

In 2016, American researchers trained a simple AI algorithm to distinguish between photos of wolves and huskies. It did so with 90% accuracy – a stunning result. But on closer inspection, they realised its decision-making had nothing to do with the animals at all: it was looking for snow in the photos. For many purposes, this might be perfectly sufficient. Even if the odd snowbound wolf or cosmopolitan husky slips through the net, these can be corrected by human review. But it is no good for law, where *why* matters as much as *what*.

As its sophistication grows, artificial intelligence is being rapidly integrated into fields once thought immune from automation, such as computer programming and financial services. There are indeed areas of legal practice where AI clearly has much to add, such as legal research, scanning through vast quantities of documents, writing standard terms in contracts or filing paperwork, to name a few. These are outcome-based tasks: if AI can find the right cases or incorporate the right terms, it does not matter how it does so.

However, proposals to incorporate AI into the legal profession extend beyond mere search tools and paperwork writers. More radical proposals have suggested that AI might be able to write full legal submissions or even adjudicate cases. In 2023, the US tech start-up DoNotPay was set to deploy a generative AI ‘lawyer’ to contest a parking fine.<sup>1</sup> The technophile Master of the Rolls, Sir Geoffrey Vos, has said that judges need not shun the careful use of AI in writing opinions.<sup>2</sup> Others have gone further to argue that, that in theory, an AI tool which can pass a Turing test – one that can reliably imitate the responses of humans – could judge cases entirely.<sup>3</sup> As long as it gets the decision right, it does not matter how it gets there.

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<sup>1</sup> <https://www.smithsonianmag.com/smart-news/the-first-ai-lawyer-will-help-defendants-fight-speeding-tickets-180981508/>

<sup>2</sup> <https://time.com/6553030/ai-legal-opinions-england-wales/>

<sup>3</sup> Volokh, E. (2019) ‘Chief Justice Robots’ *Duke Law Journal* 68:1135.

This is misguided. Although it can often achieve the same outcomes as a human being, sometimes even more effectively, AI cannot replicate the process of genuine legal reasoning. Calls to extend the use of AI beyond the role of researcher and scribe should therefore be viewed with intense scepticism. In law, it is important to achieve the right outcome, for the right reasons. It is no good if a judge reaches the right conclusion with the wrong reasoning. Not only is their judgment liable to be overturned on appeal, but their faulty *ratio* could also bind other courts to make similarly misguided rulings, corrupting adjacent areas of law. Process and reasoning matter because they balance competing imperatives, like correcting wrongdoing whilst doing so fairly with respect to other rights and duties. AI is poorly suited to this end.

Take for example a criminal trial. There is an objective question of fact – whether or not an unlawful act has been committed with the requisite mental state – which must be determined on the available evidence. There is a societal imperative to punish wrongdoing. A purely outcome-interested approach, therefore, might argue that the trial should be designed to consider the most evidence possible with the greatest precision. However, this approach is far from the way English law has developed, because there are competing concerns at play. The evidence which is admissible at trial is strictly regulated; evidence cannot be admitted if it is obtained unlawfully. Findings of fact are reserved for the jury, composed of non-expert ordinary citizens. A defendant who is convicted is entitled to know that they have been deprived of their rights for good reason through a fair process.

Sound legal reasoning is causal: the law sets a test that must be met, and the judge or jury considers whether on the facts it is indeed met. AI works differently; its logic is correlational, not causal. Correlational reasoning is poorly suited to achieve justice, because each case is meant to be judged on its own merits. For example, rates of crime in the UK vary considerably by

ethnicity.<sup>4</sup> It is an objective empirical correlate of criminality. It would, however, be an affront to justice for a defendant's ethnicity to be considered in determining their guilt. It is the equivalent of the snow in the wolves-and-huskies problem; considering it may increase the probability of a correct conclusion, but it is still wrong to consider it. This is because the law is not merely concerned with convicting an offender, but of achieving a just outcome overall. This is not to say that AI is incapable of writing a convincing justification for its conclusion *ex post*. But it does so through mimicry, not genuine reasoning, and in doing so conceals its true decision-making process. This is all the more the problem, given that the way AI functions is poorly understood by legal practitioners, whose profession is not known for its tech savvy.

Consequently, AI is also incapable of solving non-empirical problems, with which law is replete.<sup>5</sup> The tradition of Equity involves bending legal rules where strict adherence to them would offend the conscience of the court. Moreover, there are competing philosophies of legal interpretation. This obvious in jurisdictions like the United States, where the composition of the bench is politically contested, but is also true of the English judiciary. *Quaere* how AI would dispense mercy, exercise conscience, or decide between competing jurisprudential paradigms.

As AI's abilities expand in the coming years, so too will the deficit in our understanding of how it actually works. Nonetheless, calls to incorporate these technological shortcuts into legal practice will likely grow louder. As Lord Sales warned in a 2019 lecture, lawyers risk becoming like a frog sitting pleasantly in increasingly hot water. It blissfully enjoys the warmth, until it finds that it has gone beyond a crisis point, with the situation changed irrevocably, for the worse and beyond its control. The water boils and the frog is dead.

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<sup>4</sup> <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/number-of-arrests/latest/>

<sup>5</sup> Huq, A. (2020) 'A Right to a Human Decision' *Virginia Law Review* 106:611