 'The Impact of Generative AI on Critical Thinking: Self-Reported Reductions in Cognitive Effort and Confidence Effects From a Survey of Knowledge Workers', *CHI Conference on Human Factors in Computing Systems* (CHI '25), April 26–May 01, 2025, Yokohama, Japan. ACM, New York, NY, USA. https://hankhplee.com/papers/genai_critical_thinking.pdf (accessed 20 April 2025).

orientations such as personal and social relevance and an academic orientation in (academic) legal education.

Why writing is important for law students

In law schools, we teach students to become lawyers. Lawyers need to be equipped by both a critical attitude (see previous section) and domain knowledge – whether they use GenAI or not. Students need to understand the difference between different legal domains, and they need to be able to solve cases, construct a legal argument, debunk a legal argument, play around with the law, in other words: 'think like a lawyer'.[53]

The traditional proven way to learn this is by writing and getting constructive feedback on one's writings: writing to learn.[54] Writing about a topic forces you to engage with the topic, structure your thoughts, and put them into words enabling others to follow your line of reasoning. Articulating your views by putting them into written words necessarily sharpens them and reinforces the cognitive structures inside your brain, deepening your understanding of the topic.[55]

Writing on a legal topic is fundamentally different from writing on (most) other topics. First, for legal research, writing is in a sense a research method: the argument is developed by writing it down (and again and again) and then reviewing and editing the result. We do not report in writing on research that was done elsewhere, for example by experiments or interviews. So, in a way, if we outsource the writing to GenAI, we outsource ourselves.

Secondly, thinking like a lawyer by writing involves arguing about normative concepts that resist precise definitions, such as justice, fairness, right and wrong, equality, but that are not matters of opinion or subjective taste. Normative reasoning involves analysis, carefully crafted arguments to avoid

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[53] Kenneth J. Vandevelde, *Thinking like a lawyer: An introduction to legal reasoning*. Routledge, 2018.
[54] Michael J. Madison, 'Writing to Learn Law and Writing in Law: An Intellectual Property Illustration.' *Louis ULJ* 52 (2007): 823. https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=1128312 (accessed 20 April 2025).
[55] Laurel Currie Oates, 'Beyond communication: Writing as a means of learning.' *Legal Writing: J. Legal Writing Inst.* 6 (2000): 1. https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1337&context=faculty (accessed 20 April 2025).

fallacies and expose fallacies in your opponent's argument.[56] Composing a legal argument involves a skilled use of the tools in a lawyer's toolbox including: finding and citing relevant precedents, referring to the real or ascribed intention of the rule-makers, pointing to favourable or undesired consequences of a certain interpretation, etc.[57] Use of these tools can only be mastered by practicing with them, by making oral and written arguments yourself.

Writing is not necessarily a painless or joyful experience. It requires effort, perseverance, dedication and patience. A writing process *without* the use of AI forces a student not only to practice language skills, but also simply to struggle and come up with a good text of their own.[58] In essence, therefore, writing also contributes to the development and personal growth of students. The use of GenAI is at odds with that learning process. On the contrary, allowing students to use GenAI for writing entails the risk that they will fear writing any texts on their own, cannot muster up the energy to do so (impressed as they may mistakenly be by the level of AI generated texts), or simply out of laziness or lack of time.[59]

Writing for law students is thus an effective way for them to learn. Teaching law, therefore, includes teaching law students how to write.[60] We do so by giving them examples of good writing for them to study, and by giving them constructive feedback on writing assignments, on structure, contents, wording and referencing.[61] Challenging writing assignments enable students to hard-wire the art of 'thinking like a lawyer' into their brain.[62] Encouraging or even

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[56] Arend Soeteman, *Logic in Law: Remarks on logic and rationality in normative reasoning, especially in law*. Vol. 6. Springer Science & Business Media, 2013.
[57] Kenneth J. Vandevelde, *Thinking like a lawyer: An introduction to legal reasoning*. Routledge, 2018.
[58] Cynthia Liem, 'ChatGPT berooft ons van waardevol denkwerk. Wanneer zijn we gestopt met ergens moeite voor doen?', *Trouw* 4 maart 2023.
[59] Jaures Jip, 'A teacher caught students using ChatGPT on their first assignment to introduce themselves. Her post about it started a debate', *Business Insider Nederland,* 8 September 2024, https://www.businessinsider.nl/a-teacher-caught-students-using-chatgpt-on-their-first-assignment-to-introduce-themselves-her-post-about-it-started-a-debate/ (accessed 20 April 2025).
[60] I. Curry-Sumner et al, *Research skills. Instruction for lawyers*, Ars Aequi Libri, 2010.
[61] Michael J. Madison, 'Writing to Learn Law and Writing in Law: An Intellectual Property Illustration.' *Louis ULJ* 52 (2007): 823. https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=1128312 (accessed 20 April 2025).
[62] Laurel Currie Oates, 'Beyond communication: Writing as a means of learning.' *Legal Writing: J. Legal Writing Inst.* 6 (2000): 1, at p. 24.

allowing students to leave the writing to LLMs in that sense does them a disservice.

In the sources from the local level that we investigated we noticed a clear emphasis on the importance of writing skills, and the possibilities of fraud detection. The ample attention on these specific aspects suggests that curriculum orientations based on individual intellectual development and the legal discipline as such are given more importance – as writing and language proficiency are considered essential elements of the legal discipline and of becoming a good lawyer.

This is why we argue that GenAI should not be embraced unconditionally in HLE – but rather that strict rules are required regarding use of GenAI in writing assignments. We cannot educate lawyers without writing assignments, and we cannot tolerate that students use GenAI for these assignments while we look the other way. Banning GenAI for writing assignments sends out a strong message: rather than a ban on GenAI we can call it a Code of Conduct for writing assignments: solemnly declare that what you hand in was written by you and only by you, as a matter of academic integrity.[63]

Critical thinking and writing as key legal skills for the future

We do not want to argue against preparing students for the future labour market. However, there is room for discussion about the way in which this should be done. We are not convinced that this should involve allowing students to use LLMs for their writing assignments – let alone training students how to use them. LLMs evolve rapidly, and it is to be expected that future employers will use their own dedicated applications, and that it will not be hard at all for graduates to master their use.

Instead, we are convinced of the importance of making students (and teaching staff, for that matter) digitally literate and critical on AI technology and its applications. Future employers, we think, need well-educated, critical, writing-

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[63] In line with the MIT Management STS Teaching and Learning Technologies, *AI Detectors Don't Work. Here's What to Do Instead*, https://mitsloanedtech.mit.edu/ai/teach/ai-detectors-dont-work/, (accessed 20 April 2025). See for an example of a Code of Conduct Law KU Leuven (Belgium): https://www.law.kuleuven.be/onderwijs/leuven/studentenportaal/reglementen/fac_reg_beleid/code-of-conduct-gen-ai_draft_ma-rechten-en-crim_poc4october.docx (accessed 20 April 2025).

proficient future employees. At the end of the day, good writing skills and critical thinking skills are typically also in the interest of future employers. They too will profit from critical lawyers with a keen sense of language, who can write and analyse texts – because that is where a human lawyer has the edge over AI.[64] This is acknowledged even in a tech company *pur sang* like ASML that welcomes young lawyers as they 'are naturally textually strong and trained to work accurately. This comes in handy in implementations of AI tooling – which are often based on language models'[65] – an unexpected plea to restrict students' use of GenAI for writing assignments from the professional field.

We believe that HLE institutions should not in any way have imminent prospects of 'missing the boat' propagated by policy makers affect their own curriculum decisions too much:

> '(…) Meanwhile students, market parties and the labour market are embedding [GenAI] in their activities. If we do not educate all the involved stakeholders, the sector will fail to navigate this societal change for the good of students and society. Take students seriously, both in demystifying AI as well as to prepare them for future work.'[66] (NPULS)

Interestingly, students themselves do not share these views *per se*. A recent survey showed that students when asked 'To me, education in 2040 should mainly be a place for students to….' replied: 'to have the opportunity for personal development' (76 per cent), and 'to find out who I am' (64 per cent).

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[64] Peter Immink, *GenAI op de campus: in gesprek met hoogleraar en advocaat Dirk Visser*, 25 september 2024, https://www.wolterskluwer.com/nl-nl/expert-insights/gen-ai-on-campus-in-conversation-with-professor-and-lawyer-dirk-visser (accessed 20 April 2025).

[65] Douwe Groenevelt, Head Legal HQ and Deputy General Counsel at ASML, as cited in: Martijn Kroese, 'Bedrijfsjurist wordt innovator dankzij AI: 'Legal unicorn is goud waard' - *Mr. Online*,16 December 2024 (accessed 20 April 2025).

[66] NPULS, T*he state of AI and the modern educational institution. AI explained in the context of the educational sector*, 27 November 2023, p. 22, https://npuls.nl/wp-content/uploads/2024/04/Npuls-Startnota-State-of-AI-B5-EN.pdf, (accessed 20 April 2025).

Only 40 per cent considered education as the preparation for a successful career and only 34 per cent as 'learning a profession'.[67]

Some final thoughts

One good thing about GenAI is that it has forced us to become even more aware of the importance of writing in legal education. It has also exposed the dominant (labour market) orientation on HE and HLE, at least on a central and intermediate level. So far, this perspective has led to the absence of consistent policies on the institutional and faculty levels regarding students' use of GenAI for writing assignments. Shifting the policy focus to students' personal development, societal interests, and especially the discipline-based orientation for which writing and critical thinking are pivotal, we argue, might help us out of this impasse.

We are aware of the limitations of this first survey. The diversity and dynamics of the 'GenAI and education' policy landscape require more systematic and no doubt also other types of studies for which we make some suggestions.

Firstly, more research on the actual extent of students' use of GenAI and their attitudes towards using LLMs in the writing process is welcomed. We know of one study comparing educators' and students' perceptions that found that both groups generally agree that using AI to brainstorm ideas or model answers is acceptable, but that using AI to complete writing tasks, with or without disclosure, is not.[68] It would be interesting to repeat a similar survey in a European or Dutch HLE context. Also, we believe that involving students in GenAI policy making and curriculum decisions could be beneficial, whereas students' voices have been largely absent in discussions about GenAI until now.

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[67] Eimers, T. (red.) *Vandaag is het 2040. Toekomstverkenning voor middelbaar beroepsonderwijs, hoger onderwijs en wetenschap*. 2023, Nijmegen/Utrecht/Enschede/Amsterdam: KBA Nijmegen, ResearchNed, Andersson Elffers Felix, CHEPS, Kohnstamm Instituut, p. 150. Vandaag is het 2040 Deel 1 | Rapport | Rijksoverheid.nl (accessed 20 April 2025).

[68] Alex Barrett and Austin Pack, 'Not quite eye to AI: student and teacher perspectives on the use of generative artificial intelligence in the writing process', *Int J Educ Technol High Educ* (2023) 20:59 https://doi.org/10.1186/s41239-023-00427-0 (accessed 20 April 2025).

Future research could explore the possibilities of involving students in policy development and curriculum decisions on GenAI.[69]

Some scholars are not convinced by the claim that it is impossible, now and in the future, to have tools detecting whether AI has been used.[70] The scientific discussion about this seems to acknowledge that it is complicated, but the discussion is not yet closed.[71] It is important to explore what detection options there are, and how they can be used to detect the use of GenAI. In the Netherlands, this might be a task for an organisation like Universities of the Netherlands (UNL).

Furthermore, we would recommend a systematic investigation of whether (legal) employers are really so eager to hire legally trained graduate prompt engineers. The claim that AI is set to redefine the legal profession is not supported by the current evidence.[72] For those who think that the employability-based curriculum orientation is all there is, the results of such a survey could possibly give room to other perspectives.

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[69] Malcolm Tight, 'The curriculum in higher education research: A review of the research literature', *Innovations in Education and Teaching International,* 2024, 61:2, 315-328, DOI: 10.1080/14703297.2023.2166560 (accessed 20 April 2025).

[70] A. Knott et al, 'Generative AI models should include detection mechanisms as a condition for public release', *Ethics and Information Technology*, 2023, 25(4), 55. C. Mao, C. Vondrick, H. Wang, and J. Yang, 'Raidar: generative ai detection via rewriting', *ICLR 2024*, arXiv preprint arXiv:2401.12970 (accessed 20 April 2025).

[71] V.S. Sadasivan et al, *Can AI-generated text be reliably detected?* 2023, preprint https://ui.adsabs.harvard.edu/abs/2023arXiv230311156S/abstract (accessed 20 April 2025).

[72] There are large employers, such as the municipality of Amsterdam, that prohibit the use of LLMs by their employees altogether. See also Sayash Kapoor, Peter Henderson and Arvind Narayanan, 'Promises and pitfalls of artificial intelligence for legal applications', *Journal of Cross-Disciplinary Research in Computational Law* 2024, https://arxiv.org/pdf/2402.01656 (Accessed 20 April 2025).

Appendix: GenAI policy documents published by Dutch HE institutions

Institution	Source	Link
VU Amsterdam	Web page 1	https://vu.nl/en/employee/didactics/how-to-deal-with-chatgpt-as-a-teacher
VU Amsterdam	Web page 2	https://vu.nl/en/student/examinations/generative-ai-your-use-our-expectations
University of Groningen	Web page 1	https://www.rug.nl/about-ug/organization/quality-assurance/education/artificial-intelligence-ai/
University of Groningen	Policy on AI in teaching	https://edusupport.rug.nl/2365784080/Instructor/Artificial+Intelligence+(AI)+in+education
Utrecht University	Web page 1	https://www.uu.nl/en/education/educational-vision/teaching/generative-ai
Utrecht University	Web page 2	https://students.uu.nl/en/homepage/academics/chatgpt-in-education/a-chatbot-as-study-aid
Radboud University	Web page 1	https://www.ru.nl/en/staff/lecturers/designing-education/ai-in-education
Maastricht University	Policy Framework Generative AI	https://www.maastrichtuniversity.nl/news/policy-framework-generative-ai-officially-published
Leiden University	Web page 1	https://www.staff.universiteitleiden.nl/education/it-and-education/ai-in-education?cf=law
Leiden University	Web page 2	https://www.student.universiteitleiden.nl/en/announcements/2023/02/using-chatgpt-for-written-assignment-be-aware-of-the-risks?cf=university&cd=guest
Leiden University	Web page 3	https://www.staff.universiteitleiden.nl/announcements/2023/02/chatgpt-faculty-strategy?cf=law (Faculty of Law)
Erasmus University Rotterdam	Web page 1	Generative AI Usage Guidelines | Erasmus University Rotterdam
Erasmus University Rotterdam	Policy GenAI PhD-trajectory	2024-07-policyontheuseofgenaiandthephd-trajectory
University of Amsterdam	Web page 1	https://tlc.uva.nl/en/article/unsupervised-written-assignments/?faculty=54

University of Amsterdam	Beleidsmemo AI	https://www.uva.nl/over-de-uva/beleid-en-regelingen/onderwijs/beleidsmemo-ai-in-het-onderwijs.html (only in Dutch)
Tilburg University	Web page 1	https://www.tilburguniversity.edu/intranet/education-support-portal/ai-education
Open University	Web page 1	AI-tools in het OU-onderwijs - Open Universiteit - Open Universiteit (only in Dutch)
Utrecht UoAS	Handreiking GenAI en toetsing	ChatGPT-handreiking.pdf (only in Dutch)
Amsterdam UoAS	Generatieve AI in onderwijs	AI regels - HvA (only in Dutch)
HAN UoAS	Framework gebruik AI	Framework_gebruik_AI_binnen_de_HAN-(juni-2024).pdf *HAN-Handreiking-ChatGPT-en-toetsing-okt-2023.pdf (only in Dutch)
InHolland UoAS	Generatieve Artificiële Intelligentie in het Hoger Onderwijs	https://www.inholland.nl/nieuws/werkgroep-ai-publiceert-update-student--en-inholland-statements-ai/ (only in Dutch)
Saxion UoAS	Handreiking AI/ChatGPT voor studenten	https://www.saxion.nl/binaries/content/assets/nieuws/2023/juli/handreiking-ai-chatgpt-studenten-saxion-voor-saxionnl.pdf (only in Dutch)

All links were accessed 14 February 2025.