



AI: Judge or Tool?

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Abstract

As technology meets justice, many issues are solved in opposition to others.

The benefits of technological development should be embraced as long as we do not expose ourselves to the risks of technological development, including when it replaces human discretion and presence.

It is ultimately the role of technology to facilitate rather than replace human tasks, particularly in the justice system where human intervention is indispensable.



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Introduction

We are immersed in technology on a daily basis. In recent years, technology has even been implemented in the legal and judicial sectors, and this implementation is digital as well as automated. When it comes to courts, artificial intelligence plays two roles: AI in courts (digital and automated courts) and AI as courts (robot judges).

In contrast to digital courts, automated courts can either use technology to facilitate procedures or use AI to make decisions. A digital court can use technology to enhance traditional procedures, such as video calls, or it can be completely digital, such as crowdsourced online dispute resolution (CODR).

As it is essential to differentiate between AI as a tool in courts and AI as a court, AI as a court raises the most fundamental moral concerns.



AI: Judge or Tool?

Artificial intelligence is being used in court administration and as an assistant to judges. Many algorithms are being utilized to identify the most critical and urgent cases that should be handled and referred to a judge since these cases have social, financial, and personal implications.

AI is also used by judges in courts to support their decisions by identifying and selecting relevant jurisprudence, advising them, as well as predicting the outcome of the cases. For example, in the United States, AI is utilized in bail cases to assess the risk of recidivism.¹ This predictive justice is also present in many other countries, such as France. As a result, AI will become more and more involved in courts, until it becomes the court itself.

Some AI courts already exist, especially for cases that need to be resolved rapidly, such as trading, e-commerce, copyrights infringements, money bail² and domain dispute resolution. These cases are rather seen as simple, uncomplicated, and have financial effects, so they are ruled without a lengthy legal process.

China has been using AI courts since 2017 for the above-mentioned cases and all that is related to the use of the internet, including civil rights cases.³

A well-known example is the use of AI decision-making in Online Dispute Resolution ('ODR'). Online dispute resolution does not require disputants to meet in person since they can participate remotely via the internet. An expert system is a software program designed by experts in

1 Reiling, A.D. (Dory)., 2020. Courts and Artificial Intelligence. International Journal for Court Administration, 11(2), p.8. DOI: <http://doi.org/10.36745/ijca.343>

2 MATT O'BRIEN and DAKE KANG, AI in the court: When algorithms rule on jail time (January 31, 2018). Available at: apnews.com

3 Tara Vasdani, Robot justice: China's use of Internet courts, lawyers daily, available at: lexisnexis.ca



their fields which utilizes rule-based algorithms to make decisions based on the data provided by parties.⁴

Our digital courts were previously ruled by human reasoning, but today we have courts that only use artificial intelligence, such as debt collection and traffic judgments. Although some cases can be handled by AI, others require human intervention to avoid any lack of emotional intelligence.

Pros and Cons

It is complex work to serve as a judge, since they should interact with a variety of people, demonstrate legal knowledge, resolve disagreements, manage, induct, and have a strong sense of intuition to provide justice in their decisions while taking into consideration the social impact of each decision.

The use of AI as a court system has many advantages, but it also poses many problems.

In traditional courts, disputants suffer from the lengthy procedures as well as the cost until they obtain a ruling and close the case. The issues, however, are not relevant to AI courts, where the procedures and rulings are handled by an algorithm that is extremely fast at processing documents and evidence, classifying them, searching for laws and jurisprudence, and final ruling on the matter, all of which result in a tremendous decrease of costs.

The impartiality of AI as a court is also an advantage, as a robot can process court documents and rule regardless of race, gender, or religion. Further, it cannot be corrupted or bribed by any party or third party to rule in a certain way.

⁴ Davide Carneiroa, Paulo Novaisa, Francisco Andradeb, John Zeleznikowc, José Nevesa (2009) Online Dispute Resolution: An Artificial Intelligence Perspective.



Additionally, in more specific cases, such as debt collection cases, the algorithm cannot make mistakes, unlike a human judge who could miss something.

Moreover, it will reduce prison crowding when it comes to money bail, particularly in a country like Lebanon where prisons are already overcrowded due to strike action by judges and public employees and long court proceedings.

AI as a court in Lebanon would be very helpful since it offers many advantages, most notably in traffic courts, commercial and financial ones, as well as money bail, as discussed previously.

Even though it reduces failure demands and improves user experience, it has its risks.

There are risks and issues associated with incorporating the law, particularly since many laws are being modified or newly legislated, and many rules are based on the jurisprudence of the judges, not only the law. Can robots create new jurisprudence? To become a judge, one must study and undergo a long process. As previously described, a judge must possess a variety of qualities.

In this context, we can talk about syntax and semantics. Despite its syntax or formal structure of operation, the computer lacks semantics or meaning in its operations, especially in judicial matters. Whether the judicial job is to reach justice in a single case or the broader context of society, the financial system of the State, or even international relations between countries, it is the mission of judicial officers to reach justice. In contrast, a judge can identify the cruelty of the committed act and its consequences, as well as the preventions that should be taken, but a robot can only recognize that an act has been committed and it should be punished.⁵

⁵ Professor T Sourdin: Judge v robot? Artificial intelligence and judicial decision-making, (October 1, 2021), available at: judcom.nsw.gov.au



One of the fundamental human rights is cited in article 11.1 of the Declaration of Human Rights:

*“Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense.”*⁶

Although AI can ensure a fair, fast, and well-organized trial when used in courts, can it guarantee a fair verdict? Can it ensure a fair trial in a verbal hearing in which body language, facial expressions, and voice tonality play an important role? Can a robot rule in sensitive and critical cases without violating human rights?

AI is impartial, as we discussed previously, but there is no guarantee that a Human intervention won't jeopardize it, which raises the issue of security of the stored data as well as programming the AI.

As a result, the question becomes how to store, manage, and categorize data for the AI to function, and how laws are translated into algorithms.⁷ AI judges would need to reduce returned sources to a manageable and relevant sample before comparing these sources to the case and performing analysis to determine the outcome. But many countries are working on their databases, i.e., in France, the jurisprudence of the Court of Cassation and court of appeals already have their database published and stored to surpass this technological issue.⁸ Unfortunately, it will be more challenging for countries like Lebanon, where most of the rulings in the judicial and administrative

⁶ Universal Declaration of Human Rights.

⁷ Morison, John and Harkens, Adam, Re-Engineering Justice? Robot Judges, Computerized Courts and (Semi) Automated Legal Decision-Making (March 15, 2019). Legal Studies, Available at SSRN: <https://ssrn.com/abstract=3369530>

⁸ Courdecassation.fr



sectors are still not digitized, to achieve the first step toward digital, or automated courts and automated judges.

Several other issues arise, including legal authority, discretionary judgments, and supervision of rulings...

Conclusion

Is it possible that artificial intelligence will one day replace human judges in courtrooms with machines that can preside over hearings and render more complex judgments? Should we accept this reengineering of justice?

Based on the discussion and comparison of AI in courts versus AI as courts, we can conclude that AI in courts is a necessity since it is very beneficial for the disputants and the judicial team, despite its main issues regarding security and accuracy. As a court, AI raises a number of questions, even though it has proven useful in many less complicated, urgent, everyday cases.

When it comes to cases and rulings that have a direct impact on a human life, it should be another fellow human who makes the decision. For there is a particularity for the human race that no other living creature can share with him, so how can a robot that is a Human creation?

How can a robot render justice if humans, the robot's creators, and its programmers are unjust?

The tribunal of reason thus prevails over the tribunal of computers.



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(<https://apnews.com/article/ap-top-news-david-magee-courts-cleveland-us-news-20efb1d707c24bf2b169584cf75c8e6a>)

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