

BETWEEN LAW AND DISCRETION: AI AND THE IMPLICATION OF HARD CASES OF THE JUDGE

Paul Terngu Haaga, PhD&Lubem Agishi

Department of Philosophy, Federal University of
Lafia

paul.haaga@arts.fulafia.edu.ng;

lubemagishi@gmail.com

Abstract

Our aim in this paper is to explore how the integration of artificial intelligence (AI) into the legal system could positively improve decision-making. However, it is imperative to observe that AI may also pose a significant challenge to traditional jurisprudence, particularly in facets related to discretion, moral responsibility, and legal decision-making. Opinions in this regard are that artificial intelligence (AI) may have the predilection to threaten existing principles of justice that have been construed in a manner that prioritizes 'Hard cases' that stem from the judge, at the core of legal systems. Adopting the philosophical method of analysis, we argue that at the moment AI cannot replace the essential human components of judgment and moral deliberation, which are basic and fundamental to jurisprudence. In this paper, we argued that the judgment of a machine cannot override that of humans based on rationality and autonomy in judicial decision-making. We explore the impending possibility of AI to support legal decisions but caution against the probability of supplanting human discretion, particularly in 'marginal cases that require a nuanced

understanding of justice. In the final third, this paper recommends a balanced approach that combines AI's analytical capabilities with human ethical reasoning that heightens marginal cases and discretion in jurisprudence and the legal system.

Keywords: Artificial Intelligence, Jurisprudence, Legal Discretion, Hard cases, Moral Responsibility, Judicial Decision-Making.

Introduction

The rapid advancement of Artificial Intelligence (AI) in the legal domain has sparked considerable scholarly and ethical debates regarding its role in judicial decision-making. The growing sophistication of AI models, particularly those capable of processing vast legal data and generating legal recommendations, poses significant questions about the nature of legal interpretation and judicial discretion. As Frank Pasquale warns, “the rise of algorithmic decision-making systems threatens to displace not only bureaucratic procedures but also the moral reasoning essential to fair adjudication”¹. This article investigates whether AI, in its current or future forms, can appropriately interpret legal materials in the way judges must, particularly when their decisions hinge not merely on logical

¹ Pasquale, Frank. *The Black Box Society: The Secret Algorithms That Control Money and Information*. (Cambridge, MA: Harvard University Press, 2015), 146

application of rules but also on humanistic judgment and interpretative discretion.

Artificial Intelligence (AI) refers to the simulation of human intelligence by machines, especially computer systems programmed to perform tasks such as learning, reasoning, and self-correction. Legal interpretation involves the process by which judges and legal scholars discern the meaning and applicability of legal texts. Judicial discretion is the power or right given to judges to make decisions based on their judgment within the bounds of the law. The rule of law is the principle that all members of a society, including lawmakers and enforcers, are equally subject to publicly disclosed legal codes and processes. The contemporary relevance of this debate stems from the increasing reliance on algorithmic tools in courtrooms. The idea that machines might one day be involved in interpreting laws or even adjudicating cases is no longer fictional. As Mireille Hildebrandt notes,

The legal effect of decisions made by artificial intelligence challenges the very assumptions of constitutional democracies: that citizens are subject to laws made by democratically elected legislatures, interpreted by independent judges who are accountable for their decisions.”².

² Hildebrandt, Mireille. *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology*. (Cheltenham: Edward Elgar Publishing, 2015), 48

This article poses three key questions: (1) Can AI interpret law in the way that judges are required to? (2) What is the nature and limit of judicial discretion that AI may or may not replicate? (3) How can we ethically and jurisprudentially respond to the integration of AI in legal systems? These questions guide our inquiry into both the epistemic and moral dimensions of legal interpretation in the age of AI. The objectives of the article are to critically analyze the capabilities and limitations of AI in interpreting law, to explore whether machine reasoning can meet the requirements of the rule of law, and to evaluate the philosophical implications of replacing or augmenting human judges with machine agents. As Ronald Dworkin argued, “What judges must decide is not merely what the law says, but what the law means, and this meaning cannot be derived from mechanical rules or computational logic alone.”³.

Methodologically, this article employs a conceptual and philosophical analysis. It draws upon the theoretical frameworks of legal positivism, interpretivism, and critical legal studies to understand the place of discretion in judicial reasoning. Where applicable, the article references case studies involving algorithmic sentencing tools such as COMPAS and evaluates their implications for justice, fairness, and human dignity. By weaving together

³ Dworkin, Ronald. *Taking Rights Seriously*. (Cambridge: Harvard University Press, 1977), 87

philosophical inquiry and empirical insights, the study seeks to illuminate the boundary between legal normativity and computational reasoning. The underlying concern is whether legal decision-making is reducible to a set of rules executable by machines or whether it is, in Dworkin's phrase, "a matter of judgment guided by principles rather than mere policies."⁴

Conceptual Clarifications

Legal interpretation is the intellectual process through which judges, lawyers, and scholars determine the meaning and implications of legal texts. Theories of interpretation differ widely, but two dominant schools are textualism and purposivism. Textualism holds that "the ordinary meaning of the text is the law, and judges must give it that meaning and no other."⁵ In contrast, purposivism seeks to align legal interpretation with the broader purpose or intent behind a statute. Hart and Sacks think that "The basic criterion for interpreting a statute is to determine the purpose of the legislation as a whole and to interpret its provisions to carry out that purpose."⁶ The divergence between these approaches reflects the tension between fidelity to

⁴ Dworkin, *Taking Rights Seriously*, 22

⁵ Scalia, Antonin. *A Matter of Interpretation: Federal Courts and the Law*. (Princeton: Princeton University Press, 1997), 23

⁶ Hart, Henry M., and Albert M. Sacks. *The Legal Process: Basic Problems in the Making and Application of Law*. Prepared by William N. Eskridge and Philip P. Frickey. (Westbury, NY: Foundation Press, 1994), 1374

enacted text and responsiveness to evolving social goals, a tension that becomes acute when AI systems are programmed to interpret legal language based on literal or statistical patterns, potentially missing contextual meaning or moral intent.

Judicial discretion refers to the authority judges have to make decisions within the bounds of legal norms, particularly in situations where the law is vague, silent, or in conflict with other norms. Discretion is not arbitrary power but rather a structured freedom guided by principles of justice, equity, and precedent. Justice Benjamin Cardozo famously captures it that, “The judge, even when he is free, is not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness.”⁷ Judges often depart from strict textual readings to achieve equitable outcomes, especially in cases involving human rights, evolving social values, or moral ambiguity. The exercise of such discretion is what makes judicial reasoning rich in human understanding, a quality not easily replicated by machines.

AI in legal systems has emerged primarily as a tool for predictive analytics, legal research, and decision-support systems. Technologies such as COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) have been used to predict

⁷ Cardozo, Benjamin N. *The Nature of the Judicial Process*. (New Haven: Yale University Press, 1921), 141

recidivism risks in criminal sentencing, while platforms like ROSS Intelligence assist with legal research using natural language processing. However, these tools are often critiqued for opacity and potential bias. Danielle Citron warns that, “Automated systems, once embedded in administrative or legal institutions, can magnify existing inequalities or introduce new forms of unfairness if their design lacks transparency or accountability.”⁸. While AI can process vast amounts of legal data with speed and consistency, its limitations in understanding social context, empathy, and normative reasoning raise serious questions about its suitability for interpretative or discretionary roles in adjudication.

The philosophical foundations of legal interpretation and discretion often draw from the long-standing debate between legal positivism and natural law theory. Legal positivism, exemplified by H.L.A. Hart, asserts that “the existence of law is one thing; its merit or demerit is another”⁹. According to this view, interpretation involves applying valid rules derived from recognized sources, independent of moral considerations. Natural law theorists, such as Lon Fuller, argue that law inherently involves moral principles and cannot be fully understood or applied apart from them. Fuller famously insisted that, “Law

⁸ Citron, Danielle Keats. “Technological Due Process.” *Washington University Law Review* 85, no. 6 (2007): 1267

⁹ Hart, H.L.A. *The Concept of Law*. 3rd ed. Oxford: (Oxford University Press, 2012), 185

is not merely a system of rules, but a purposive enterprise that depends upon fidelity to internal moral principles such as coherence, clarity, and congruence”¹⁰. These contrasting views profoundly shape how discretion is exercised and whether machines, designed to follow strict logics, can fulfill the interpretative function that law, grounded in human experience, often demands.

When applied to AI, the positivist approach may encourage reliance on rule-based models that treat law as code, while the natural law perspective casts doubt on the very possibility of mechanizing legal interpretation. Thus, this debate is not merely theoretical; it bears directly on how we design, deploy, and evaluate AI in legal systems. Are we building tools that assist judges in clarifying facts and patterns, or are we delegating interpretative authority to systems that cannot grasp the lived realities behind legal norms? The conceptual distinction between mechanical rule-following and moral judgment is critical for answering the central question of this article: can AI, however advanced, truly interpret what judges must decide?

Historical and Jurisprudential Reflections

David Hume’s influential distinction between facts and values, commonly referred to as the is-ought problem, has profound implications for judicial

¹⁰ Fuller, Lon L. *The Morality of Law*. Rev. ed. (New Haven: Yale University Press, 1969), 96

reasoning. In *A Treatise of Human Nature*, Hume observed:

“In every system of morality, ... I am surprised to find that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but it is, however, of the last consequence.”¹¹.

This philosophical demarcation suggests that empirical observations or legal facts do not logically entail normative conclusions. In judicial reasoning, this implies that merely stating what the law “*is*” does not automatically resolve what the judge “*ought*” to decide. Legal interpretation, especially in hard cases, inevitably involves normative judgments that transcend textual descriptions, and this creates a foundational challenge for AI systems that are designed to analyze data but not to render normative or ethical judgments.

The mid-twentieth-century debate between Patrick Devlin and H.L.A. Hart over the role of morality in law illustrates this tension further. Devlin maintained that law must enforce society’s moral standards to preserve its cohesion, arguing: “Society means a community of ideas; without shared ideas on politics,

¹¹ Hume, David. *A Treatise of Human Nature*. Edited by L.A. Selby-Bigge. (Oxford: Clarendon Press, 1888), 302

morals, and ethics no society can exist”¹². Hart, in contrast, argued for a legal system where morality and law are distinct, emphasizing the need for legal positivism: “What is law is one thing, and what it ought to be is another”¹³. Hart accepted that discretion exists but insisted that judges operate within a legal framework, constrained by rules and legal reasoning. This divergence raises critical concerns for legal AI. If, like Hart, one sees law as a system of rules separated from morality, AI may be seen as capable of applying such rules. However, if one adopts Devlin’s view, the moral fabric of law resists mechanization, and judicial discretion becomes irreducibly human.

Dalton and Wende extend this debate into more contemporary contexts, highlighting how legal interpretation and discretion are shaped by institutional, ideological, and socio-political forces. For example, Dalton critiques the idea that legal texts can ever be neutral, writing: “Legal interpretation is always already a political act because it takes place within a framework of power, ideology, and contestation.”¹⁴. Wende similarly explores how discretion in adjudication reflects broader struggles over meaning, identity, and justice.

¹² Devlin, Patrick. *The Enforcement of Morals*. (London: Oxford University Press, 1965), 10

¹³ Hart, *The Concept of Law*, 185

¹⁴ Dalton, Clare. “An Essay in the Deconstruction of Contract Doctrine.” *Yale Law Journal* 94, no. 5 (1985): 267

These perspectives emphasize that interpretation is not simply about decoding legal text but navigating contested moral and political terrains. This complexity raises the stakes of relying on AI, which lacks the embeddedness in political life and critical consciousness necessary for such interpretative acts.

The tension between legal rules and moral judgment has always been central to jurisprudence. Ronald Dworkin famously challenged Hart's positivism by arguing that law is not merely a system of rules but a matter of moral principles embedded in legal practice. In *Taking Rights Seriously*, he asserts: "When no settled rule dictates a decision, judges must exercise a judgment that combines legal and moral reasoning. Law is not exhausted by rules."¹⁵. This position underscores that judicial discretion cannot be limited to algorithmic choices between clear-cut options. Instead, it demands a capacity to engage with moral reasoning, weigh competing values, and justify decisions in terms that transcend data. Thus, Dworkin's critique complicates attempts to automate judgment, raising questions about whether AI can participate in the interpretative practices that law requires.

Even Hart, though a positivist, acknowledged in his *The Concept of Law*, that "open texture" exists in legal language, necessitating discretion where the

¹⁵ Dworkin, *Taking Rights Seriously*, 22

law is indeterminate¹⁶. Judges must often decide what the law should be in light of new circumstances. AI, by contrast, operates through definable parameters and statistical inference. It lacks the capacity to make normative leaps or to exercise what Lon Fuller termed the “internal morality of law,” which demands attention to coherence, integrity, and the purpose of law itself¹⁷. This gulf between human judgment and computational reasoning is more than a technical limitation; it reflects a philosophical chasm.

Consequently, the challenge before us is not merely technological but conceptual. Can AI replicate the complex interplay of facts, norms, principles, and societal context that judges must navigate? The answer, as illuminated by the thinkers above, may depend not only on advances in machine learning but on how we define law itself. If law is merely a set of rules, then AI may one day interpret it. But if law is, as Dworkin says, an “interpretive concept,” always entangled with justice, dignity, and human meaning, then discretion is irreducibly human. These jurisprudential reflections thus deepen our understanding of the limitations and possibilities of AI in judicial interpretation.

The Role of Judges: Interpretation or Decision-Making?

¹⁶ Hart, *The Concept of Law*, 124

¹⁷ Fuller, *The Morality of Law*, 96

The judicial function has often been described as either interpretative or decisional. At first glance, judges appear to merely interpret the law as it is written. However, closer scrutiny reveals the limits of constitutional and legal texts, especially in complex or novel cases. As Ronald Dworkin rightly observed, “the language of the law is often too vague or incomplete to yield determinate answers.”¹⁸ This problem is most visible when constitutional provisions clash or when statutes are silent on new issues. Judges are then called not only to interpret existing law but to decide what the law should be in light of overarching principles. Thus, the role of a judge inevitably goes beyond mechanical application of text and enters the terrain of value-laden decision-making.

Several case studies from constitutional jurisprudence exemplify the moments when judges must “fill in the gaps” of the law. A classic example is *Brown v. Board of Education* (1954), where the U.S. Supreme Court declared that racial segregation in public schools violated the Equal Protection Clause of the Fourteenth Amendment. The Constitution did not explicitly mention segregation in education, yet the Court interpreted its spirit to reach its conclusion. As Chief Justice Warren wrote: “We cannot turn the clock back to 1868 when the Amendment was adopted... We must consider public education in the light of its full development and its present place in

¹⁸ Dworkin, *Taking Rights Seriously*, 17

American life throughout the Nation.”¹⁹. This case illustrates that judges often make decisions not by finding answers in black-letter law, but by applying interpretive and moral reasoning responsive to the times.

This raises the fundamental jurisprudential question: what does it mean to “decide” under the law? For legal formalists, deciding should mean applying the law as it is. However, as Hart points out, there are areas of “open texture” where the law runs out, and judges must choose between options not dictated by rules²⁰. Dworkin, in his *Law’s Empire*, challenges even this view by asserting that in hard cases, judges do not exercise discretion like a legislator but are bound to make the best moral interpretation of the law. He writes: “Even when no rule clearly applies, a judge is under a duty to decide in accordance with legal principles and not according to policy or personal preference.”²¹. This interpretation, however, places a heavy burden on judges, not merely to choose, but to justify their decisions as interpretations of a legal tradition grounded in justice.

Yet no amount of doctrinal clarity can eliminate the normative weight of human experience in judicial decision-making. Judges must often grapple with

¹⁹ *Brown v. Board of Education*, 347 U.S. 483, (1954)

²⁰ Hart, *The Concept of Law*, 124

²¹ Dworkin, Ronald. *Law’s Empire*. (Cambridge: Harvard University Press, 1986), 105

contextual factors, cultural nuance, and moral empathy. As Justice Oliver Wendell Holmes famously stated, “The life of the law has not been logic: it has been experience.”²² This insight reflects that legal reasoning is not purely abstract or computational; it is embedded in lived realities. Empathy, moral intuition, and attentiveness to human dignity play indispensable roles in adjudication. When AI lacks this human element, it fails not just technically, but philosophically. Judicial interpretation thus becomes inseparable from the moral and social contexts in which decisions are rendered. Martha Nussbaum in *Upheavals of Thought: The Intelligence of Emotions*, stresses that practical judgment requires a form of emotional intelligence. She observes: “The capacity for compassion and imaginative understanding is essential to good legal judgment, especially in cases involving human suffering.”²³

The question then becomes: can AI systems, however sophisticated, replicate the deeply human faculties, context-awareness, historical memory, and moral imagination necessary for judicial decision-making? At present, they cannot. Their interpretive “choices” are confined to probabilistic patterns within data; they cannot perceive injustice or innovate moral principles. Ultimately, to decide under the law is not

²² Holmes, Oliver Wendell Jr. *The Common Law*. (Boston: Little, Brown and Company 1881), 1

²³ Nussbaum, Martha C. *Upheavals of Thought: The Intelligence of Emotions*. (Cambridge: Cambridge University Press, 2001), 56

merely to select among legal options but to engage with what the law aspires to be. Judges do more than interpret texts; they mediate between rules and justice, between certainty and discretion. As Lon Fuller reminds us, “The inner morality of law” is not static; it demands that decisions resonate with fairness, coherence, and purpose (Fuller 1969, 96). AI may assist judges, but it cannot replace their role as moral agents and interpreters of our collective norms.

The Promise and Limits of AI in the Legal System

Artificial Intelligence (AI) is no longer a theoretical construct but a practical tool with increasing applications across industries, including the legal system. Its capabilities in language processing, pattern recognition, and data analysis have positioned it as a potentially revolutionary aid in legal decision-making. AI systems such as IBM’s Watson and ROSS Intelligence have demonstrated how algorithms can analyze large volumes of legal documents, predict litigation outcomes, and even draft contracts²⁴. These tools operate using Natural Language Processing (NLP) and machine learning, enabling them to identify relevant case laws and precedents with speed and precision that far surpass human capacity.

²⁴ Surden, Harry. “Machine Learning and Law.” *Washington Law Review* 89, no. 1 (2014): 92

However, AI's limitations are equally profound, especially when measured against the complexity of human legal judgment. While AI can process texts, it lacks the contextual sensitivity and normative discernment that characterize human reasoning. As Frank Pasquale points out, "AI systems are fundamentally context-blind; they operate on correlations, not meanings."²⁵ Machines do not comprehend the lived experiences behind legal cases; they manipulate symbols devoid of human emotion or ethical reflection. This creates a chasm between information processing and genuine adjudication. Legal interpretation is more than text analytics; it involves discerning the spirit and purpose of the law, a task AI is structurally unequipped to perform.

This limitation, therefore, raises a philosophical challenge: Can a machine ever understand justice? John Rawls, in his *A Theory of Justice*, argues that justice requires "a capacity for a sense of justice and for a conception of the good".²⁶ These capacities are rooted in moral consciousness, empathy, and rational deliberation, all traits that AI lacks. Even when algorithms approximate legal reasoning through machine learning, they lack intentionality, self-reflection, and moral imagination. As Dreyfus and Dreyfus contend, "a computer program cannot be

²⁵ Pasquale, *The Black Box Society*, 121

²⁶ Rawls, John. *A Theory of Justice*. Rev. ed. Cambridge: Harvard University Press, 1999), 19

said to understand a concept when it simply follows rules without knowing what the rules are for”²⁷. In this view, AI may simulate decision-making, but it cannot grasp the moral stakes embedded in legal adjudication.

The problem of bias further complicates AI’s promise in legal contexts. Far from being neutral, many AI systems reflect the prejudices embedded in their training data. A notable case is the use of the COMPAS algorithm in U.S. criminal justice, which was shown to disproportionately label Black defendants as high-risk recidivists²⁸. The underlying data fed into COMPAS was drawn from a justice system already fraught with racial bias. This demonstrates what Kate Crawford calls “the inescapable politics of AI”, wherein algorithms not only mirror but often amplify existing inequalities²⁹. Thus, deploying AI without accountability mechanisms risks entrenching injustice under the guise of objectivity.

²⁷ Dreyfus, Hubert, and Stuart Dreyfus. *Mind Over Machine: The Power of Human Intuition and Expertise in the Era of the Computer*. (New York: Free Press, 1986), 112

²⁸ Angwin, Julia, Jeff Larson, Surya Mattu, and Lauren Kirchner. “Machine Bias.” ProPublica, May 23, 2016. <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>

²⁹ Crawford, Kate. *Atlas of AI: Power, Politics, and the Planetary Costs of Artificial Intelligence*. (New Haven: Yale University Press, 2021), 39

The reliance on historical data also challenges AI's ability to engage with legal change. Laws evolve to reflect shifting moral and political landscapes, but AI systems are inherently backward-looking. They make predictions based on precedent, not on aspirational principles or evolving norms. As Mireille Hildebrandt argues, "The law is not a closed system of rules but a normative practice responsive to the future."³⁰ AI, focused on patterns and past behaviors, cannot anticipate or advocate for transformative legal interpretations. This reactive orientation clashes with the progressive aims of justice, especially in matters of civil rights or emergent ethical dilemmas.

Moreover, legal reasoning often requires narrative competence, the ability to understand and evaluate the stories of the people involved. The legal philosopher James Boyd White asserts, "Law is a rhetorical and narrative practice before it is an analytic one."³¹ Judges must weigh testimony, credibility, motive, and social context, all elements that are deeply human and narrative in nature. AI cannot intuit irony, sarcasm, trauma, or sincerity. It cannot enter into the moral world of litigants. Thus, even when AI is deployed in support roles, its lack of narrative comprehension should caution against overreliance.

³⁰ Hildebrandt, *Smart Technologies*, 46

³¹ White, James Boyd. *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law*. (Madison: University of Wisconsin Press, 1985), 238

Therefore, while AI offers remarkable tools for improving legal efficiency and access to information, it cannot replace the human judge's moral, contextual, and interpretive faculties. To decide is not just to compute; it is to evaluate, empathize, and uphold justice in dynamic social settings. As Lon Fuller wisely noted, "Law cannot be understood apart from the purpose it serves, and this purpose is inherently moral."³² Therefore, the promise of AI in law is real but must be bounded by a clear recognition of its limits and guided by ethical governance frameworks that prioritize justice over mere automation.

Between Law and Discretion: The Jurisprudential Gap

At the heart of every legal system lies a tension between law as a determinate set of rules and the need for judicial discretion where those rules fall silent or are ambiguous. This tension gives rise to what some jurists call the "jurisprudential gap", a conceptual and practical space where judges must move beyond formalism and apply their judgment. Ronald Dworkin explains in *Law's Empire*, thus: "Judges are not free to decide cases by fiat; they must seek the best constructive interpretation of the legal practices of their community"³³. In other words, where the law ends, interpretation and discretion begin, not as a departure from law but as a

³² Fuller, *The Morality of Law*, 97

³³ Dworkin, *Law's Empire*, 225

continuation grounded in moral and institutional values.

This jurisprudential gap is not merely technical but profoundly normative, engaging questions of justice, fairness, and purpose. Judges are often called upon to resolve issues the framers of the law could not foresee. In *Riggs v. Palmer* (1889), for example, the court held that a murderer could not inherit from his victim, despite a literal reading of the will. The ruling invoked moral reasoning beyond textual interpretation. Benjamin Cardozo later remarked that, “The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness.”³⁴. Instead, he must act within the bounds of legal principles, yet also fill in the “gaps” where law falls short.

This raises a fundamentally critical question: can AI comprehend or replicate this space of discretion? It is known that while AI can analyze statutes, precedents, and probabilities, it cannot operate in the realm of what H.L.A. Hart called the “open texture” of law. For Herbert Lionel Adolphus Hart wrote, “There is a limit, inherent like language, to the guidance which general language can provide. There will indeed be plain cases... but there will also be cases where it is not clear.”³⁵. These “penumbra” cases require moral

³⁴ Cardozo, *Nature of the Judicial Process*, 141

³⁵ Hart, *The Concept of Law*, 123

and contextual judgment, not algorithmic processing. AI lacks the normative awareness to navigate such ambiguity. It cannot ask, “What ought we to do?”, a question central to legal judgment.

The risk of replacing or over-relying on AI in such areas is therefore considerable. Not only does this threaten to reduce law to computation, but it may also undermine the legitimacy of the justice system. Joseph Weizenbaum has warned for decades that “There are some human functions that should not be entrusted to machines, no matter how intelligent they may become.”³⁶ Law is one such function, especially where decisions affect lives, liberty, and dignity. Automated sentencing tools like COMPAS have already shown how opaque and biased AI systems can distort justice when applied indiscriminately³⁷.

More fundamentally, the jurisprudential gap is filled by human subjectivity, empathy, and ethical deliberation, none of which machines can replicate. The judicial role involves listening to narratives, weighing testimony, understanding motives, and appreciating the socio-political context. Martha Nussbaum collaborates this when she writes that, “Emotions and empathy are not merely private feelings but essential elements of public reasoning in

³⁶ Weizenbaum, Joseph. *Computer Power and Human Reason: From Judgment to Calculation*. (San Francisco: W.H. Freeman, 1976), 235

³⁷ Angwin et al., *Machine Bias*, 2016

a just society”³⁸. AI may aid in fact-finding but cannot embody this affective and interpretative dimension. Its judgments are statistical, not moral.

This unpredictability, this refusal to reduce justice to a set of rules, is part of what makes law a living and evolving institution. Judges bring their life experiences, philosophical commitments, and interpretative creativity to bear on each case. As Dworkin emphasized, “Law’s empire is defined by attitude, not territory. It is an interpretive concept.”³⁹. The jurisprudential gap is thus not a flaw but a space where law lives, adapts, and aspires. It is here that human judgment, rooted in discretion, not automation, remains indispensable.

Moral Responsibility, Sentience, and the Limits of Machine Judgment

One of the most profound challenges posed by the integration of artificial intelligence into the legal domain is the question of moral responsibility. Traditional jurisprudence holds that judges, being moral agents, are capable of rendering decisions that are not only legally sound but ethically justified. But can machines, which lack consciousness, empathy, and ethical intuition, carry the weight of moral judgment? At the heart of the problem is sentience (the capacity to feel, perceive, and experience subjectivity). Legal adjudication often transcends rules and statutes; it requires moral deliberation,

³⁸ Nussbaum *Upheavals of Thought*, 35

³⁹ Dworkin, *Law’s Empire*, vii

especially in hard cases where legal norms are indeterminate. Judges bring to bear a sense of justice, equity, and human experience. Machines, however, process data without consciousness. As Joseph Weizenbaum presciently warned in the 1970s:

“No matter how sophisticated the program, no computer can be said to understand what justice is, nor can it be held responsible for a decision. Responsibility presupposes understanding, and understanding requires a moral and emotional framework⁴⁰.

The limitation is not merely technical but philosophical. AI systems operate on formal logic and probabilistic reasoning, but legal decision-making often demands interpretative judgment, narrative sensitivity, and ethical discernment. H.L.A. Hart noted that: “In the application of rules to particular cases there is a discretion which cannot be eliminated by any mechanical deduction; the judge must exercise moral choice.”⁴¹. Hart’s insight emphasizes the essential human component of law. Judicial discretion is not a flaw but a feature; it allows the legal system to adapt to new moral challenges and social complexities. If this discretion is then delegated to machines, then what is law? We risk nothing more than reducing the law to an algorithmic exercise, devoid of human conscience.

⁴⁰ Weizenbaum, *Computer Power and Human Reason*, 202

⁴¹Hart, *The Concept of Law*, 204

The issue becomes even more acute when considering moral responsibility. In traditional legal systems, every decision is attributable to a responsible agent. The judge, the prosecutor, and the jury are all accountable for their actions. AI systems, by contrast, are not moral agents. They cannot be praised or blamed, held liable, or appealed to on moral grounds. Luciano Floridi and Josh Cowls have observed in their article “A Unified Framework of Five Principles for AI in Society” that: “Machines cannot be moral agents because they are not bearers of ethical duties or legal obligations. Responsibility lies with the human agents who design, deploy, and oversee them.”⁴².

This limitation has critical implications for justice. If an AI system recommends a sentence that is later deemed unjust, who bears the blame? The absence of a moral center in AI makes it a poor substitute for the judicial role, where empathy, compassion, and narrative understanding are often indispensable. Again, the law is not just a system of rules but a moral institution. It speaks to our shared values and our evolving conceptions of justice. Delegating its interpretation to entities devoid of sentience threatens its normative core. As John Rawls reminds us that:

Justice is the first virtue of social institutions, as truth is of systems of

⁴²Floridi and Cowls, A Unified Framework, 6

thought. A theory, however elegant and economical, must be rejected or revised if it is untrue; likewise, laws and institutions must be reformed or abolished if they are unjust.⁴³

Rawls' claim reiterates the dynamic and moral essence of legal institutions. To entrust AI with judicial authority without the capacity for moral reflection is to risk ossifying law into a morally neutral structure. AI can assist in streamlining legal research and identifying patterns, but it remains fundamentally limited by its lack of sentience and moral responsibility. The law's human face, its empathy, equity, and moral deliberation, cannot be replicated by algorithms. Thus, while AI may serve the law, it must never supplant the moral agency at the heart of judicial reasoning.

Conclusion

The integration of artificial intelligence into legal practices brings with it both opportunities and profound challenges. While AI can enhance efficiency and aid in managing complex data, it cannot replace the essential human element in legal decision-making. The complexity of law is not just in its rules but in the application of those rules with moral reasoning, empathy, and discretion. Judges must navigate the intricate intersection of law, ethics,

⁴³Rawls, *A Theory of Justice*, 3

and human experience, which AI is currently incapable of doing.

As we move forward, the role of AI should be seen as a complementary tool that assists legal professionals in data analysis, research, and prediction, rather than as a substitute for human judgment. The future of jurisprudence must recalibrate to ensure that technology is leveraged responsibly without undermining the moral and ethical responsibilities that lie at the heart of legal practice. This recalibration will involve establishing clear boundaries for AI's involvement in legal decision-making, safeguarding human oversight in areas where moral responsibility and discretion are key.

The challenge of integrating AI into the legal sphere is not only about the capabilities of technology but also about preserving the integrity of the legal system. We must ensure that the law remains a human-centered institution, rooted in justice, accountability, and moral responsibility, while harnessing AI's potential to enhance, rather than diminish, these core values.

Bibliography

Angwin, Julia, Jeff Larson, Surya Mattu, and Lauren
Kirchner. "Machine Bias." ProPublica, May 23,

2016.
<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.
- Brown v. Board of Education, 347 U.S. 483 (1954).
- Cardozo, Benjamin N. *The Nature of the Judicial Process*. New Haven: Yale University Press, 1921.
- Citron, Danielle Keats. "Technological Due Process." *Washington University Law Review* 85, no. 6 (2007): 1249-1313.
- Crawford, Kate. *Atlas of AI: Power, Politics, and the Planetary Costs of Artificial Intelligence*. New Haven: Yale University Press, 2021.
- Dalton, Clare. "An Essay in the Deconstruction of Contract Doctrine." *Yale Law Journal* 94, no. 5 (1985): 997-1114.
- Devlin, Patrick. *The Enforcement of Morals*. London: Oxford University Press, 1965.
- Dreyfus, Hubert, and Stuart Dreyfus. *Mind Over Machine: The Power of Human Intuition and Expertise in the Era of the Computer*. New York: Free Press, 1986.
- Dworkin, Ronald. *Law's Empire*. Cambridge: Harvard University Press, 1986.
- Dworkin, Ronald. *Taking Rights Seriously*. Cambridge: Harvard University Press, 1977.
- Floridi, Luciano, and Josh Cowls. "A Unified Framework of Five Principles for AI in Society." *Harvard Data Science Review* 1, no. 1 (2019): 1-15.

- Fuller, Lon L. *The Morality of Law*. Rev. ed. New Haven: Yale University Press, 1969.
- Hart, H.L.A. *The Concept of Law*. 3rd ed. Oxford: Oxford University Press, 2012.
- Hart, Henry M., and Albert M. Sacks. *The Legal Process: Basic Problems in the Making and Application of Law*. Prepared by William N. Eskridge and Philip P. Frickey. Westbury, NY: Foundation Press, 1994.
- Hildebrandt, Mireille. *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology*. Cheltenham: Edward Elgar Publishing, 2018.
- Holmes, Oliver Wendell Jr. *The Common Law*. Boston: Little, Brown and Company, 1881.
- Hume, David. *A Treatise of Human Nature*. Edited by L.A. Selby-Bigge. Oxford: Clarendon Press, 1888.
- Kanu, A. I., Addidi, T. & Kanu, C. C., "Artificial intelligence and cybercrime in Nigeria: Towards an Ethical framework". *Dialogue and Universalism*. 32(1) 143-158, 2024.
- Kanu, I. A. (2020). "Igwebuiké philosophy of science and technology". *Nnadiabube Journal of Education*. Vol. 5. No. 4, pp. 64-74.
- Kanu, I. A. and Ndubisi, J. O. E. (2022). "Artificial intelligence and socio-economic development in Africa". *OCHENDO: An African Journal of Innovative Studies*. Vol. 3. No. 1. pp. 2-21.
- Onyiah, S. C.; Ndubisi, J. O. E; Kanu, A. I. (2024). "Navigating the Ethical Implications of

- Artificial Intelligence through Carol Gilighan's Ethics of Care." *Aquino Journal of Philosophy*. Vol. 4. No. 2. pp. 1-12.
- Kanu, A. I. & Okpokwasili, O. A. (2025). "Artificial Intelligence and Digital Colonialism in Africa." *International Journal of Intercultural Values and Indigenous Ecoethics*. Volume 5. Number 2. 14-24.
- Mittelstadt, Brent, Patrick Allo, Mariarosaria Taddeo, Sandra Wachter, and Luciano Floridi. "The Ethics of Algorithms: Mapping the Debate." *Big Data & Society* 3, no. 2 (2016): 1-21.
- Nussbaum, Martha C. *Upheavals of Thought: The Intelligence of Emotions*. Cambridge: Cambridge University Press, 2001.
- Pasquale, Frank. *The Black Box Society: The Secret Algorithms That Control Money and Information*. Cambridge, MA: Harvard University Press, 2015.
- Rawls, John. *A Theory of Justice*. Rev. ed. Cambridge: Harvard University Press, 1999.
- Scalia, Antonin. *A Matter of Interpretation: Federal Courts and the Law*. Princeton: Princeton University Press, 1997.
- Surden, Harry. "Machine Learning and Law." *Washington Law Review* 89, no. 1 (2014): 87-115.
- Sweeney, Latanya. "Discrimination in Online Ad Delivery." *ACM Queue* 11, no. 3 (2013): 1-19.

- Weizenbaum, Joseph. *Computer Power and Human Reason: From Judgment to Calculation*. San Francisco: W.H. Freeman, 1976.
- Wende, Peter. *A History of Law and Lawyers in the Western Tradition*. London: Routledge, 2002.
- White, James Boyd. *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law*. Madison: University of Wisconsin Press, 1985.