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Marina Lovichi, Doctorante à l'Université Paris 1 Panthéon-Sorbonne

Cher lecteurs,

La personnalité juridique est un concept fondateur du droit, à la fois outil de protection et critère d'inclusion. Mais qui a – ou devrait avoir – droit à cette reconnaissance ? Les êtres humains, certes, mais qu'en est-il des animaux ? Des intelligences artificielles ? Ce numéro de la *Revue Doctorale de Droit de La Sorbonne* explore ce questionnement fondamental à travers plusieurs contributions qui interrogent les contours mouvants de la personnalité juridique à l'ère des bouleversements technologiques et éthiques.

Dans « Les animaux dans la loi : remise en question de la dualité bien / autre que bien », *Hugo Menotti et Alice Concetto* analysent finement la manière dont le droit civil continue d'inscrire les animaux dans une logique patrimoniale, tout en reconnaissant désormais leur sensibilité. Leur contribution invite à dépasser cette dualité héritée entre personne et chose, et à envisager une voie proprement juridique pour intégrer les animaux dans la sphère des sujets de droit, sans passer par les catégories humaines traditionnelles.

Dans un autre registre, « L'influence de l'intelligence artificielle (IA) en droit : équilibrer les progrès technologiques et les considérations éthiques », Ammar examine les tensions entre innovation et encadrement normatif. À mesure que l'IA devient un acteur effectif de la décision, la question de sa responsabilité, de son autonomie, et potentiellement de sa reconnaissance juridique, se pose avec acuité. Ce texte met en garde contre une fascination technicienne qui ferait l'impasse sur les fondements mêmes du droit et de sa finalité humaine.

Enfin, à travers l'article « L'utilisation de l'intelligence artificielle du point de vue du droit humanitaire et du droit des réfugiés » Darius-Alexandru aborde un terrain encore peu exploré : les usages de l'IA dans des contextes de grande vulnérabilité humaine. Comment concilier efficacité algorithmique et dignité des personnes déplacées ? Comment éviter que des machines ne reproduisent ou n'aggravent des logiques d'exclusion ? Là encore, c'est à une réflexion de fond sur les titulaires de droits et les porteurs de responsabilités que le droit est convoqué.

Ces trois contributions, bien que différentes dans leurs objets, ont en commun de poser une même question en filigrane : qui mérite une protection juridique fondée sur la reconnaissance ? Qu'il s'agisse d'un être vivant non humain ou d'une entité artificielle, c'est toute l'architecture conceptuelle du droit que ces débats invitent à réinterroger.

Actualités de la revue

Ce numéro marque également une étape importante dans la vie de notre revue. Nous avons le plaisir d'annoncer l'intégration de nouveaux membres au sein du comité éditorial, que nous remercions pour leur engagement et leur volonté de contribuer à une revue doctorale vivante, rigoureuse et ouverte.

Nous tenons aussi à revenir sur notre conférence annuelle consacrée au parcours doctoral en droit, qui a permis de riches échanges entre doctorants. Deux contributions prolongent avec profondeur et authenticité cette réflexion dans ce numéro : Guillaume et Gabriel, que nous remercions chaleureusement pour la qualité de leur plume et la sincérité de leur regard.

Perspectives et nouveautés

Alors que l'année universitaire touche à sa fin, nous vous souhaitons d'excellentes vacances, pleines de lecture, de repos et d'inspiration. Nous vous donnons rendez-vous l'an prochain pour une nouvelle conférence et avons le plaisir d'annoncer le lancement d'un podcast de la revue. Ce nouveau format donnera voix aux doctorants, chercheurs et praticiens autour des enjeux du droit contemporain, dans un esprit à la fois académique et accessible.

Bonne lecture et bel été à toutes et tous !

Le comité éditorial de la Revue Doctorale de Droit de La Sorbonne

EDITORIAL : LEGAL PERSONALITY: AT THE BORDERS OF THE LIVING AND THE ARTIFICIAL

Marina Lovichi, Doctoral Student at Paris 1 Panthéon-Sorbonne university.

Legal personality is a foundational concept in law—both a tool of protection and a criterion of inclusion. But who has—or should have—the right to such recognition? Human beings, certainly, but what about animals? Artificial intelligences? This issue of the Sorbonne Doctoral Law Review explores this fundamental question through several contributions that examine the shifting contours of legal personality in an age of technological and ethical upheaval.

In "Animals in the Law: Challenging the Dichotomy Between Property and Non-Property," Hugo Menotti and Alice Concetto offer a nuanced analysis of how civil law continues to frame animals within a patrimonial logic, even as it now recognizes their sentience. Their contribution invites us to move beyond the inherited dichotomy between person and thing, and to consider a specifically legal path toward integrating animals as legal subjects—without resorting to traditional human-centered categories.

In a different vein, "The Influence of Artificial Intelligence (AI) on Law: Balancing Technological Progress and Ethical Concerns" Ammar examines the tension between innovation and legal regulation. As AI becomes an effective decision-making actor, questions of responsibility, autonomy, and potentially legal recognition arise with increasing urgency. This text warns against a purely technocratic fascination that overlooks the very foundations and human purpose of the law.

Finally, though the article "The Use of Artificial Intelligence in Humanitarian Law and Refugee Law" explores a less-charted territory: Darius-Alexandru show the deployment of AI in contexts of profound human vulnerability. How can we reconcile algorithmic efficiency with the dignity of displaced persons? How can we prevent machines from reproducing or worsening patterns of exclusion? Once again, the law is called upon to reflect deeply on who holds rights and who bears responsibilities.

Though these three contributions address different subjects, they share a common underlying question: who deserves legal protection based on recognition? Whether dealing with a non-human living being or an artificial entity, these debates invite us to re-examine the entire conceptual framework of the law.

News from the Review

This issue also marks an important milestone for our journal. We are pleased to welcome new members to our editorial board, and we thank them for their commitment and their desire to contribute to a doctoral journal that is dynamic, rigorous, and open-minded.

We also look back on our annual conference dedicated to the doctoral journey in law, which fostered rich exchanges between doctoral candidates, professors, and alumni. Two contributions continue this reflection with depth and sincerity in this issue: Guillaume and Gabriel, whom we warmly thank for the quality of their writing and the authenticity of their insights.

Looking Ahead

As the academic year comes to a close, we wish you a wonderful summer—full of reading, rest, and inspiration. We look forward to seeing you again next year for another conference, and are pleased to announce the launch of the journal's podcast. This new format will give voice to doctoral students, researchers, and legal practitioners on the pressing issues of contemporary law, in a format that is both academic and accessible.

Happy reading, and have a great summer!

The Editorial Board of Sorbonne Doctoral Law Review

ANIMALS IN THE LAW:
QUESTIONING THE PROPERTY / OTHER-THAN-PROPERTY DUALITY

Alice Di Concetto,[1] *Hugo Marro-Menotti*[2]

Abstract

This article explores the tension between the legal status of animals as property and their growing recognition as sentient beings. It traces the evolution of legal and ethical thinking on animal issues, distinguishing between two waves of thought: the first, based on individual rights and liberal rationality, and the second, more inclusive and critical, incorporating feminist, ecologist and post-colonial approaches.
The article proposes several avenues for reform, ranging from the recognition of animal legal personality to the creation of specific legal categories, but highlights the limits of these overly theoretical approaches. In practice, progress is best achieved through concrete legislative reforms (such as the French laws of 2021 or the Italian constitutional reform of 2022) and strategic litigation, aimed at enforcing or interpreting existing laws in favor of animals. In short, the article argues for a more pragmatic and coherent approach to animal protection, while calling for a move beyond traditional binary legal frameworks.

Résumé

Cet article explore la tension entre le statut juridique des animaux comme biens (propriété) et leur reconnaissance croissante comme êtres sensibles. Il retrace l'évolution de la pensée juridique et éthique en matière animale, distinguant deux vagues de réflexion : une première, fondée sur des droits individuels et la rationalité libérale, et une seconde, plus inclusive et critique, intégrant des approches féministes, écologistes ou postcoloniales.
L'article propose plusieurs pistes de réforme, allant de la reconnaissance de la personnalité juridique animale à la création de catégories juridiques spécifiques, mais souligne les limites de ces approches trop théoriques. En pratique, les avancées passent davantage par des réformes législatives concrètes (comme les lois françaises de 2021 ou la réforme constitutionnelle italienne de 2022) et des litiges stratégiques, visant à faire appliquer ou interpréter les lois existantes en faveur des animaux. En somme, l'article plaide pour une approche plus pragmatique et cohérente de la protection animale, tout en appelant à dépasser les cadres juridiques binaires traditionnels.

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Introduction

Like other social justice movements, the animal protection movement is shaped by core theoretical debates that have evolved significantly under the influence of post-modernism and, more specifically, deconstructivist thought. In the 1990s and through the early 2000s, the field of animal law was largely dominated by a traditional, binary approach to legal analysis and solutions concerning the treatment of animals.

This trend was gradually replaced by an approach informed by critical animal studies. Critical animal studies, which offer a post-modern account of animal legal scholarship, is more ambitious in its objective to liberate animals from all forms of human-based domination, and this framework also seeks to be more inclusive of other social justice movements.

In his book "Global Animal Law from the Margins International Trade in Animals and their Bodies," legal scholar Iyan Offor offers a detailed account of this evolution in animal ethics and the law in what he calls "first-wave of animal ethics," as opposed to "second-wave of animal ethics."[3] According to Offor, first-wave ethics have largely been shaped by Tom Regan's subject-of-a-life theory and Peter Singer's utilitarianism and are defined by the "use of liberal-rational theory to justify drawing animals within a circle of moral concern together with humans on the basis of similarities deemed to be relevant, such as cognitive ability, self-consciousness, or sentience."[4]

Second wave ethics, on the other hand, are more inclusive of marginalized entities, including non-human animals. They rely on ethics of care, as opposed to individualistic liberal rights, and they emphasize incorporating the perspectives of politically marginalized groups in the design and implementation of policies, away from claims of universalism.[5]

Like Offor, Federico Zuolo describes the same dynamic at play in the history of animal ethics.[6] Zuolo specifically differentiates between "first and second generation animal ethics," with the first generation of animal ethics shaped by liberal philosophers who primarily focused on the action of individuals towards animals, with proposed solutions to improve animal treatment anchored in a rights/duties framework. According to Zuelo, second-generation animal ethicists have adopted a

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[3] OFFOR I., "Global Animal Law from the Margins: International Trade in Animals and their Bodies," Routledge, 2024.

[4] *Ibidem*, p. 15.

[5] *Ibid*., pp. 42-47.

[6] ZUOLO F., "The Moral Value of Animal Sentience and Agency," *Human/Animal Relationships in Transformation: Scientific, Moral, and Legal Perspectives,* Augusto Vitale and Simone Pollo (eds.), Palgrave MacMillan, 2022, pp. 44-66. ISBN: 978-3-030-85276-4.

more collective approach to the moral treatment of animals, by exploring what societies – as opposed to individuals – should do to address the interests of animals, in specific contexts.

Political theorist Robert Garner also presents a clear and compelling account of current debates at the intersection of political science and animal ethics, building on discussions previously explored by Offor and Zuolo. Specifically, Garner identifies a political turn in animal ethics, which emerged in 2014–2015, whereby animal ethicists have departed from simply advocating for the end of animal exploitation and instead have worked to formulate a more expansive claim that animals should be members of the political community.[7]

In practice, over the past 20 years, both animal law scholars and practitioners have engaged in attempts to break from binary frameworks that have long structured the field, such as the legal status of animals as property or persons, the types of objectives pursued – animal welfare versus right, and the philosophical divide between animal-centered and environmental-centered approaches.[8] As a result of these scholarly and practical efforts, a range of theoretical approaches to animal law have emerged (1), each giving rise to diverse methods and strategies in their practical application (2).

1. Animals in Legal Theory: The Inconsistent Status of Animals in the Law

In Western jurisdictions, the law establishes a clear distinction between humans and non-humans, and categorizes animals as property as opposed to persons (1.1.). A significant portion of animal legal scholarship considers this duality as a root cause of inequities between humans and non-humans, and accordingly proposes solutions to transcend this duality (1.2.).

1.1. The Legal Duality Between Human and Non-Human Animals

Animals in French law, and Western law in general, are typically distinguished clearly from humans or human creations, who are recognized as legal persons, while non-humans are generally classified as property. When it comes to animals though, French law does not follow a strictly binary approach. Although animals have always been considered property, the legal regime applicable to animals has evolved through time (1.1.1.) and is no longer identical to the regime applicable to properties (1.1.2.). While this regime is imperfect and does not guarantee strong protections for animals, its limitations appear to stem more from a lack of consistency in the applicable rules, as opposed to the supposedly inadequate legal status of animals (1.1.3.).

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[7] GARNER R., "Political Representation of Animals' Voices," *Human/Animal Relationships in Transformation: Scientific, Moral, and Legal Perspectives*, op. cit., pp. 341-362.

[8] In that sense, *see* DI CONCETTO A. and EPSTEIN A.-S., "Protéger l'environnement ou les animaux ? Par-delà le clivage entre droit de l'environnement et droit de l'animal," in *Éthique environnementale pour juristes*, Jochen Sohnle and Christophe Bouriau (eds.), Mare & Martin (Fr.).

1.1.1. Animals in French Law

French law has traditionally categorized animals as property. However, a number of provisions recognize animals as sentient beings, starting with the 1850 Grammont Law,[9] which penalized "those who have exerted public and abusive mistreatments towards domestic animals" with a fine and jail time.[10] Although this law was the first codified French provision to consider animals' interests,[11] its scope was limited to "domestic animals" subjected to abuse committed publicly. More specifically, the Legislature likely intended to condemn abuse against horses, in the context when the horse carriage was ubiquitous. The Grammont Law was also likely inspired by the 1822 Martin's Act in the UK[12] and was similarly grounded in the mid-19th century European hygienist doctrines, which viewed cruel treatment to animals as an indicator of interpersonal violence. The Grammont Law is therefore consistent with the view that society does not value animals' interests inherently, but rather as subordinate to, or intertwined with, human interests.[13]

In 1976, the French legislature explicitly recognized the "sentient"[14] nature of farmed animals in Article L. 214-1 of the Agricultural Code, which additionally mandates that the owner of an animal must place the animal in "conditions that are compatible with the animal's biological needs."[15]

Later, at the end of the 20th century, the 1992 reform of French criminal law went a step further towards the recognition of animals' inherent interests. This reform led to the creation of a stand-alone chapter in France's Criminal Law Code[16] dedicated to penalties for violating anticruelty laws. Before 1992, these penalties were classified in the chapter dedicated to property crimes. Although this change in the classification of crimes and associated penalties has not had any implications for the status of animals, the 1992 reform has contributed to the recognition of animals as a form of non-property.

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[9] Loi du 2 juillet 1850 dite Grammont sur les mauvais traitements envers les animaux domestiques. For a history of this law, *see* AIT AHMED I. and JAMERON I., "On the History and Legacy of the Grammont Act, France's First Animal Protection Law," *UK Journal of Animal Law*, Volume 6, Issue 2, October 2022.

[10] *Ibid.*

[11] For the purpose of this article, the authors limited the scope of this study to French law as we know it today, since the adoption of the first Napoleonic code in 1804. Before 1804, Jewish rabbinic law, Roman law, and Catholic canon law have contained many provisions mandating humans to protect animals.

[12] Cruel Treatment of Cattle Act, 1822, United Kingdom.

[13] On this specific topic, *see* LIVINGSTON M., "Desecrating the Ark: Animal Abuse and the Law's Role in Prevention," *87 Iowa Law Review 1*, 74, 2001.

[14] "Les animaux sont des êtres vivants doués de sensibilité," Article L. 214-1, Code rural et de la pêche maritime (Fr.).

[15] Article L. 214-1, Code rural et de la pêche maritime (Fr.).

[16] Codes are national registers of French law, compiling all laws, regulations, and relevant case law.

1.1.2. Animals as Sentient Beings Treated as Property Under the Law

The legal status of animals in French law has evolved significantly, particularly following legal reforms in 1976 and 2015,[17] that have progressively led to the legal recognition of animals as sentient beings. Since 1976, French agricultural law has considered animals as sentient beings, while the civil legislation, as amended in 2015, designates them as "living beings endowed with sensitivity."[18] Unlike the 1976 reform, the 2015 reform of the French civil law concerning animals sparked significant debate among legal scholars.

These debates focused on the fact that, despite recognizing the sensitivity of animals, French civil law continues to uphold the classical *summa divisio* inherited from Roman law – a foundational distinction between persons and property[19] – since animals remain largely classified as property under French civil law. More specifically, the 2015 amendments to Articles 524, 528, and 533 of the Civil Code removed animals from the category of movable and immovable goods, while simultaneously specifying that animals remain under the legal regime that governs property, in the absence of a distinct legal regime specific to animals. The inclusion of Article 515-14 in the chapter dedicated to property in the Civil Code thus explicitly states: "Subject to the laws that protect them, animals are subject to the regime of property."[20]As a result, under French civil law, although the legal status of animals is ambiguous, the legal regime applicable to them continues to be that of property.

1.1.3. Different Protection Rules

Beyond the question of categorization, the legal regime of animals in France is heavily influenced by human-use typologies.[21] The French legislature first distinguishes between domestic and wild animals, with domestic animals being defined as those bred and fed by humans as per Article 1 of a 2006 regulation.[22]

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[17] Loi n°76-629 du 10 juillet 1976, article L. 214-1, Code rural et de la pêche maritime (Fr.) ; Loi n°2015-177 du 16 février 2015, article 515-14, Code civil (Fr.).

[18] « être vivant doué de sensibilité ».

[19] MARGUENAUD J.-P., "L'animal sujet de droit ou la modernité d'une vieille idée de René Demogue," *RTD Civ.* 2021, p. 591.

[20] Article 515-14, Code civil : « sous réserve des lois qui les protègent, les animaux sont soumis au régime des biens. » (Fr.).

[21] On human-use typologies, *see* EISEN J., "Liberating Animal Law: Breaking Free From Human-Use Typologies," *Animal Law Review*, 2010.

[22] Arrêté du 11 août 2006 fixant la liste des espèces, races ou variétés d'animaux domestiques, JORF n°233 du 7 octobre 2006 (Fr.).

Additionally, the French legislature recognizes the existence of companion animals – both wild and domestic – in agricultural legislation,[23] as well as captive and tame animals, depending on their level of habituation to humans, although these terms are not legally defined.

This plurality of classifications and the absence of a unified regime has led to significant disparities in the legal protection applicable to animals. As a result, although all animals are recognized as sentient beings, they do not benefit from equal protection under criminal law. Animals can be qualified as movable property, immovable property by destination, or *res nullius* in the case of wild animals without an owner. For instance, a rabbit placed in a home or a shelter is legally qualified as a domestic companion animal whereas a wild rabbit is classified as wild and may be legally hunted. However, that same wild rabbit can also be considered the property of a medical corporation, which is therefore entitled to use the animal for research purposes. Consequently, the legal status of the rabbit depends on the context and the applicable legal regime. Similarly, a pheasant raised in captivity may fall under protective provisions of property rules applicable to owned animals but loses such protections once released into the wild, thereby becoming *res nullius*.

In light of these contradictions, and the resulting harm caused to animals, legal scholars have proposed solutions to bring more consistency to animal protection rules.

1.2. Potential Solutions

Proponents of first wave animal ethics generally advocate granting legal rights to animals by following similar approaches used to extend rights to marginalized humans, primarily through the extension of legal personhood and/or fundamental rights to animals.[24] Proponents of these theories tend to assume that animals are entrapped in legal categories that inherently differentiate them from humans, therefore depriving them of rights (1.2.1).

While this theory has some merit, the solutions proposed by animal legal personhood and animal rights supporters are often criticized for perceived anthropocentric biases that second wave animal ethics partly redress (1.2.2.). Beyond the first and second waves of animal ethics, some legal scholars question whether the legal status of animals is truly the primary source of inconsistencies in their treatment. These scholars instead maintain that the inconsistency in levels of protection afforded to animals calls for practical solutions aimed at harmonizing applicable legal regimes, and that the legal status of animals is, in fact, largely irrelevant (1.2.3.).

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[23] Article L. 214-6, Code rural et de la pêche maritime (Fr.).

[24] For instance, *see* REAGAN T., "The Case for Animal Rights," Berkeley: University of California Press, 1983 and WISE S., "Rattling the Cage: Toward Legal Rights for Animals," Perseus Books, Cambridge, Massachusetts, 2000.

1.2.1. New Legal Categories

The concept of animal legal personhood in France, though still marginal, is rooted in historical developments. As early as the 1900s, legal scholar René Demogue addressed this subject.[25] In the 1980s, the Fondation Droit Animal, Éthiques et Sciences (French animal law foundation) conducted preliminary analyses on animal personhood.[26] More recently, the 2019 Toulon Declaration drafted by a group of animal law scholars has also contributed to ongoing discussions around animal legal personhood.[27]

In French law, legal personhood – defined as the capacity to hold rights and be subject to obligations – has traditionally been reserved for natural and legal persons.[28] Extending personhood to animals would aim to rectify existing inconsistencies in the protection of animals in French law and to secure stronger legal protections for animals. In short, legal personhood proponents argue that animal personhood would grant animals the ability to be represented in legal proceedings and have their interests legally safeguarded.

This approach, advocated notably by scholars such as Tom Regan[29] and Steven Wise[30] in the US, and Jean-Pierre Marguénaud[31] in France, proposes granting certain features of legal personhood—as applied to entities like corporations—to animals.

Internationally, this concept has gained some traction in two specific cases.[32] In 2016, an Argentinian court recognized the legal personality of a chimpanzee for the purposes of granting her the right of Habeas Corpus.[33] Similar recognition was afforded to a bear in Colombia the following year.[34]

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[25] DISSAUX N., "La technique juridique dans la pensée de René Demogue," *Revue interdisciplinaire d'études juridiques*, 2006-56(1), pp. 57-87.

[26] *See* the symposium "Droits de l'Animal et pensée contemporaine" organized by the LFDA in October 1984.

[27] Toulon Declaration, proclaimed on March 29, 2019 in Toulon (France).

[28] CORNU G., "Vocabulaire juridique," 15ème édition.

[29] REGAN T., "The case for animal rights," 2nd ed., Berkeley: University of California Press, 2004.

[30] WISE S., op. cit..

[31] MARGUENAUD J.-P., "La personnalité juridique des animaux," D. 1998. Chronique 205.

[32] For a review of cases seeking the recognition of animal personhood, *see* MONTES FRANCESCHINI M., "Animal Personhood: The Quest for Recognition," *Animal & Natural Resource Law Review,* 2021.

[33] Poder Judicial Mendoza, Tercer Juzgado de Garantía, Chimpancé « Cecilia », Expte. Nro. P-72.254/15, 3 nov. 2016 (Arg.).

[34] Corte Suprema de Justicia, República de Colombia, 26 jul. 2017, AHC4806-2017 (Col.).

In France, the Province of the Loyalty Islands (New Caledonia), a French territory,[35] moved to recognize certain natural entities—including totemic animals such as the turtle and the shark—as legal entities. Although the local legislature considered that these entities bore no obligations and could not be held liable, they were still deemed capable of having interests and could be represented in court by approved environmental associations or customary authorities. However, the highest French administrative court (*Conseil d'État*) struck down this new law on the grounds that the Loyalty Islands province lacked the authority to institute a new legal regime.[36] The recognition of animal legal personhood thus remains contested in French legal scholarship and practice, and has yet to gain the support of the legislature. Hence the relevance of alternative approaches.

Once such alternative is the creation of a distinct form of property – a new legal category, separate from movable and immovable goods[37] proposed by legal scholar Suzanne Antoine in a 2005 report submitted to the French Ministry of Justice. This intermediate solution does not go so far as to extend legal subjectivity to animals, but it would still acknowledge their unique biological and moral status. However, like animal personhood, the creation of a new status for animals did not gain traction in the legal scholarship, nor in the legislature.

1.2.2. Breaking Away from Anthropocentric Biases

Critical legal studies scholars have questioned the validity of creating new legal categories for animals, particularly animal personhood or special types of property, arguing that such solutions are rooted in anthropocentrism that eventually undermines animals' interests. These scholars reject the idea that animals should be considered as any form of property under the law, as this status would perpetuate the objectification of animals. However, these scholars also oppose the idea that animals should be granted a legal status similar to that of humans, on the grounds that any status modeled after that of humans or human creations would negate the singularity of animals' lives, thus perpetuating animal exploitation as a result. For instance, Maneesha Decka argues that animals should be granted a new legal status which she called "beingness," which would recognize animals as they are, independently of the characteristics they might share with humans.[38]

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[35] Code de l'environnement de la province des îles Loyauté, Articles 241-2 et 242-17 (Fr.).

[36] Conseil d'Etat, Décision du 31 mai 2024 n° 492621, 10ème - 9ème chambres réunies, Mentionné aux tables du recueil Lebon (Fr.).

[37] ANTOINE S., "Rapport sur le régime juridique de l'animal," Ministère de la Justice, 10 mai 2005. In the same vein, in US legal scholarship, *see* FAVRE D., "Living Property: A New Status for Animals Within the Legal System," 93 Marq. L. Rev. 1021, 2010.

[38] DECKHA M., "Animals as Legal Beings: Contesting Anthropocentric Legal Orders," University of Toronto Press, 2020.

This position aligns with second wave animal ethics scholars, who criticize the lack of inclusiveness of liberal individual rights frameworks, even in the context of human rights.[39] These scholars typically argue that liberal human rights frameworks have generally failed to guarantee the rights of minorities and non-human entities, and have not sufficiently included alternative approaches to rights-based claims, such as those emanating from class-based advocacy, feminism, critical race theory, or gender and queer studies.[40]

1.2.3. Practical Solutions to a Practical Problem

Because the solutions put forward by legal scholars are often difficult to implement, animal advocates have also turned to more pragmatic approaches. Proponents of practical solutions recognize that the legal status of animals is in fact complex since animals are both qualified as property but often subject to specific regimes that can be vastly different from the one usually applied to property. Legal practitioners further recognize that these legal regimes may be grounded in pathocentrism, through the recognition of sentience in the law, but may also draw from vulnerability ethics[41] or liberal philosophies, such as the recognition of subjectivity.[42]

As a result, animal advocates and legal practitioners have tended to focus on solutions that aim to bring more coherence to the rules applicable to animals, rather than questioning the broad categories that structure the legal order as a whole. In practice, these types of solutions take the form of legislative reforms aimed at amending the rules governing the treatment of animals to improve their protection, or legal challenges brought before the courts to ensure proper enforcement of such laws.[43]

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[39] OFFOR I., op. cit.

[40] For instance, see the work of Catherine MacKinnon on feminist jurisprudence.

[41] ROUX-DEMARE F.-X., "La notion de vulnérabilité, approche juridique d'un concept polymorphe," *Les Cahiers de la Justice*, 4(4), 619-630, 2019.

[42] Mainly through case law. MONTES FRANCESCHINI M., op. cit.

[43] LOVVORN J. R., "Animal Law in Action: The Law, Public Perception, and the Limits of Animal Rights Theory as a Basis for Legal Reform," *Animal Law Review,* 133, 2006.

2. Animal Law in Action: The Multi-Faceted Approach to Using Laws for Animals

Animal law practitioners do not typically engage in challenging the legal status of animals and have instead traditionally focused on achieving reforms of the different rules that apply to animals through legislative advocacy (2.1.) or litigation (2.2.).

2.1. Legislative Advocacy: Advancing Animal Interests in the Legislature

Although legislative advocacy has resulted in limited advances for animals, recent legal and constitutional reforms have paved the way for more ambitious changes in the law (2.1.1.). Similarly, the use of direct democracy mechanisms is likely to bring positive change for animals at EU level (2.1.2.).

2.1.1. Animals in National Legislation: A Case Study of Successful Traditional Legislative Advocacy

Two recent legal developments illustrate that the legal protections for animals can be improved without amending their legal status. First, the 2021 French Law on Animal Abuse[44] introduced numerous prohibitions on cruel acts, such as a ban on mink fur farming, a ban on the use of wild animals in circuses, and a ban on cetacean shows in dolphinariums. The Law further provided educational requirements, such as mandatory animal ethics training and ownership certificates for owners of companion animals. The Law also increased criminal penalties for animal abuse. While this law remains imperfect in both its scope and implementation, it marks a paradigmatic shift in how animal interests are considered under French law.

A second example can be found in the amendment of Article 9 of the Italian Constitution, which took place in February 2022, to include the following: "The Republic protects the environment, biodiversity and ecosystems, also in the interests of future generations. National law regulates the modalities and forms of animal protection."[45] Although animals remain legally classified as property, this new constitutional provision has reinforced their protection as the Italian Parliament and national administrative courts have interpreted and implemented this reform in substantive ways. For instance, the Italian House of Representatives (*Camera dei deputati*) adopted a law in 2024 to amend its criminal law to strengthen anti-cruelty penalties, with an explicit reference to Article 9 (new) of

[44] Loi n°2021-1539 du 30 novembre 2021 visant à lutter contre la maltraitance animale et conforter le lien entre les animaux et les hommes, JORF n°0279 du 1er décembre 2021 (Fr.).

[45] Legge costituzionale n. 1, Modifiche agli articoli 9 e 41 della Costituzione in materia di tutela dell'ambiente, , 11 febbraio 2022, GU Serie Generale n.44 del 22 febbraio 2022 (It.) ; Repubblica italiana, Costituzione italiana, articoli 2, 9, 32 et 117 (It.).

the Constitution.[46] The Italian courts have also used Article 9 (new) of the Constitution as basis in animal protection cases.[47]

2.1.2. Farm Animals in EU Law: Using Direct Democracy

Animal advocates have also utilized direct democracy mechanisms in the context of legislative advocacy efforts. In the US, ten states have passed new legislation banning the confinement of farm animals (and in some cases, the sale of products originating from confinement systems) by way of ballot initiatives, which are official petition mechanisms that allow citizens to decide propositions by way of popular vote.[48]

In the EU, the 2018 European Citizens' Initiative (ECI) to end the use of cages in animal agriculture may very well result in a prohibition on the use of cages in the EU egg industry. The ECI is a mechanism that enables citizens to officially petition the EU's executive branch, the European Commission, to enact legislation on a matter within its competence. The ECI mechanism has existed since the entry into force of the Lisbon Treaty in 2007 as a way to increase direct democracy.[49] Since the creation of the ECI in 2007, 119 ECIs have completed registration on the European Commission's ECI portal, including nine on animal protection issues.[50] In the majority of cases so far, the European Commission has responded to ECIs by proposing a series of non-legislative follow-up actions. This was the case with the 2015 "Stop Vivisection" ECI, where the European Commission simply committed to better implementation of existing legislation, considering that the request formulated in the ECI had already been addressed through EU legislation.[51]

The 2018 "End the Cage Age" ECI petitioned the European Commission "to propose legislation to prohibit the use of cages for laying hens, rabbits, pullets, broiler breeders, layer breeders, quail, ducks and geese, farrowing crates for sows, sow stalls, where not already prohibited, and individual

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[46] Camera dei deputati, Disegno di legge n°1308, Modifiche al codice penale, al codice di procedura penale e altre disposizioni per l'integrazione e l'armonizzazione della disciplina in materia di reati contro gli animali, Dossier n° 113/1, 19 novembre 2024 (It.).

[47] TAR Palermo, Ordinanza cautelare n. 467, 25 luglio 2022, Terza Sezione e Ordinanza cautelare n. 1067, 6 ottobre 2022, Terza Sezione (It.).

[48] VOGELER C. S., "Politicizing Farm Animal Welfare: A Comparative Study of Policy Change in the United States of America," *Journal of Comparative Policy Analysis: Research and Practice,* 23(5–6), pp. 526-543.

[49] Article 11(4), Treaty on the Functioning of the European Union and Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019 on the European citizens' initiative, O.J. L/130, 55-81 (2019).

[50] "Save Cruelty Free Cosmetics," "Stop Vivisection," "Save the Bees," "Stop Finning – Stop the Trade," "EU Directive on Cow Welfare," "End the Cage Age," "Save Cruelty Free Cosmetics," "Stop EU Fur Farming," "End the Slaughter Age."

[51] European Commission, "Citizens' European Initiative," https://europa.eu/citizens-initiative/_en (last visited November 6th 2021).

calf pens."[52] In 2021, the European Commission committed to end the use of cages in animal agriculture in response to the "End the Cage Age" ECI.[53] Although the Commission subsequently failed to publish new proposals for legislation, the Commissioner for Health and Animal Welfare announced in 2025 that a new proposal for legislation banning the use of cages in the egg sector would be presented by 2029.

2.2. Strategic-Based Litigation: Advocating for Animals in the Courts

Animal advocates have further engaged in litigation-based efforts as a way to bypass political roadblocks in the legislature. Litigation efforts have a dual objective: to enforce existing statutes that protect animals (2.2.1.) and to achieve changes in the interpretation of existing statutes (2.2.2.).

2.2.1. Enforcing Existing Laws

Animal protection organizations play a pivotal role in enforcing animal protection laws. Not only do these organizations initiate legal proceedings, they also conduct investigations and collect evidence, thereby acting as private prosecutors, closing the gaps in enforcement due to limited public resources. French organizations such as the *Œuvre d'Assistance aux Bêtes d'Abattoirs* and the *Fondation Brigitte Bardot* have litigated hundreds of farm animal anticruelty cases.[54] With these lawsuits, animal protection organizations improve enforcement while contributing to the clarification of existing laws and the expansion of judicial interpretations.

2.2.2. Bypassing the Roadblocks in the Legislature: Engaging in Strategic Litigation

Many successful lawsuits demonstrate the promising role litigation can play in compelling regulatory action, reinterpreting legislative provisions, and strengthening enforcement.

In the context of farm animal welfare, Compassion in World Farming (CIWF) successfully petitioned the highest French administrative court (*Conseil d'État*) to order the government to issue an implementing decree for a gradual phase out of the use of cages for laying hens in 2020.[55] Even

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[52] European Commission, "Citizens' European Initiative," https://europa.eu/citizens-initiative/initiatives/details/2018/000004_en (last visited November 6th 2021).

[53] European Commission, Communication from the Commission on the European Citizens' Initiative (ECI) "End the Cage Age," C(2021)4747.

[54] Figures taken from the reports of the NGOs in question.

[55] Conseil d'État, Décision du 27 mai 2021 n°441660, Association CIWF, 3e et 8e chambres réunies, Mentionné aux tables du recueil Lebon (Fr.).

though CIWF's petition failed on appeal, the conclusion of the court's advocate general (*rapporteur public*) acknowledged the decree was inadequate to incentivize industry transition towards cage-free farms.[56] In 2022, L214 secured a conviction against a farm for routinely tail docking pigs,[57] and in 2024, L214 was successful in challenging the French administration for failing to ensure regular veterinary inspections on farms.[58]

As concerns animals used for scientific purposes, the French organization Transcience was successful in challenging the legality of research projects involving the use of animals.[59] More specifically, in a February 2024 ruling, a French administrative court of appeal found 18 research projects involving the use of mice, hamsters, and macaques had been conducted illegally on the grounds that the ethics committees which approved these research projects had not been authorized by the French competent authorities.

In matters concerning wildlife, associations have also challenged administrative decrees authorizing hunting or designating of invasive species.[60]

Conclusion

The legal status of animals has evolved through a complex historical process. In theory, the law only recognizes persons or properties. In practice though, animals are qualified as property but often benefit from specific protection regimes. In some cases, this protection regime is closer to the one applicable to legal persons than to property. For this reason, the legal status of animals has not been central to the practice of animal law in Europe, where animal advocates have pursued reforms by capitalizing on legislative opportunities and engaging in judicial activism.

Dominant animal legal theory has yet to engage with the practical aspects of animal advocacy. Second-wave animal ethics (or "second-generation animal ethics" in the words of Zulo, or "the political turn in animal ethics" according to Garner) has contributed to closing the gap between theory and practice by overcoming the artificial, binary discourse of first-wave animal ethics. Proponents of second-wave animal ethics have further shaped the normative discourse – particularly in critiquing the dichotomy between welfare and rights – and have made it more consistent with the

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[56] Conseil d'État, Décision du 4 décembre 2023 n°461367, Association CIWF et 8 autres, 3e et 8e chambres réunies, Inédit au recueil Lebon, Conclusions - Mme Marie-Gabrielle MERLOZ, Rapporteure publique (Fr.).

[57] Tribunal correctionnel de Moulins, Décision du 6 avril 2022 (Fr.) ; Cour d'appel de Riom, Décision du 26 avril 2023 (Fr.).

[58] Tribunal administratif de Dijon, Décision du 23 avril 2024 n° 2200604, 2ème chambre (Fr.).

[59] Tribunal administratif de Paris, Décision du 8 février 2024 n°2219559, 4ème Section - 1ère Chambre, Inédit au recueil Lebon (Fr.).

[60] Tribunal administratif de Caen, Décisions du 24 novembre 2023 n°2201342 - 2201597 (Fr.).

ways in which practitioners approach their work. However, there still remains significant gaps between these theoretical advances and their practical integration into legal advocacy.

Artificial Intelligence Use from the Perspectives of Humanitarian and Refugee Law

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Abstract

The exponential development of artificial intelligence has transformed our society and these changes are noticeable in all fields of activity. The expansion of crises was followed by a higher necessity for a humanitarian workforce and prudent interventions; therefore, efficiency is one of the advantages that digitalization has to offer. Considering such a situation, this paper aims to observe how human rights and artificial intelligence work together. On the other hand, it will analyze the challenges and impact, both positive and negative that automatization can or cannot have over the humanitarian field.

Résumé

Le développement exponentiel de l'intelligence artificielle a transformé notre société et ces changements sont perceptibles dans tous les domaines d'activité. L'expansion des crises a été suivie d'un besoin accru de personnel humanitaire et d'interventions prudentes ; par conséquent, l'efficacité est l'un des avantages que la numérisation a à offrir. Compte tenu de cette situation, le présent document vise à observer la manière dont les droits de l'homme et l'intelligence artificielle fonctionnent ensemble. D'autre part, il analysera les défis et l'impact, à la fois positif et négatif, que l'automatisation peut ou ne peut pas avoir sur le domaine humanitaire.

Keywords: humanitarian, artificial intelligence, technology, data, refugees

Introductive aspects

Nowadays, artificial intelligence has made its presence known by a real strike in the sectors of activity, a non-invasive infiltration that must be considered cautiously from a defensive standpoint. In other words, the storm of new technologies helped create an algorithm-based interface. The new power system does not impose itself as dictatorial, but it expresses itself with the animus ocupandi wish. The bid suggested by artificial intelligence comes with remarkable advantages, but its direction does not seem to be adapted to the purpose these technologies have been created. Moreover, the related role of artificial intelligence tends to hold the primordial position, superseding human reasoning and masking its progress under the curtain of massive digitization. The screenwriter seems to be replaced by the actor, and the misappropriation of positions is not effective in any way. Human progress, masked by the digital velvet, does not illustrate a play applauded on an open stage. From this point of view, the transition to the digital sector, perceived through the spectrum of humanitarian law, according to personal considerations must, all the more, be subjected to analysis. Being in an era of technologization, the semantic field of the notion of "war" expands, including informational wars, which can be complementary to military ones or distinct[1]. In this sense, what was created to serve the individual and improve the quality of his work can be converted into a tool capable of harm.

Humanitarian law considers not only the limited meaning of the ideas established in doctrine but also the human being as the central element. From this perspective, humanitarian law is characterized not just through the lens of the humanist intellectual framework, but also via the humanitarian nature, which encompasses acts of support and feelings of empathy for those in difficult situations. Humanistic and humanitarian components are closely linked to everyone's human nature, but like any precious metal, it must be brought to the surface and polished to bring it into the light. The regulatory object of humanitarian law protects life, integrity, health, and, in general, social values, which is why they are constituted as porcelain of great value. Any touch is bound to make these aspects less attainable. Along this line of thought, the technological footprint has also manifested its presence in the humanitarian sphere through an obvious impress.

[1] https://www.academia.edu/42146887/Referat_RĂZBOIUL_INFORMAȚIONAL, accessed on the 26.10.2023.

Existing or creative digital technologies have shown to be feasible and functional options in the context of the epidemiological challenge.

Furthermore, without them, the scenario would have been taken over by a shadow, which would have obscured human activities. At the same time, applications that warn of threats with a high incidence potential in a specific area constitute another link that supports the tree of this highly branched, technological system. In addition, the European community pays close attention to these issues, with the European Council ruling, among other things, that "digital solutions and the use of large volumes of data can also contribute to obtaining useful information for development and humanitarian actors, particularly through the more effective use of early warning systems and early action mechanisms", strengthening the link between the humanitarian and development fields.

The Dawn of Artificial Intelligence in the Humanitarian Branch

The current humanitarian law template accounts for rules recorded in a decalogue that has bridged over time. Since Antiquity, the foundation has been cemented by the precepts of the Chinese military theorist Sun Tzu, who wrote: "Treat prisoners well and take care of them." All prisoner soldiers are to be treated with genuine generosity /.../."[2] The "Book of the Law of Manu," also known as the "Old Testament," contains rules for fighting: only enemy men "should be struck with the edge of the sword," while women and children are to be spared[3]. We should note that jus ad bellum was a constant throughout history until it was displaced by the application of jus in bellum. Meanwhile, human progress has not entirely reaped barbaric thoughts. Still, it has directed its attention to methods of improving the quality of life, maintaining peace, and knitting an inclusive coat for the entire world. Consequently, cybernetics, the IT revolution, and now digitization represent historical reforms, but their positive impact is debatable.

Knitting this digital-humanitarian duo is a wise decision that may lead to positive results. The transition from analog to digital is necessary and history has shown us the positive humanitarian impact that artificial intelligence can have, despite our concerns about it. Such instances are distinguished by events in which digital input was critical. For a long time, the pattern by which humanitarian organizations operated remained rooted in traditional soil, growing according to the criteria of an analog world when, in fact, the social interface was hyper-connected to the digital age, and the challenges demanded reforms. In this regard, the earthquake in Haiti demonstrated how the traditional method used by volunteers is being replaced by interventions based on victims' SMS, a method previously unnoticed as a tool that can serve the humanitarian service. Throughout the humanitarian effort, the victims' cries were joined by new technologies, and their voices were not

ignored, giving rise to an innovative application for the time that aimed to warn people of impending dangers. The Triology Emergency Response Application was the fork in the road that led away from the crossroads, and it was the point at which organizations involved in humanitarian service became aware of the

2 Sun Tzu, *The art of war*, Ed. Antet, București, 1999, p.20.

3 https://www.bibliaortodoxa.ro/carte.php?id=17, accessed on the 26.10.2023.

operational mode of such technologies in humanitarian service[4]. Furthermore, Red Cross volunteers in Nigeria gathered information about communities via free SMS to limit the spread of malaria. We can see that artificial intelligence is making great strides on all fronts; for example, in the medical field, a project called KConnect "is developing multilingual text search services to help people find the most relevant medical information available."[5] The epidemiological context of SARS CoV2, the war and conflict situations we are and have been facing, whether they are isolated events or those that affect the entire international community, have all created the premises for tacit acceptance of digitization, highlighting the need for the digital sector to exist within the humanitarian sector. In line with technological advancement, artificial intelligence has positioned itself as a pillar of support for human rights, with a particular emphasis on the humanitarian sector.

Not only are the preceding mentions guarantors of the mentioned but so are the field's remarkable efficiencies. Thus, in the case of refugee procedures[6], technological innovation is currently implementing procedures that significantly reduce time[7], with numerous examples. The obvious benefit of the technology, on the other hand, becomes a risk that allows foreign users to access stored data streams. Most of the time, they do not act in good faith, exposing the people who are the subject of data from the humanitarian service system to risks, by providing information on the stage of the procedure for accepting refugee status, as well as other personal information that represents vital data for the person in question's survival.

The Exodus

In these days of social chaos, the age of Moses is evocative. The exodus of the Jews from Egypt and God's promise to lead His people to the promised land, Canaan, can still represent a subject relevant to the current context, albeit in a different pattern.
The Israeli-Palestinian conflict sparks the interest of the international community and, by

4 https://www.ted.com/talks/paul_conneally_how_mobile_phones_power_disaster_relief?subtitle=ro, accessed on the 27.10.2023.

[5] https://www.europarl.europa.eu/news/ro/headlines/society/20200827STO85804/ce-este-inteligenta-artificiala-si-cum-este-utilizata?at_campaign=20234-Digital&at_medium=Google_Ads&at_platform=Search&at_creation=DSA&at_goal=TR_G&at_audience=&at_topic=Artificial_Intelligence&gclid=CjwKCAjw-eKpBhAbEiwAqFL0mqEYFzk-8gFBotXi1tsahsGbG4F9QifJKCVI2ZH6OS8AcKfRgLjYaBoCdCUQAvD_BwE, accessed on the 27.10.2023.

[6] Look at the Dublin Treaty.

[7] https://academic.oup.com/ijrl/article/34/3-4/373/6839163?login=false&fbclid=IwAR05MdM0E_DLOoCUsO5DsJybxqjNsy7lnsV3gVbaJDiNkga_fTj_fdir Ft8, accessed on the 7.11.2023.

extension, humanitarian organizations[8]. Terrorist groups' actions are a violation of the rules established worldwide in the field of humanitarian law[9]. New technologies could not prevent or announce such an unplanned conflict, leading us to believe that it is not machines that go beyond the sphere of perceptible knowledge, as the designers intended. However, it is interesting to see how the artificial intelligence component will be integrated in such a context.

In the context of this discussion, problems with humanitarian law have persisted, and the shortage of food for civilians, combined with the Israeli government's abusive response and the brutal way of punishing Palestinians, indicates a lack of a humanitarian component in the approach policy. Despite living in a technologically advanced era, we observe that social differences cannot be resolved by artificial intelligence because a human response must be countered from the same platform. Not far from these times, the Gaza Strip was cut off from telecommunications and the Internet for an extended period due to violent conflicts in the area. This event, of course, did not go unnoticed by the European Union and humanitarian organizations, who warned that such isolation could lead to human rights violations. The logic appears to be supported by Israel's refusal to accept a humanitarian cease-fire. Although it may not appear to be the case, technology has become an extension of everyone. The smartphone is no longer just a means of communication; it is a rope that keeps us permanently connected to the reality reflected in the virtual space. Still, in a situation such as that of the people of Gaza, access to the Internet and telecommunications may be the only means of survival.

The conclusion will reveal the conditions under which the exodus will occur, whether through the collaboration of humanitarian organizations with technology or capitulation to the latter. However, despite technological advancement, the problem does not appear to be fixable via this approach, but only through the human being, who is the only one capable of stopping the massacre. Given the

uncertain conditions that only serve to fuel the embers between the conflicting parties, it is unlikely that a consensus will be reached. Any change will certainly result in new narrative plans being thrown into the equation and mixed; it is up to us to oppose the human geometry that constructs mass productions by abuse and without refusal.

The medal's reverse. Human attribute transplant

The umbilical cord that forms between technology and the user binds the latter for life. This open and unrestricted access signals the beginning of a smart world, the result of which is the abolition of man in favor of the triumph of digitization, the replacement of human intelligence with artificial intelligence, and the "capitulation of culture in front of technology." [10]

[8] The Geneva Conventions of 1949.

[9] https://www.trt.net.tr/romana/lume/2023/10/22/agentiile-onu-lumea-trebuie-să-facă-mai-mult-pentru-gaza-2054180, accessed on the 28.10.2023.

[10] Neil Postman, *Tehnopolis. The Capitulation of Culture to Technology,* Ed. Contra Mundum, Arad, 2030, p.3.

These articulated problems, denied by statistics that record technological conquests, result in a loss of autonomy.

The surrender of autonomy is determined by digital governance, which is the currency we give in exchange for the efficiency we enjoy. The dissemination of information and the censorship of beneficiaries' rights inevitably or possibly leads to a "lack of transparency that outlines a minefield, together with minimal security that leaves the door wide open for possible cyber-attacks"[11]. Trading user information has been common for a long time, but the risk of data loss becomes even greater when an organization or institution is involved. In such a case, the loss of such data can amount to an invasion of privacy and a violation of rights. On top of that, "cyber-attacks, frequent in the Russian-Ukrainian confrontation, have shown us, in case we had any doubt, that there can be real dangers that may result in the disclosure of state secrets or valuable information that endangers the security of a nation"[12].

The aggressive intrusion with which artificial intelligence sneaks and penetrates our lives shackles us in the limited dimension, minimizing effort, until it eventually takes us out of the game, replacing us. In another order, the term "*cybernetics*" derives from the Greek " *κυβερνήτης*," which denotes the term "*helmsmen*." When battles are fought to exclude man's absolute right of veto in drawing the control limits of technology, the translation becomes relevant in everyday life. The transplantation of

human characteristics into technology implies an agreement to which we may or may not consent, but which, more than likely, will not succeed in artificially constructing human actors for some time to come, because we are a breath of life, a divine spark beyond the face.

The Expense

The temptation to accept innovation without question, to allow human DNA to be replicated, is evidence of ignorance, which has several consequences. The consequences will be particularly harsh/ serious in the humanitarian sector, as they concern people and often conflicting social relations. As a result, knowing some information about refugees, armed conflicts, or other details related to the humanitarian sector will jeopardize these organizations' operational methods. The modernization process indeed transformed the way these latter organizations function, as proven by evident indicators. Prudence requires, however, that human effort is not to be removed by placing it as a related element. The duo can be unbeatable as long as artificial intelligence is used as a complementary element. On the flip side, we depart from the humanitarian essence that serves as a catalyst between people, solidarity. In other words, if our reliance on technology binds us, we'll have to pay the bill, which will take us out of the play we're directing.

[11] https://www.juridice.ro/705925/radiografie-digitală-a-unei-societăți-automatizate-dreptul- noilor-tehnologii-inteligența-artificială.html, accessed on the 28.10.2023.

[12] *Ibidem.*

The European Perspective

In response to the rapid advancement of artificial intelligence on the current scene, the European Community has positioned itself as a supporter of innovations, marching for the desire of a Europe resilient to future technologies.

Despite their desire to digitize Europe, the organizations keep in mind "the right of the people, which constitutes the sure proof of the permanence and primacy of the human condition and, at the same time, the main instrument of its protection."[13] So, while the benefits package is appealing, the goal is to eliminate the drawbacks that come with the array of perks[14]. Analog- digital crafting, a hybrid operation, outlines the digital age transition, an uncertain change riddled by existential risks. However, current terms necessitate a digital approach to support economic progress, which prompted the development of a Regulation aimed at managing the digital sector and promoting a transparent environment[15].

One of the main goals of the European Union, marching for automation and arguing based on the

right to a healthy environment, is to encourage states to approach a digital vision rather than the conventional one.

Verum histrio VS impostors

Without a doubt, the digitization of humanitarian actions brings many kinds of advantages, the most prominent among them being the ability to act quickly and efficiently. Remote assistance can be provided as an urgent alternative in crises in remote areas where volunteers cannot reach in time. Similarly, telemedicine, another asset of the IT system's development, provides medical assistance and indications in the event of an emergency, through the volume of data stored permanently, being able to provide an operative response to intervention teams for the injured, located in difficult-to-reach areas. The glow of this benefit pack is dazzling in the sun, but it becomes opaque in the presence of clouds. In the mirror, the conversion to digital reduces the nuance of the humanitarian service, and like any benefit acquired for free, it subjects the beneficiary to certain conditions, thus narrowing the field of application of the term "free of charge." As a result, we can call it a donation with obligations, because an obligation is born in each party's patrimony. The issue is the disparity in benefits and how the clauses are followed. Humanitarian service is gradually dehumanized by accepting the replacement of humans with robots. Aside from assisting those in need, the volunteer feels the need of the person they are assisting and reacts accordingly. A robot, regardless of its speed, does not pay attention to the

13 Ovidiu Ungureanu & Cornelia Munteanu, *Civil law. Persons*, ediția a 3-a, Ed. Hamangiu, București, 2015, p. 19.

14 https://www.europarl.europa.eu/news/en/press-room/20230609IPR96212/meps-ready-to-negotiate-first-ever-rules-for-safe-and-transparent-ai, accessed on the 28.10.2023.

15 https://www.europarl.europa.eu/news/en/press-room/20230609IPR96212/meps-ready-to-negotiate-first-ever-rules-for-safe-and-transparent-ai, accessed on the 3.11.2023.

way people relate on a sentimental level, but instead relies on technical actions, on algorithms that direct its decisions based on the situation. That is why, while robots have been able to imitate some facial expressions and transmit some feelings, I believe it will be impossible to achieve a complete transfer of human attributes, whether it is an open heart operation because authentic personification by artificial components is impossible. No matter how hard one tries, human uniqueness cannot be replicated! The difficulties arise not only in the transfer of human characteristics but also in the dissemination of information. Free access to social networks should be favored over limited access, without constraining users' freedom of expression. Situations that fuel global conflicts are created when information is virtualized and discussions are open for debate to all. One recent example is the

Israeli-Palestinian conflict, in which communities split as a result of images and news in the public domain, resulting in riots. Propaganda and disinformation are intertwined, providing an entry point for those who wish to cause chaos. Another example that goes against humanitarian service is the information that the Kremlin transmitted through its telecommunications channels about the war in Ukraine that was not accurate and had the sole purpose of keeping the opposing side in the dark, labeling it as an aggressor so that the Russian state could absolve itself of the massacre. Terrorist organizations also act this way. The digital expansion brings with it a multitude of new challenges, forcing humanitarian organizations to adapt to a new environment that fuels negative feelings of hatred and leads to division.

The principles of international humanitarian law represent the time coordinate, which in these times is bathed in fast waters with the indication of the North. The International Committee of the Red Cross, founded in 1863, has remained a pillar of humanity to this day. After 160 years, the humanitarian barometer has maintained its fuel level, indicating that, despite the road becoming increasingly drifting the tank is always full. The International Committee of the Red Cross proved an impressive opponent to the new dominions, continuing to be a firm supporter of humanitarian principles[16]. This moral compass directs the humanitarian course. The eagerness with which innovations are greeted must give way to skepticism, which signals the presence of real threats on the horizon. In this sense, the principle of humanity constructs the logic to resonate sentimentally with the victims, stating the obligation to "prevent and alleviate human suffering under any circumstances."[17] Furthermore, because this principle is based on human structure, it is not accessible to artificial intelligence-based technologies that exclude the sentimental component. Such an approach, of offering assistance without sketching an expression, of healing without feeling pain, of connecting soul to wound, but rather of connecting a system to data, turns us into the machines we design. Gradually, as we rely solely on new technologies, we become savages, antivirus programs that act on command, without being stimulated by internal factors and without rationalizing the actions taken. Indeed, in such a situation, efficiency increases; robots or applications can achieve levels of progress that exceed

[16] https://blogs.icrc.org/law-and-policy/2023/02/02/back-to-basics-digital-twist-humanitarian-principles/, accessed on the 3.10.2023.

[17] Bianca Selejan-Guțan, Laura-Maria Crăciunean, *International Public Law*, ediția a 2-a, Ed. Hamangiu, București, 2014, p. 248.

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those of humans, but they lose sight of the human essence. This rejection of new technologies in humanitarian service is relative, based on the idea that humanitarian service relies on a community of living, human components acting under the same impulse, the humanitarian spirit. Often, the

algorithmic scale is used to assess need, putting humanitarian decision-making at the heart of artificial intelligence. The lack of transparency in the online environment results in a "weakening of private life," with humanitarians obligated to keep the decisions in the human sphere. With technologies aligned to political ends, digital sovereignty is asserting itself as a major player on the battlefield as well. As a result, the front is no longer limited to a single framework, but rather transcends it, expanding into the online environment. Neutrality, a vital principle praised by humanitarians, is expanding its reach, with volunteers being required to combat long-term online conflicts as much as possible. Independence is a Red Cross-designed and manufactured medicine that comes in the form of *serum veritas* for technological interdependence.

Furthermore, neutrality, impartiality, and independence are the ingredients that will ultimately provide the cure for the epidemic. According to this logic, humanitarian actors do not define themselves as non-believers in new technologies, but rather as followers of a creed expressed through a pragmatic refusal to recognize innovative humanitarian solutions, with reservations about management style, transparency, and the purpose of artificial intelligence. The refusal to deviate from the GPS coordinates, which are constituted by the principles that guide the activity, represents the fidelity with which the humanitarian volunteers act, considering solutions centered on needs and respecting the rights, respectively the dignity of the people, without excluding digital solutions, but without putting them in charge. The delimitation of *verum histrio* from an *impostor* must be *expressis verbis*, so that there îs no confusion.

Actions Taken by the International Committee of the Red Cross

The International Committee of the Red Cross uses genetics to identify generations that are genetically similar in congruent traits and have a visibly altruistic genotype. The International Committee of the Red Cross's activities are centered on disaster relief, social services, and first aid, as well as health education courses. Aside from the implications of these social activities, the effort made during armed conflicts to provide medical care or to address the phenomenon of migration is well known[18]. The activity is subject to constant dynamism, as evidenced by the actions in South Sudan[19]. In general, the African continent's population is deprived of access to the Internet and new technologies as a result of the countries' low economic levels. As a result, the new approach is viewed with skepticism, if not outright rejection. In such countries, humanitarian intervention through volunteers is even more important, to state the "laws of humanity," which are not popular among them. Areas in the Middle East and Africa, in particular, are represented by humanitarian crises and conflicts that break out, prolong, and intensify, but

[18] https://crucearoșie.ro/ce-facem/migrație/, accessed on the 3.10.2023.

[19] https://blogs.icrc.org/law-and-policy/2022/11/17/humanitarian-principles-south-sudan-red- cross/, accessed on the 3.11.2023.

rarely die down. The war in Syria, the carnage in Aleppo, the exodus of refugees[20], and the extremist activities in Iraq highlight the suffering of those who guard the border and civilians who are collateral damage in military operations. Interactions of ideologies, political ambitions, and, more recently, the resurrection of the caliphate cause earthquakes with violent aftershocks that challenge the humanitarian right to rise above the ruins.

The Risks of Artificial Intelligence

In the last decade, artificial intelligence has advanced, and the implementation of new technologies has also targeted the judicial sector. Despite all of their promoters' claims, the digital sector remains vulnerable to risks, the most serious of which is that such errors primarily target human rights. Algorithms can make decisions for humans, but an incorrect decision based on an artificial intelligence system puts a person's life in jeopardy[21]. This is especially common in criminal cases, where a court decision issued based on an error in these algorithms deprives the person in question of his liberty. Additionally, to record such results and overcome man's cognitive power, these algorithms record personal data. As a result, many rights are being discussed, because without storing information from the environment, these systems would not make significant progress, which exceeds the human limits of thought.

To put it another way, technological progress has a negative side, with artificial intelligence being used in armed conflicts via drones and cyber operations that cause civilian casualties. [22]Given the devastating consequences, artificial intelligence in armed conflicts must be limited.

Responsible development and use of artificial intelligence should be regarded as unavoidable rules. On the contrary, the provisions of the 1949 Geneva Convention and the additional protocols lose legal force.

Conclusions

Prudence is a critical component in the relationship we establish with artificial intelligence, as responsible use supports the first principle. When discussing the applications and implementation of artificial intelligence, benefits must be weighed against potential risks. In addition, a lack of transparency indicates a lack of optimal security, which indicates a potential risk for cyber-attacks, interference in private life, and violations of fundamental human rights.

[20] https://www.europarl.europa.eu/news/ro/headlines/priorities/siria/20160114STO09818/o-criză-care-se-înrăutățește-refugiați-azil-și-solidaritate, accessed on the 3.11.2023.

[21] https://www.geneva-academy.ch/joomlatools-files/docman-files/Human Rights and the Governance of Artificial Intelligence.pdf?fbclid=IwAR3fuIrnU25RqNFJb0Etw8Mhvu5rHi2D3-UfVIJG8uwDW8XUXAgk1tcxnMI, accessed on the 7.11.2023.

[22] https://www.cigionline.org/articles/ai-and-the-actual-ihl-accountability-gap/?fbclid=IwAR3fuIrnU25RqNFJb0Etw8Mhvu5rHi2D3-UfVIJG8uwDW8XUXAgk1tcxnMI, accessed on the 7.11.2023.

The challenges posed by new technologies compel international humanitarian law to pay closer attention to how humanitarian organizations choose to implement and use artificial intelligence. Artificial intelligence must be relegated to a supporting role rather than a replacement for the humanitarian effort.

Analogon : An in-depth look at artificial intelligence through the lens of humanitarian law and international refugee law

The panoramic analysis of the *lato sensu* type reveals the benefits that a digitized society might recognize, but which are viewed through binoculars that limit the field of view, without providing an image that exposes, similar to X-rays, the problems that create weaknesses and may take on a malignant character. The molecular aspect, on the other hand, can show the potential complications that may arise as a result of the deficiencies that are ignored. Under a microscope, the artificial intelligence tissue reveals a lack of basic cells, which undoubtedly leads to inefficient, defective organ function. A vulnerable organism is formed by inadequate interconnection at the cellular level, followed by interconnection of organs in the same lacunar manner. In such a case, the artificial intelligence, represented by an electrocardiogram, exhibits a series of accelerated pulsations, and a rapid heart rate, and is intended to endanger biological existence. The digital sector's galloping step, the constant movement, dynamism, and desire for evolution, marked by innovations, adapted to the needs of humanity, which are in constant change, forced automation to allow the neglect of some stages, accelerated by the fulminant rise of new technologies.

This research is subject to expertise, being viewed through the lenses of humanitarian law, corroborated with artificial intelligence, and examined by an ophthalmologist qualified to pronounce possible conditions and prescribe medication that neutralizes the disease.

The MRI in the medical record indicates problems that can spread metastases to neighboring tissues but can be managed, resulting in a benign diagnosis. Scientific progress and the influx of new

technologies cause a hereditary change, and to avoid mutations, the step must remain cadent. The recommendation to organically integrate new technologies in the humanitarian sector is still valid. The individual must remain the primary actor in the humanitarian assistance process, just as it must be the *axis mundi* for decisions in this field. When shadows play the role of guided existences at the whim of a puppeteer, humanitarian principles remain unshakeable foundations, according to this reasoning. Humanitarian aid entails people lined up like soldiers in barracks, united in song, drenched in alcohol, and set on fire in the flame of eternal love, with faces that sculpt eternal happiness and candles that light eternal light. Proportionality is critical to the long-term viability of a fierce artificial intelligence attack.

Artificial Intelligence (AI) Influence in Law: Balancing Technological Advancements with Ethical Considerations

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Abstract

The paper explores the use of artificial intelligence (AI) in law, discussing the ethical and practical issues that arise as well as how it affects customary legal procedures. It emphasises the shift from labour-intensive legal practice to technology-enhanced methods, with a focus on artificial intelligence's potential to improve access to legal services and streamline legal procedures. But it also highlights the ethical questions that AI raises, especially about bias and transparency, especially when dealing with delicate matters like child custody and divorce settlements. The study promotes a "human in the loop" strategy that combines human knowledge and AI techniques to mitigate biases and guarantee individualised legal results. To guarantee that AI plays a

complementary function rather than a replacement one, it emphasises in its conclusion the necessity of preserving the human element in legal practises.

Résumé

Ce document explore l'utilisation de l'intelligence artificielle (IA) en droit, en discutant des questions éthiques et pratiques qui se posent ainsi que de la manière dont elle affecte les procédures juridiques coutumières. Il souligne le passage d'une pratique juridique à forte intensité de main-d'œuvre à des méthodes améliorées par la technologie, en mettant l'accent sur le potentiel de l'intelligence artificielle à améliorer l'accès aux services juridiques et à rationaliser les procédures juridiques. Mais elle souligne également les questions éthiques que l'intelligence artificielle soulève, notamment en matière de partialité et de transparence, en particulier lorsqu'il s'agit de questions délicates telles que la garde des enfants et le règlement des divorces. L'étude préconise une stratégie de « l'humain dans la boucle » qui combine les connaissances humaines et les techniques d'IA pour atténuer les biais et garantir des résultats juridiques individualisés. Pour garantir que l'IA joue un rôle complémentaire plutôt que substitutif, l'étude souligne dans sa conclusion la nécessité de préserver l'élément humain dans les pratiques juridiques.

Keywords: Artificial Intelligence, Legal Technologies, Algorithm Bias, Decision Making, Ethical Concerns

Introduction

Artificial intelligence (AI) has inevitably become a central part of our lives integrating into our daily lives from being used in Global positioning systems (GPS) to using social media platforms like TikTok, Instagram and Facebook. AI algorithms are dominating in every field from finance where high-frequency data helps brokers to assess the volatile, unpredictable stock market to medical health care where AI models are being used to address DNA models for cancer research purposes.[61] Contrary to its traditional image of technological hesitance, the legal sector has significantly embraced artificial intelligence (AI) to enhance procedural efficiency, streamline case management, and bridge the gap in legal accessibility. This sector now boasts a comprehensive suite of AI-enabled tools, forming an innovative virtual legal infrastructure. These tools empower individuals to perform

[61] Anthony Davis, The Future of Law Firms (and Lawyers) in the Age of Artificial Intelligence https://www.americanbar.org/content/dam/aba/publications/professional_lawyer/27-1/pln-27-1-issue.pdf

will drafting, contract modification, or remote deposition participation from their homes[62]. The spectrum of these applications is broad, ranging from self-represented litigants using digital divorce templates to law firms employing sophisticated AI systems for analysing the statistical probability and precedent-based likelihood of successful child custody outcomes in contentious divorces[63]. AI's capabilities could include generating parenting plans between father and mother, separating agreements, equitably dividing assets among spouses, and planning divorce terms by leveraging historical and legal data. This technological advancement is pivotal for the legal domain to maintain its relevance in a developing, automation-driven landscape. It offers a solution to expedite traditionally prolonged and complex legal proceedings.[64]

Artificial intelligence (AI) presents the possibility of introducing bias, even while it could improve judgment accuracy in legal problems. The data that AI algorithms are fed determines how they operate, and the type of data that they are fed has a big impact on the results that they produce. Biases based on racial and gender dynamics inside families may be embedded in the data utilised in situations such as child custody, settlements, bail, and injunctions. These biases in AI choices originate throughout the phases of data processing and collecting. This problem is made worse when humans are involved in the coding of AI systems since data modelling and structure can unintentionally reinforce biases and compromise the objectivity of AI-driven decision-making[65].

This paper will address the conventional lawyer's role in addressing legal matters specific to family law disputes and the justice system in contrast with futuristic AI technology which has the potential to address legal issues, and how will it affect the legal paradigm with concern regarding ethics on modelling of the algorithmic data which could be biased.

What does AI mean?

Before we dive into the legal dimension it's foremost important to understand what we exactly mean by AI. Despite its pervasive influence in numerous aspects of modern life, it lacks a universally agreed-upon definition. To begin with, we must consider what AI is today and what it promises it could provide us for the human species in the future. One may look at this and consider the definition of AI based on how it helps in finishing any task through automating technology which would usually be done through human intellect. AI can also be defined as a collective term encompassing various computational methods aimed at enhancing machine capabilities in tasks that require complex intelligence, such as pattern recognition, computer vision, and language processing. Given the broad and evolving nature of this field, the perception of what constitutes AI is subject to change

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[62] Alan Carlson, Imagining An AI-Supported Self-Help Portal for Divorce, 59 JUDGES' J. 26 (2020

[63] Harry Surden, Artificial Intelligence and Law: An Overview, 35 GA. St. U. L. REV

[64] David Weinberger, "Our Machines Now Have Knowledge We'll Never Understand," Wired, April 18, 2017, https://www.wired.com/story/our-machines-now-have-knowledge-well-never-understand/.

[65] Gizem Halis Kasap, *Can Artificial Intelligence ("AI") Replace Human Arbitrators? Technological Concerns and Legal Implications*, 2021 J. Disp. Resol. (2021)

over time, a phenomenon known as the "AI effect" or the "odd paradox." This effect describes the tendency for once groundbreaking innovations to become commonplace, no longer considered AI, while newer, more advanced technologies assume the AI label. The more advanced and complex form of AI which requires advanced coding for decision-making, case-based reasoning and deep learning is used in certain limited fields including the legal field. The term that has been coined recently is AI-based attorneys or lawyers in a context wherein AI software will perform the practice and work manually done by the attorney therefore mirroring the role of lawyers in legal proceedings.[66]

Artificial Intelligence (AI) technology may be broadly divided into two areas. The first category includes knowledge-based systems, or expert systems, which function by inferring behaviour given a set of axioms. These systems use programmed rules and formal logic to reason in certain domains. Commercial tax preparation software and early healthcare diagnosis algorithms are two examples. Their power is in analysing predefined circumstances to choose the best course of action based on predetermined guidelines. However, without incorporating new methods, these systems are incapable of learning or improving the quality of their decision-making over time.[67]

The second category consists of technologies that continuously improve decision-making through statistical learning. This category, which encompasses machine learning and deep learning approaches, is driven by improvements in computer processing power, lower prices for digital storage, and increasing data collecting. Applications include content moderation algorithms, automated language translation, and facial recognition in law enforcement. Even while these systems show remarkable collective performance, at their core they are probabilistic and can provide unpredictable results on an individual basis. Deep learning computer vision systems, for example, can categorise pictures effectively but sometimes make mistakes that people wouldn't, such as mistaking a turtle for a pistol. Additionally, they are susceptible to adversarial instances, intentionally modified inputs meant to trick the algorithm into producing accurate but confident results.[68]

Expanding on the legal technology area, COMPAS[69] is a noteworthy piece of software that has a lot of promise in the legal industry. Adjudicators use it as a prediction tool. E-discovery systems, which serve as all-inclusive database platforms, are also essential in this field. These technologies, which provide complex solutions for information management and decision-making, are prime examples of the developments in legal software.

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66 Zeleznikow, John and Stranieri, Andrew, Split Up An Intelligent Decision Support System Which Provides Advice Upon Property Division Following Divorce. International Journal of Law and Information Technology, Vol. 6, Issue 2, pp. 190-213, 1998, https://ssrn.com/abstract=915061

67 Gheorghe Tecuci, "Artificial Intelligence," Wiley Interdisciplinary Reviews: Computational Statistics 4, no. 2 (2012): 168–80, https://doi. org/ 10.1002/wics.200

68 Pamela McCorduck, Machines Who Think: A Personal Inquiry into the History and Prospects of Artificial Intelligence, 2nd ed. (Natick, MA: A. K. Peters, Ltd., 2004).

69 Vaccaro, Michelle Anna. 2019. Algorithms in Human Decision-Making: A Case Study with the COMPAS Risk Assessment Software. https:// nrs.harvard.edu/URN-3:HUL.INSTREPOS:37364659

Programming and engineering approaches are used in the field of electronic software created for legal applications to improve the efficacy and efficiency of different procedures. These consist of the examination, investigation, recognition, gathering, and preservation of data relevant to court matters. With the use of such software, data pertinent to case laws and legal discovery may be extracted and compiled into an easily navigable information repository. This software's underlying database is logically organised and has a collection of algorithms that can quickly process enormous amounts of legal data. This feature allows attorneys and legal scholars to refocus their attention on more intricate and technically challenging jobs by drastically cutting down on the amount of time they would typically need to spend manually sorting through data. Consequently, e-discovery programmes that were formerly labour-intensive are now handled by AI-based systems. These applications quickly produce easily understood papers that are prepared for legal experts to examine. This information processing revolution is a major step towards improving the efficacy and efficiency of legal research and documentation.[70]

AI systems used in the legal field frequently have rule-based architectures, in which a collection of clearly written algorithms controls the decision-making process. The decisions or outputs are determined by certain rules and criteria set by these algorithms. The system uses these set rules to authorise decisions when these predetermined requirements are met. To illustrate, "If a marriage lasted N years and one spouse earns significantly more than the other, then X amount of alimony is recommended." For instance, the codes might state: "If the marriage lasted over 20 years and one spouse's income is twice the other, then suggest alimony equal to 40% of the higher earner's income for half the duration of the marriage."

In practice terms, this system could be employed in family legal proceedings to efficiently provide preliminary alimony recommendations and outcomes. This would enhance the process of negotiating settlements in divorce proceedings. Solicitors and mediators could input the marriage duration and income details of both spouses, and the system would automatically incorporate an alimony amount based on these established predetermined rules. This aids in making the initial phase of negotiations more flexible and grounded in a standardized framework, potentially reducing conflicts and hours spent in deliberations.

In addition to the rule-based model of AI, there is also a case-based model of AI (CBR). The Case-based model deviates from conventional rule-based systems by not operating within a set of pre-established rules. Rather, it is predicated on a case-by-case approach. This approach archives prior cases in a database with comparable attributes and looks through them methodically. Through the assessment of these similar examples, the AI utilises past data to forecast results according to the consistency of the given facts and circumstances. This method makes use of the abundance of past case data to build forecasts and analyses, enabling a more nuanced and contextually relevant

[70] John Zeleznikow & Andrew Stranieri, Split Up: An Intelligent Decision Support System Which Provides Advice Upon Property Division Following Divorce, 6 INT'L J. L. & INFO.

decision-making process.[71] In the legal sphere, the case-based reasoning (CBR) approach is a noteworthy invention, particularly in situations where precedents have a considerable impact on case outcomes. This methodology makes decision-making easier by examining and comparing choices made in similar situations in the past. Take a 12-year-old child custody battle, for example, where one spouse works close to the child's school and the other parent has a flexible work-from-home schedule. Under such circumstances, the CBR model would evaluate analogous cases from its database and make comparisons with earlier rulings. For instance, the CBR would probably base its judgement on a previous case where custody was granted to one parent because their place of employment was closer to the child's school and the other parent's flexible schedule for frequent visits. This example demonstrates how the CBR model's careful examination of prior cases with similar features may produce well-informed, context-sensitive legal rulings.

Hence it is crystal clear that advanced AI technologies have the potential to completely transform all areas of law, and provide the groundwork for creative, efficient, and economical justice. The accessibility of justice will be improved by these instruments, which are furnished with case laws, legislation, precedents, and an examination of legal arguments. With their ability to forecast results and recommend courses of action, they are prepared to provide accurate legal advice on issues such as child custody and divorce. AI, for example, helps speed up procedures like electronically submitting restriction orders or injunctions. Though this may sound futuristic, the current state of advanced AI model research indicates that these developments might materialise in the next 15 years.[72]

The traditional approach in the legal profession

In the exploration of the evolution of legal practices, the advent of modern Artificial Intelligence (AI) systems marks a significant shift from the erstwhile labour-intensive nature of traditional lawyering. This earlier era was characterized by extensive manual research, drafting, and the physical exchange of documents, a process transformed in the late 2000s by technological advancements. These advancements facilitated streamlined intake processes, remote document access, and digital filing systems, integrating technology into the practice of law. This integration, however, did not replace the human-centric nature of the profession but rather augmented it. Technologies like remote video conferencing have become particularly vital in sensitive cases, such as those involving domestic violence, where they enable participation in Alternative Dispute Resolution (ADR) while ensuring safety.[73]

Despite the efficiency gains afforded by AI, the human element remains indispensable, especially in family law matters—a field often navigated by individuals suddenly and with little legal support in

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[71] Julia Dressel and Hany Farid, "The Accuracy, Fairness, and Limits of Predicting Recidivism," Science Advances 4, no. 1 (January 1, 2018)

[72] McPeak, Agnieszka, Disruptive Technology, and the Ethical Lawyer (April 19, 2019). University of Toledo Law Review, Vol. 50, 2019, Available at SSRN: https://ssrn.com/abstract=3374961

[73] Randolph Kahn, Law's Great Leap Forward: How Law Found a Way to Keep Pace with Disruptive Technological Change, BUS. LAW TODAY (Nov. 20, 2016), https://www.americanbar.org/content/dam/aba/publications/blt/2016/11/full-issue-201611.pdf

comparison with criminal law matters which are often represented by prosecutors who are also appointed by the court and defence attorneys. The digital resources available online offer substantial, accessible aid to those seeking guidance in unfamiliar legal terrain. However, the complexity of legal information online can be daunting for laypersons, making it challenging to comprehend intricate court forms and case law. This complexity is evident in certain states of the United States and even in the EU, where accessing domestic dispute resolution without legal representation is limited and lacks options for Online Dispute Resolution (ODR).[74]

This section highlights scenarios where traditional face-to-face dispute resolution, involving impartial third parties such as mediators or arbitrators, is advantageous over ODR. Traditional methods focus on relationship-centred counselling, encouraging parties to view themselves within a broader relational context, thereby improving interpersonal skills and mutual understanding. Research indicates that voluntary settlements in family disputes mitigate emotional and financial strains and allow for tailored agreements that reflect the unique needs and values of the families involved, potentially reducing future conflicts.[75]

Moreover, traditional family mediation often results in higher client satisfaction with the legal process. Mediation restores a sense of control to the parties, facilitating fair negotiations without imposing the facilitator's biases. Agreements reached through human-facilitated dispute resolution tend to be more detailed and specific, likely leading to better compliance due to their bespoke nature. Traditional methods also encourage constructive communication through emotional challenges, which, while uncomfortable, can provide valuable insights into each party's motivations—a dimension often absent in ODR.

For instance, in traditional mediation involving asset distribution post-divorce, the emotional dynamics can create obstacles but also opportunities for cathartic breakthroughs. A skilled mediator can guide parties through these emotionally charged moments, fostering empathy, and enhancing the potential for a favourable resolution.[76]

AI Lawyers: Future in the Making

There are two major phases to the evolution of Artificial Intelligence (AI) in the legal sphere. The first stage might be thought of as a moderate-innovative stage in which old legal practices are still prevalent but are enhanced by software and technical instruments. These legal technology tools help courts and solicitors handle cases more effectively. The second stage represents a significant advancement in legal automation and process optimisation technology. This stage includes integrating machine learning, natural language processing, and automated document evaluation. These technologies make it easier to work with large databases, recognise patterns, and analyse

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[74] Susan L. Brooks, Online Dispute Resolution and Divorce: A Commentary, 21 DISP. RESOL. MAG., Jan. 11, 2015, at 18; Kristen M. Blankley, Online Resources and Family Cases: Access to Justice in Implementation of a Plan, 88 FORDHAM L. REV. 2121, 2141 (2020)

[75] Linda S. Smith & Eric Frazer, Child Custody Innovations for Family Lawyers: The Future is Now, 51 FAM. L.Q. 193, 197 (2017)

[76] Felicity Bell, Family Law, Access to Justice, and Automation, (19) MACQUARIE L. J. 103, 131 (2019).

human language to help with decision- and prediction-making. AI will inevitably be incorporated into many legal procedures, especially through automation. This involves trial courts using complex algorithms, particularly in the pre-trial and sentencing stages of proceedings. The Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) programme is a prominent illustration of this. By evaluating a defendant's information in connection with the claimed offence and contrasting it with historical information from related previous instances that is kept in its database, COMPAS uses its programme to make defensible choices. This application's main goal is to evaluate the defendant's propensity for criminal activity in the future. This cutting-edge method used in court procedures highlights how AI is revolutionising the criminal justice system.[77]

The AI-based programme COMPAS might have a great deal of promise for use even in family law settings. The main purpose of COMPAS software is to determine the likelihood that an offender would abscond after being released on bail or committing another crime while they are on parole. It uses a prediction algorithm to provide a risk score; higher scores denote a higher probability of criminal conduct in the future. Although COMPAS is not currently used in family law, it may be used in this field, particularly in instances involving divorce and child custody.[78] For example, the programme might gather and examine detailed information on age, job history, behavioural tendencies, previous relationships, and criminal histories for both parents in child custody evaluations. To help with custody decisions, COMPAS may be extremely helpful in evaluating and analysing a variety of aspects, such as the possibility of conflict that might harm a child. The AI program can generate comprehensive profiles for every parent, aiding the court in comprehending the probability of each parent offering a secure environment for the child. This entails determining any possible dangers connected to each parent, such as a part of legal troubles or drug misuse. The use of COMPAS in family court cases is an example of how AI is becoming more widely applied in legal decision-making processes, providing a more analytical and data-driven approach to delicate family law issues.[79]

Although this program adds a layer of opaque and complicated decision-making, on the surface it seems to help courts make custody decisions. COMPAS has been more prevalent in the criminal justice system and according to Pro Publica[80], an investigative journalism organisation, carried out thorough research that raised serious questions about the use of the COMPAS algorithm in US courts. Their findings revealed a clear racial bias in the algorithm's predicted results. According to the statistics, African American defendants were found to be nearly twice as likely to be mistakenly labelled as having a higher risk of reoffending. This occurred in 44% of cases, whereas just 23% of

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[77] Peter K. Yu, Artificial Intelligence, the Law-Machine Interface, and Fair Use Automation, 72 ALA. L. REV. 187 (2020).

[78] Završnik, A. (2021). Algorithmic justice: Algorithms and big data in criminal justice settings. European Journal of Criminology, 18(5), 623-642. https://doi.org/10.1177/1477370819876762

[79] Brennan, T., Dieterich, W., & Ehret, B. (2009). Evaluating the Predictive Validity of the Compas Risk and Needs Assessment System. *Criminal Justice and Behavior*, *36*(1), 21-40. https://doi.org/10.1177/0093854808326545

[80] Angwin, J., Larson, J., Mattu, S., & Kirchner, L. (2016, May). Machine bias. ProPublica. Retrieved from https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing

cases included white defendants. The opposite circumstance, in which white offenders were nearly twice as likely to be incorrectly classified as low risk when they reoffended, highlights this gap even more. This difference was shown in 47% of instances for white people and 28% for African American people. These results point to a systematic bias in the algorithm that disproportionately impacts African-American defendants by increasing their probability of being classified as high-risk and, as a result, subjecting them to harsher court decisions than their white counterparts.

The ethical concerns regarding COMPAS and artificial intelligence (AI) in general, especially those related to transparency and inherent biases, are highlighted by this case. Putting COMPAS first, the software developer, Northpointe, has withheld some essential information regarding how it operates. There is a dearth of publicly available information on the methods used to gather data and the algorithms that were applied during the decision-making process. This opacity presents serious questions regarding responsibility and the moral use of AI in vital areas like the legal system.[81]

Apart from COMPAS, there are other software which can have the potential to create efficacy in the family law domain. The list includes Wevorce[82], SmartSettle[83], coParenter[84], DivorceBot, Online Family Wizard[85], LexMachina, and Modria. Among them, Modria has been used the longest in the history of online dispute resolution. The processing in Modria is based on collecting data and analysing it to summarise the dispute and review the common ground, followed by delivering the possible solution by using deductive reasoning.[86] Split-up is also one of the highly advanced AI systems in the legal field which was created by J. Zelenznikow and A. Stranieri.[87] Split-up is a specialised tool which exclusively deals with assessment and advising on marital assets post-divorce. Its mechanism is based on the Toulmin theory of augmentation[88] i.e., focusing on the structure of good arguments which embryoids claim, warrants, data, rebuttals, and support. The tool employs the combination of rule-based reasoning and neural networks and delivers an explanation for its conclusions.[89] The process of Split-up is even more fascinating than the tool itself. The tool employs

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[81] Salahudin Ali, "Coming to a Battlefield near You: Quantum Computing, Artificial Intelligence, & Machine Learning's Impact on Proportionality", 18 Santa CLARA J. INT'l L. 1 (2020)

[82] https://www.wevorce.com/about-us/

[83] https://www.smartsettle.com/

[84] https://coparenter.com/co-parenting/

[85] https://www.ourfamilywizard.co.uk/

[86] Dana Remus & Frank Levy, Can Robots Be Lawyers: Computers, Lawyers, and the Practice of Law, 30 GEO. J. LEGAL ETHICS 501, 530 (2017).

[87] Zeleznikow, John and Stranieri, Andrew, Split Up An Intelligent Decision Support System Which Provides Advice Upon Property Division Following Divorce. International Journal of Law and Information Technology, Vol. 6, Issue 2, pp. 190-213, 1998, https://ssrn.com/abstract=915061

[88] Kip Wheeler, Toulmin Model of Argument (2010), https://web.cn.edu/kwheeler/documents/Toulmin.pdf

[89] Dominic Thomas & Robert Bostrom, "Building Trust and Cooperation through Technology Adaption in Virtual Teams: Empirical Field Evidence", 25 INFO. SYS. MGMT. 51, 54 (2008)

the potential outcomes (BATNA-Best alternative to Negotiated Agreement) and then uses the augmentation tools for concluding the conflicts among parties, and it delivers the decision analysis with further trade-off strategies to create a balanced judgement. The clause that permits any party to object to any element of the judgement is a significant factor in the process's openness. This feature is essential because it gives the party opposing the chance to go back and revisit previous phases of the settlement process. This system makes sure that the decision-making process is fairly and thoroughly reviewed, which improves the overall integrity and acceptance of the results.[90]

By giving them more flexibility to handle aspects of cases, like cases involving domestic violence or clients who are unable to attend court because of illness or childcare obligations, emerging technologies are greatly improving the capabilities of family law practitioners, including barristers and solicitors. These developments, which present novel strategies for wealth distribution and dispute resolution, mark the beginning of a new era in the administration of family-related legal affairs. Furthermore, these technological advancements are crucial in fostering empathy, trust, and rapport between attorneys and their clients in online settings. This advancement demonstrates the significant influence of technology on the dynamics of legal practice and client connections while also enhancing the overall efficacy and customer-centeredness of legal services.

Balancing: Challenges and Concerns

The conversation over the application of artificial intelligence (AI) to the legal domain includes viewpoints from proponents and opponents of AI. Advocates emphasise the substantial advantages artificial intelligence (AI) offers to customers and attorneys. These benefits include increased productivity, AI's exceptional ability to handle large amounts of data, and easier access to legal services.

On the other hand, despite these significant benefits, there are important worries that AI might potentially come with significant drawbacks. These include possible biases in the methods used to make judgements, a lack of openness in the process used to make decisions, and problems with accountability. Such risks jeopardise the integrity and fairness of legal results by raising the possibility of injustices. This fair analysis of artificial intelligence in the legal field emphasises the necessity of managing both the technology's possible advantages and disadvantages with caution.[91]

The Reliability of AI: Dependent on the Quality and Bias of Its Data

In academic circles of both law and technology, the effectiveness of Artificial Intelligence (AI) is inextricably tied to the quality of the data upon which it is built. AI's dependability is dependent on the data utilised in its construction, much as the strength of a chain is based on its weakest link.

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[90] Dillon Reisman et al., Algorithmic Impact Assessments: A Practical Framework for Public Agency Accountability. New York University AI Now Institute, April 2018. https://ainowinstitute.org/aiareport2018.pd

[91] National Science and Technology Council: Committee on Technology, Preparing for the Future of Artificial Intelligence. Washington, D.C.: Executive Office of the President, October 2016. https://obamawhitehouse.archives.gov/sites/default/files/whitehouse_files/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf

Inadequate or subpar training data, programming faults, and defects in the creation of algorithms can all contribute to inconsistencies in AI-generated outputs, thereby compromising their effectiveness for client-specific goals. A more concerning element of these flaws is their tendency to create feedback loops inside the algorithm, maintaining existing biases and perhaps resulting in accidental discriminating effects. This scenario has the potential to have serious consequences for both clients and legal practitioners.[92]

The phenomenon of algorithmic bias emerges when prejudiced outcomes are produced due to flawed programming and biased or incomplete data. This issue poses a novel challenge to judicial fairness, necessitating vigilance from both legal practitioners and scholars. In machine-learning software, biases can amplify as they become more ingrained in the system's predictive patterns. These patterns, utilized by AI to identify relevant case features and match them with outcomes in similar cases, offer multiple avenues for bias infiltration. The primary pathways include biased or incomplete datasets used for training algorithms and the intrinsic design of the algorithm itself. For instance, historical data populating these systems' knowledge bases can be fragmentary, yielding datasets that inadequately represent the nuances of individual disputes. This inadequacy stems from the fact that a substantial portion of litigation is resolved outside of court, abandoned, or dismissed. Relying solely on data from final judgments to the exclusion of mediated settlements and non-litigated agreements skews predictions away from accurately representing the most probable or 'typical' outcomes.[93]

Furthermore, case-based systems that use historical data to forecast outcomes may unintentionally perpetuate biases inherent in that data. For example, in AI-mediated custody fights, a male client may be at a disadvantage since previous data favours moms. In an era of rapid social transition, dependence on historical data raises worries about these systems' ability to adapt to shifting cultural norms and judicial viewpoints. While the effect of prejudice on court precedent may have waned over time, depending only on historical data for contemporary case judgements might result in biased outcomes if the data reflects patterns of prior discrimination rather than the merits of the present case.[94]

Unravelling the Riddle of Accountability

When it comes to judicial review and legal responsibility, the incapacity of Artificial Intelligence (AI) programmes to explain the reasoning behind their judgements raises serious issues in the field of academic research. This opacity, often known as the "black box" problem, refers to the fully

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[92] Rejmaniak, Rafał. "Bias in Artificial Intelligence Systems" Białostockie Studia Prawnicze, vol.26, no.3, 2021, pp.25-42. https://doi.org/10.15290/bsp.2021.26.03.02

[93] Leavy, Susan & O'Sullivan, Barry & Siapera, Eugenia," Data, Power and Bias in Artificial Intelligence", (2020). https://www.researchgate.net/publication/343711761_Data_Power_and_Bias_in_Artificial_Intelligence

[94] Wensdai Brooks, Artificial Bias: The Ethical Concerns of AI-Driven Dispute Resolution in Family Matters, 2022 J. Disp. Resol. (2022) Available at: https://scholarship.law.missouri.edu/jdr/vol2022/iss2/9

independent data processing methods of artificial intelligence that are yet unknown, even to the system creators. This lack of openness foreshadows several possible outcomes.[95]

Future case results may unintentionally be impacted by legal professionals who base their case tactics on AI-generated forecasts. This impact is brought about by the feedback loop that is formed when decisions are made based on AI predictions and actions produce new data that is then reintegrated into the system to shape case outcomes and future forecasts. Because this process is self-reinforcing, biases or flaws in the original algorithm may remain unchecked and get stronger over time.[96]

The fact that AI algorithms, not human judges, determine the variables impacting case decisions is at the heart of this problem. Based on patterns they find; these algorithms make predictions that may contain discriminating or harmful aspects that are overlooked and left incorrect. Once these prejudices are ingrained in the algorithm, they will probably be used consistently, strengthening any discrimination. For example, future projections will consider an AI program's discovery of a link between the genders of the parties involved and custody judgements made by the court. The issue is made worse, and the program's biased correlation is strengthened if legal professionals act based on these forecasts.[97]

The intrinsic opacity of AI decision-making in legal settings presents important questions about the need for more responsible and transparent AI systems in judicial procedures as well as the persistence of biases.[98]

AI's Justice Dilemma:

One important institution in democratic cultures that can considerably restrict individual human rights is the criminal justice system. Because of this, procedural protections have developed to protect defendants and convicted parties from arbitrary rulings that may have been influenced by deliberate abuse of authority or unconscious prejudices such as weariness or racism. To improve efficiency and impartiality, justice systems are currently using automated decision-making technologies, such as risk assessments, at different phases.[99] Although these instruments have a favourable effect on the rights of those who are charged and found guilty if they are correct, a wide range of rights might be negatively impacted by their operational shortcomings. Risk assessment

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[95] S. Wachter et al., "Transparent, explainable, and accountable AI for robotics," Science Robotics 2, no. 6 (May 31, 2017), http://robotics.sciencemag.org/content/2/6/eaan6080.full.

[96] Jones ML, 'The Right to a Human in the Loop: Political Constructions of Computer Automation and Personhood' (2017) 47 Soc Stud Sci 216.

[97] Patrick Huston & Lourdes Fuentes-Slater, The Legal Risks of Bias in Artificial Intelligence, LAW360 (2020), https://www.law360.com/articles/1274143/the-legal-risks-of-bias-in-artificial-intelligence

[98] Cynthia Rudin & Joanna Radin, Why Are We Using Black Box Models in AI When We Don't Need To? A Lesson From an Explainable AI Competition, 1(2) HARV. DATA SCI. REV. 1, 2 (2019)

[99] Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso, "Extraneous Factors in Judicial Decisions," Proceedings of the National Academy of Sciences of the United States of America 108, no. 17 (April 26, 2011): 6889–92, https://doi.org/10.1073/pnas.1018033108.

techniques were first developed in the 1920s to reduce prejudice and wrongful imprisonment. These techniques entailed assessing defendant data, considering both changeable (skills, psychological profile) and immutable (age, gender) elements to forecast the probability of recidivism. However, these instruments were biased by skewed data from long-term incarcerations and frequently lacked dependability, especially in subjective domains like evaluating antisocial conduct.[100]

In the United States, risk assessment instruments are criticised for being inherently unjust, particularly for having a disproportionately negative effect on minority groups. Due to this data distortion, recidivism estimates for certain demographic groups may not be accurate. The Canadian Supreme Court in *Ewert v Canada* brought attention to this matter, pointing out the potential harm to minority offenders' chances for rehabilitation.[101] It is yet unknown how the rights to life, liberty, and security were affected by previous risk assessment instruments. Although they provide a check on judges' unbridled discretion, they run the danger of incorrectly labelling someone as high-risk, which might result in excessively harsh punishments and obstruct the right to a fair trial. Furthermore, these instruments' subjective components frequently evade judicial scrutiny.[102]

Algorithmic risk assessments have been used in several nations recently, with full automation improving consistency and perhaps lowering prejudice. These technologies, which depend more and more on machine learning, supposedly get better over time as they constantly adjust to new data. For example, research conducted in New York City[103] revealed that machine learning may have a major positive influence on equality and non-discrimination rights by reducing the number of people in pretrial custody or crime rates. However, there have been claims that widely used systems like COMPAS, which have previously been addressed in this journal, encourage racial prejudice. Furthermore, worries about equality and non-discrimination are made worse by systematic biases in training data resulting from disproportionate police attention to minority groups. Because machine learning findings are sometimes incomprehensible, the private creation of these technologies, concealed in confidential, significantly complicates defendants' rights to self-defence and conviction appeals.[104]

To have a fair perspective, one must acknowledge that although automated risk assessment technologies may lower crime rates and help "low-risk" offenders and society overall, it is unclear how they would affect historically marginalised groups' rights. Ensuring a fair and impartial judicial

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[100] Shawn Bushway and Jeffrey Smith, "Sentencing Using Statistical Treatment Rules: What We Don't Know Can Hurt Us," Journal of Quantitative Criminology 23, no. 4 (December 1, 2007): 377–87, https://doi.org/10.1007/s10940-007-9035-1.-

[101] Ewert v. Canada, 2018 SCC 30. Note, however, that other tools—such as the Ontario Domestic Assault Risk Assessment Tool ("ODARA")—are in widespread use in Canada and have been adopted by courts in several provinces and territories.

[102] Thomas H. Cohen, "Automating Risk Assessment Instruments and Reliability: Examining an Important but Neglected Area in Risk Assessment Research," Criminology & Public Policy 16, no. 1 (February 2017): 271–79, https://doi.org/

[103] Jon Kleinberg et al., "Human Decisions and Machine Predictions" (Cambridge, MA: National Bureau of Economic Research, February 2017), https://doi.org/10.3386/w23180.

[104] Julia Dressel and Hany Farid, "The Accuracy, Fairness, and Limits of Predicting Recidivism," Science Advances 4, no. 1 (January 1, 2018), https://doi.org/10.1126/sciadv.aao5580

procedure is severely hampered by the opacity of modern techniques and the possible automation of preexisting societal prejudices.

Limitations of AI-Generated Agreements in Addressing Individual Conflicts and Interests:

In the legal discourse on the integration of Artificial Intelligence (AI) in dispute resolution, particularly in family law, it is evident that AI-generated agreements may overlook the unique conflicts and interests intrinsic to individual parties. Certain elements of dispute resolution are fundamentally human and resist replication by even the most sophisticated AI systems. For instance, personal values, pivotal in family law disputes, often elude digital quantification and codification.

Child custody decisions, for example, are predicated on a multitude of best-interest factors, which vary by state. These include the children's needs, the parents' mental and financial capacities, and the family's domestic history. These factors can become even more complex when issues like domestic violence, psychological problems, and co-parenting challenges are involved. While AI proves beneficial in resolving more straightforward matters such as the equitable division of property and assets, it struggles with issues like child custody due to their highly individualized nature. This limitation stems partly from AI's inability to fully represent the diverse nuances of each unique dispute.[105]

Alternative dispute resolution's appeal lies in its capacity to consider individual interests and needs, unconstrained by strict legal precedents or public policy considerations. Facilitators in these scenarios have significant discretion to apply precedent and law in a manner that addresses the parties' unique needs and interests while maintaining subjective fairness. Currently, constructing an AI tool capable of adequately assessing the fairness of a proposed judgment is unfeasible, aside from its ability to compare judgments to identify outliers or discriminatory patterns.[106]

Research suggests that the combination of AI systems and human expertise surpasses the efficacy of AI used in isolation. A balanced approach involves a practitioner review of all AI-based recommendations or decisions. Ideally, legal practitioners should employ AI programs as a supplement to their judgment, following an independent evaluation of the parties' conflicts and interests. This approach, referred to as a "human in the loop" (HITL) system, aims to mitigate biases in the data, ensuring compliance with public policy and facilitating a form of quasi-judicial review. HITL systems are prevalent in the medical field, assisting in classifying skin lesions for cancer risk. Here, an automated system preliminarily identifies areas of concern, which are then verified by a human provider. For AI-based legal programs, HITL involvement is recommended both in the design process and in periodic back-end audits to identify and rectify biased data. The designated HITL individual should comprehend the AI program's decision-making process and underlying factors and possess the authority to assign legal or fiscal liability in cases of transparency violations. Without

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[105] Bhavik N. Patel et al., Human–machine Partnership with Artificial Intelligence for Chest Radiograph Diagnosis, 2:111 NPJ DIGIT. MED. 1 (2019), https://www.nature.com/articles/s41746-019-0189-7.pdf

[106] Jenna Burrell, How the Machine 'Thinks': Understanding Opacity in Machine Learning Algorithms, 3 BIG DATA & SOC. 1 (2016), https://journals.sagepub.com/doi/pdf/10.1177/2053951715622512

practitioner oversight, AI in judicial decision-making risks becoming an opaque process, complicating, or even precluding effective judicial review.[107]

Outlook

In the context of legal academia, the integration of Artificial Intelligence (AI) programs in the judicial system, particularly in aiding judges and facilitators, offers a wider array of remedies and a more robust foundation for assisting parties. However, this advancement introduces new risks and concerns, especially for those not directly involved in technological development. While incorporating new technology into legal practices is crucial, the potential for AI to perpetuate systemic discrimination and challenge the ethical boundaries governing human practitioners is a primary concern.[108]

It is essential for judges, facilitators, and parties involved in family law or the criminal justice system to critically assess whether AI and data analytics tools reduce bias, enhance the likelihood of equitable outcomes, or inadvertently introduce biases through reliance on outdated data and established legal precedents. Despite AI's remarkable contributions to legal service accessibility, it is not universally suitable for all types of disputes. Issues in the criminal justice system have shown significant outcomes of racial bias in its decisions.

And when comes to AI-driven online dispute resolution, it may overlook the unique, human-centric elements crucial to the success of Alternative Dispute Resolution (ADR) in certain scenarios. AI systems tend to prioritize efficiency by utilizing historical data and information to identify statistically optimal solutions. This approach can neglect the personal conflicts and specific interests of the involved parties, potentially undermining the core objective of ADR — to achieve resolutions tailored to the distinct needs of all parties. Furthermore, while these systems have the potential to counteract judicial bias, they can also introduce biases that Human-in-the-Loop (HITL) processes usually avoid. Therefore, vigilant oversight is necessary to ensure that the application of AI in legal contexts does more good than harm.[109]

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[107] IEEE Global Initiative on Ethics of and Autonomous and Intelligent Systems, "Ethically Aligned Design: A Vision for Prioritizing Human Well-Being with Autonomous and Intelligent Systems" (IEEE, 2017), https://standards.ieee.org/wp-content/uploads/import/documents/other/ead_v2.pdf

[108] Nello Cristianini, "On the Current Paradigm in Artificial Intelligence," AI Communications 27, no. 1 (January 1, 2014): 37–43, https://doi. org/10.3233/AIC-130582

[109] Manheim, Karl M. and Kaplan, Lyric, Artificial Intelligence: Risks to Privacy and Democracy (October 25, 2018). 21 Yale Journal of Law and Technology 106 (2019), Loyola Law School, Los Angeles Legal Studies Research Paper No. 2018-37, Available at SSRN: https://ssrn.com/abstract=3273016

Panorama du parcours doctoral en droit

in LOVICHI M., SANTORO M. et LANGLE G. (dir.), Le parcours doctoral : enjeux, défis et perspectives, 9 mai 2025, Revue doctorale de droit de la Sorbonne, Université Paris 1 Panthéon-Sorbonne

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Résumé : Si les conditions dans lesquelles la réalisation d'une thèse de doctorat en droit peuvent à première vue sembler secondaires à celle-ci, la question du parcours doctoral revêt en fait une importance cruciale. Celui-ci n'est en effet pas exempt d'obstacles : une direction de thèse restreinte a priori, un projet professionnel aléatoire, des écueils inhérents à ce parcours et l'incertitude quant à la soutenance de la thèse. Outre la difficulté d'une titularisation par la suite, ces éléments de droit et de fait doivent être pris en considération avant et pendant leur thèse pour tous les doctorants en droit.

Summary *: At first glance, the conditions under which a doctoral thesis is written may appear to be secondary to its completion, but the question of the doctoral process is in fact of crucial importance. There are a number of obstacles to overcome: a limited number of thesis supervisors, an uncertain career plan, inherent pitfalls and uncertainty as to whether or not the thesis will be defended. In addition to the difficulty of securing tenure at a later date, these legal and factual factors must be taken into consideration before and during their thesis for all doctoral students in law.*

Mots-clés : droit ; sciences juridiques ; parcours ; doctorat ; doctorant ; enseignement ; enseignant ; recherche ; chercheur ; études ; étudiant

Panorama du parcours doctoral en droit

« Le troisième cycle est une formation à la recherche et par la recherche qui comporte, dans le cadre de formations doctorales, la réalisation individuelle ou collective de travaux scientifiques originaux. »[110]

C'est ainsi que le code de l'éducation pose le principe du troisième cycle, qui peut donner suite, après soutenance, à la délivrance du diplôme de Doctorat et la collation du grade de Docteur.

Il convient de noter que ce parcours doctoral constitue, comme pour le premier cycle, un « parcours de formation » [111], tandis que le deuxième cycle ne retient comme notion que celle d'un « regroupement de formations »[112].

Le parcours doctoral en droit sera donc assimilé ici à la définition du troisième cycle, et plus particulièrement pour ce propos, à la préparation autant qu'à la réalisation de ce cycle en sciences juridiques, que sont le droit privé (01), le droit public (02), l'histoire du droit et des institutions (03) et la science politique (04)[113].

La question à laquelle il faudra tenter de répondre est la suivante : **quel panorama pour le parcours doctoral en droit ?**

Un axe temporel étant retenu pour cette étude, il faudra tout d'abord traiter d'un panorama ex ante et ex post de ce parcours (I), puis d'un panorama au présent de celui-ci (II).

I - Un panorama ex ante et ex post du parcours doctoral en droit

A) L'obtention préalable d'une direction de thèse restreinte a priori

1. La direction de thèse peut tout d'abord être restreinte par des règles disciplinaires, en l'espèce : par le champ disciplinaire du directeur de thèse pressenti (01, 02, 03, 04), ainsi que la concordance entre le domaine de spécialité de celui-ci et le sujet de thèse du doctorant.

2. La direction de thèse peut ensuite être restreinte par des règles de droit mou et des rapports interpersonnels, en l'espèce : par la limitation du nombre simultané de doctorants pour chaque directeur de thèse et par l'existence d'un rapport interpersonnel préexistant directeur-doctorant.

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[110] Article L612-7 du code de l'éducation

[111] Article L612-3 du code de l'éducation

[112] Article L612-5 du code de l'éducation

[113] À ne pas confondre avec les sciences politiques qui sont l'objet d'enseignements d'établissements tel que l'Institut d'études politiques de Paris dit « Sciences Po »

B) La préparation aléatoire du projet professionnel a posteriori

3. La préparation du projet professionnel post parcours doctoral est d'abord marquée par un nombre relativement important d'alternatives lorsque l'issue est celle du doctorat obtenu, notamment : candidature à la qualification de Maître de conférences auprès du Conseil national des universités (et idéalement qualification et recrutement correspondants), présentation au concours national d'agrégation (et idéalement réussite et recrutement correspondants), avocature, magistrature, haute fonction publique, secteurs public/privé, etc.

4. La préparation du projet professionnel post parcours doctoral est aussi marquée, outre l'enrichissement professionnel et personnel, par un certain nombre d'alternatives lorsque l'issue n'est pas celle du doctorat, notamment : la présentation et idéalement la réussite à un examen ou concours supplémentaire, le recrutement en fonctionnariat, en salariat privé ou sous statut libéral… sous réserve naturellement des règles relatives aux professions réglementées.

II – Un panorama présent du parcours doctoral en droit

A) La gestion inévitable des écueils les plus classiques du parcours doctoral en droit

5. Parmi les premiers écueils du parcours doctoral en droit figurent les isolements et les précarités, c'est-à-dire : l'isolement social, l'isolement professionnel, la précarité financière et la précarité de la poursuite de thèse.

6. Parmi les autres écueils du parcours doctoral en droit figure la surcharge, c'est-à-dire : la surcharge professionnelle et la surcharge mentale.

B) Une thèse soutenue, condition sine qua non d'un parcours doctoral réussi

7. Il faut tout d'abord prendre conscience dès le début de l'impérieuse nécessité de penser et de concrétiser la thèse rapidement, c'est à dire : de délimiter le champ de recherche, de faire valider le plan détaillé, et surtout de rédiger la thèse (corps, introduction et conclusion), tout ça en trois à cinq ans.

8. Il faut ensuite et tout au long de la recherche prévenir et éviter soigneusement tout blocage : de la thèse comme du doctorant.

Overview of the doctoral course in law

« The third cycle is training in research and through research which includes, within the framework of doctoral training, the individual or collective production of original scientific work.»[114]

This is how the education code establishes the principle of the third cycle, which can lead, after defense, to the award of the Doctorate diploma and the conferral of the Doctorate degree.

It should be noted that this doctoral course constitutes, as for the first cycle, a « training course »[115], while the second cycle only retains the notion of a « grouping of training courses »[116].

The doctoral course in law will therefore be assimilated here to the definition of the third cycle, and more particularly for this purpose, to the preparation as well as the realization of this cycle in legal sciences, which are private law (01), public law (02), the history of law and institutions (03) and political science (04) [117].

The question that we will have to try to answer is the following: **what is the panorama for the doctoral course in law?**

Since a time axis is chosen for this study, it will first be necessary to deal with an ex ante and ex post panorama of this journey (I), then a panorama of the present (II).

[114] Article L612-7 du code de l'éducation

[115] Article L612-3 du code de l'éducation

[116] Article L612-5 du code de l'éducation

[117] À ne pas confondre avec les sciences politiques qui sont l'objet d'enseignements d'établissements tel que l'Institut d'études politiques de Paris dit « Sciences Po »

I - An ex ante and ex post overview of the doctoral course in law

A) Obtaining prior supervision of a thesis restricted a priori

1. Thesis supervision may first of all be restricted by disciplinary rules, in this case: by the disciplinary field of the prospective thesis director (01, 02, 03, 04), as well as the concordance between the latter's area of specialization and the doctoral student's thesis subject.

2. Thesis supervision can then be restricted by soft law rules and interpersonal relationships, in this case: by limiting the simultaneous number of doctoral students for each thesis director and by the existence of a pre-existing interpersonal relationship between director and doctoral student.

B) Random preparation of the professional project after the fact

3. The preparation of the professional project after the doctoral course is first marked by a relatively large number of alternatives when the outcome is that of the doctorate obtained, in particular: application for the qualification of Lecturer with the National Council of Universities (and ideally corresponding qualification and recruitment), presentation to the national competitive examination for aggregation (and ideally corresponding success and recruitment), lawyer, judiciary, senior civil service, public/private sectors, etc.

4. The preparation of the professional project after the doctoral course is also marked, in addition to professional and personal enrichment, by a certain number of alternatives when the outcome is not that of the doctorate, in particular: the presentation and ideally the success of an additional examination or competition, recruitment in the civil service, in private employment or under liberal status... subject naturally to the rules relating to regulated professions.

II – A current overview of the doctoral course in law

A) The inevitable management of the most classic pitfalls of the doctoral course in law

5. Among the first pitfalls of the doctoral course in law are isolations and precariousnesses, that is to say: social isolation, professional isolation, financial precariousness and the precariousness of pursuing a thesis.

6. Among the other pitfalls of the doctoral course in law is overload, that is to say: professional overload and mental overload.

B) A defended thesis, a sine qua non condition for a successful doctoral course

7. First of all, one must be aware from the start of the urgent need to think about and put the thesis into practice quickly, that is to say: to define the field of research, to have the detailed plan validated, and above all to write the thesis (body, introduction and conclusion), all of this in three to five years.

8. It is then necessary, throughout the research, to carefully prevent and avoid all and any blockage: of the thesis as well as of the doctoral student.

On the one hand, the blocking of a thesis in law could be conceived in the event of reform (constitutional, legislative, regulatory), or even in the event of a reversal of jurisprudence for disciplines which would be more dependent on it (e.g. in labor law). A modification of the law can mean that a sub-part, or even a part, becomes obsolete, and here too it is the entire fragile balance of research which can be upset. The prospect of having to resume, partially or in full, a research work is indeed not very encouraging, particularly beyond the first two years.

Ô TEMPS, SUSPEND TON VOL !

Réflexions sur la gestion du temps dans le parcours doctoral

in LOVICHI M., SANTORO M. et LANGLE G. (dir.), Le parcours doctoral : enjeux, défis et perspectives, 9 mai 2025, Revue doctorale de droit de la Sorbonne, Université Paris 1 Panthéon-Sorbonne

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Abstract

This contribution starts with the observation that time management is a key to a successful PhD. Based on the author's own experience, it offers practical tips and theoritical reflections aiming at saving time in the course of researching and teaching. First, the article covers how to "gain time" through effective planning and the use of digital tools like Zotero to streamline research. As regards teaching, time can be saved by shifting from delivering lectures to adopting a more interactive, coaching role, or by using clear guidelines for grading.

The second part of the article focuses on how to "use" the time saved. The author explains that by streamlining repetitive tasks, doctoral candidates can explore different research methods. Besides, article also stresses the importance of maintaining a balance between professional duties and personal well-being. Additionally, saving time opens up the possibility of getting involved in extracurricular activities, such as university governance or academic societies, which can enrich the doctoral experience. Ultimately, effective time management is presented not only as a way to complete a PhD but also as a key skill for a successful academic career.

Résumé

Cette contribution part du constat que la gestion du temps est la clé d'un doctorat réussi. Basée sur l'expérience de l'auteur, elle propose des conseils pratiques et des réflexions théoriques visant à gagner du temps dans le cadre de la recherche et de l'enseignement. Tout d'abord, l'article explique comment « gagner du temps » grâce à une planification efficace et à l'utilisation d'outils numériques tels que Zotero pour rationaliser la recherche. En ce qui concerne l'enseignement, il est possible de gagner du temps en passant d'un cours magistral à un rôle plus interactif et d'accompagnement, ou en utilisant des directives claires pour la notation.

La deuxième partie de l'article se concentre sur la manière d'« utiliser » le temps gagné. L'auteur explique qu'en rationalisant les tâches répétitives, les doctorants peuvent explorer différentes méthodes de recherche. En outre, l'article souligne également l'importance de maintenir un équilibre entre les obligations professionnelles et le bien-être personnel. En outre, le gain de temps permet de s'impliquer dans des activités extrascolaires, telles que la gouvernance universitaire ou les sociétés académiques, qui peuvent enrichir l'expérience du doctorat. En fin de compte, la gestion efficace du

temps est présentée non seulement comme un moyen de terminer un doctorat, mais aussi comme une compétence clé pour une carrière universitaire réussie.

Ô temps… Tel pourrait être le soupir du jeune doctorant, fraîchement inscrit en thèse et savourant à cette occasion un unique moment de plénitude : navigant sur les immenses eaux du savoir à explorer, s'attardant sur les îlots des sources exotiques et rêvant aux développements théoriques les plus audacieux ! Mais voilà, bientôt le lac des hauteurs éthérées débouche sur une rivière dont le courant, s'accélère petit à petit ; l'eau se trouble, des rapides apparaissent et avec eux l'inquiétude du candidat qui doit apprendre à naviguer entre les récifs ; ça y est la rivière est désormais furieuse, les embruns éclaboussent de toute part et au loin on aperçoit déjà la fin : la soutenance de thèse, chute vertigineuse ! À ce moment de son parcours, le doctorant souhaitera, sans doute, pouvoir de nouveau suspendre le temps qui court…

La gestion du temps trouve donc toute sa place dans les enjeux du parcours doctoral, que la conférence de la Revue Doctorale de Droit de la Sorbonne du 9 avril 2025 a explorés par le biais de riches présentations. C'est à cette occasion que j'ai pu partager quelques conseils tirés de ma modeste expérience : ayant soutenu ma thèse en décembre 2024 à l'université Paris-Panthéon-Assas, j'ai entre-temps été qualifié aux fonctions de maître de conférences ce qui me permet de supposer que ma thèse satisfait aux critères actuels du monde académique.

Ainsi, je démontrerais ici brièvement qu'il est possible, dans le cadre de la thèse, de gagner du temps (I) afin de pouvoir bien l'utiliser (II).

I Gagner du temps

Gagner du temp nécessite une véritable réflexion sur le rôle et les outils du doctorant, que l'on envisage ses activités de recherche (A) ou d'enseignement (B).

A] Gagner du temps au cours de la recherche

Qui n'a pas entendu comme conseil, qu'il était nécessaire de se « perdre dans les recherches » au début du parcours de thèse ? Certes, naviguer de mélanges en manuel paraît propice à la créativité, voire la sérendipité. Toutefois, il faut aussi prendre garde que cette période ne dure pas trop longtemps au risque de perdre contact avec la dure réalité ! C'est le premier conseil que j'adresserai à un jeune doctorant : planifier son parcours en fonction des contraintes matérielles de la thèse. Dans le meilleur des cas, le doctorant bénéficiera d'un financement pendant 5 ans. La thèse devrait donc, elle aussi, durer 5 ans, sachant que finir la thèse au chômage — je parle en connaissance de cause — est loin d'être souhaitable. Il est donc utile de planifier son parcours, par exemple avec un outil de rétroplanning, tel que Gantt Project, quitte à réévaluer plusieurs fois le plan initial : un an pour la recherche ? Plan détaillé au bout de la deuxième année ? Trois années de rédaction ? Chacun et chacune peut définir son propre calendrier, à condition de garder à l'esprit que ce n'est pas la thèse qui fait la date de soutenance, mais l'inverse.

Au-delà de la planification, la maîtrise des nouveaux outils de recherche permettra des gains de temps à toutes les étapes du parcours. Au niveau de la lecture et l'annotation des sources, les doctorants sont aujourd'hui confrontés à une profusion inédite de ressources. Le logiciel Zotero, pour ne citer que lui, est alors un allié indispensable, permettant de constituer sa propre base de données ce qui facilite grandement l'organisation des ressources et la relecture des notes. De même, la mise en forme de la thèse peut devenir un véritable cauchemar, alors que Zotero permet une harmonisation aisée des notes de bas de page et de la bibliographie.

D'autres recettes existent pour gagner du temps dans le cadre des activités d'enseignement.

B] Gagner du temps au cours des enseignements

Doit-on le rappeler : le doctorant est avant tout un chargé de TD, au point que les activités d'enseignement deviennent parfois un véritable gouffre temporel. Au moment de la préparation, par exemple, si le chargé se donne pour mission de faire un « cours bis », en communiquant toutes les connaissances aux étudiants, il s'impose une charge très lourde. En revanche, si l'on admet que le but des TD est plutôt de faire participer les étudiants à la réalisation des exercices alors le chargé peut se permettre de ne plus être une source infaillible de savoir, mais plutôt un « coach » méthodologique, rôle qui est souvent plus facile à adopter — et moins chronophage. Un second facteur de gain de temps est la possibilité de mutualiser les efforts de préparation, soit au sein d'une équipe de chargés, soit en demandant conseil aux chargés des anciennes équipes, sous réserve d'actualisation.

En ce qui concerne le temps de correction, il paraît difficilement compressible. Pourtant quelques facteurs permettent de gagner quelques précieuses minutes de correction par copie, par exemple le fait de s'appuyer sur un barème précis, ce qui évite alors de dériver au gré d'appréciations souveraines fluctuantes ; le fait de chronométrer la correction pour éviter de se perdre dans certaines copies… sachant que la principale source d'économie de temps reste le fait de réaliser, ou non, une double-correction, dont l'opportunité ne relève pas des doctorants.

Gagner du temps offre alors la possibilité de l'utiliser autrement.

II Utiliser son temps

Si l'utilisation du temps gagné relève des affinités de chacun, on pourrait à tout le moins suggérer qu'il permet d'explorer différentes manières de faire les mêmes choses (A), et même de faire des choses différentes (B).

A] Faire les mêmes choses différemment

Gagner du temps sur les tâches répétitives de la recherche permet en premier lieu de se dégager un espace mental pour explorer d'autres manières de faire de la recherche. Dans mon cas, la prise de note efficace des sources classiques grâce au logiciel Zotero m'a donné le temps d'explorer des sources moins classiques, à savoir la jurisprudence des cours d'appel.

De même, en consacrant moins de temps à préparer des résumés de cours à destination des étudiants, j'ai pu en passer plus à peaufiner mon explication de la méthodologie - par exemple en rédigeant une grille des d'arguments à mobiliser en commentaire d'arrêt – ou encore à expérimenter d'autres exercices pédagogiques mettant les étudiants dans la peau des différents professionnels du droit.

Enfin, gagner du temps permet aussi de faire autre chose que les activités doctorales classiques.

B] Faire différentes choses

Bien entendu, gagner en efficacité sur les tâches professionnelles permet de se dégager plus de temps personnel, ce qui peut constituer un objectif en soi lorsqu'on connaît la charge de travail supportée par certains collègues et que l'on se rappelle que la thèse est une course de fond : mieux vaut préserver ses forces, plutôt que risquer une perte de motivation, voire un véritable burn-out en milieu de parcours.

Mais si l'envie et l'occasion se présentent, le temps gagné sur le cœur des tâches doctorales permet aussi de s'engager à d'autres niveaux dans la vie universitaire. Pour revenir à mon expérience, j'ai proposé, en tant qu'élu suppléant au conseil d'administration de l'université Panthéon-Assas, une feuille de route écologique qui a été adoptée par les instances de cette université. Mais il existe bien d'autres façons de faire vivre l'université : revues étudiantes, séminaires de laboratoires, association de doctorants… Autant de démarches qui seront probablement valorisées lors des recrutements, qui visent, paraît-il, à recruter de futurs collègues autant que de bons enseignants-chercheurs.

Car la gestion du temps ne s'arrête pas à la fin de la thèse ! Entre les délais de candidature, les prix de thèse, les auditions de recrutement, l'universitaire semble bien condamné à courir après sa montre comme le lapin de Lewis Caroll. Cela dit, il y a une différence de taille entre l'avant et l'après-soutenance : cet énorme poids en moins qu'est l'angoisse du dépôt, et le sentiment enthousiasmant qu'au-delà de la chute, un fleuve nouveau s'ouvre vers des horizons encore inexplorés.