

The use of AI can disproportionately negatively affect marginalised groups in our society. Is there any benefit to using AI in our legal system?

By Monelle Garber

In this essay, I will be addressing the downfalls of using Artificial Intelligence (AI) in our legal system and its disservice to marginalised groups in society. With the risk of exacerbating existing inequalities using AI, its positive development forces us to consider whether it is worth the risk of reversing any significant milestones the legal system has made in reducing social injustice and inequality. Particularly, being aware of how the use of AI in our legal system can lead to bias and discrimination against marginalised groups due to the structural limits of AI algorithms and the lack of diversity in the data used to train them. However, the application of AI in the legal system has attracted substantial interest in recent years because of its potential to boost efficiency, accuracy, and access to legal services. Therefore, we need to assess the extent to which the use of AI will be of benefit to our legal system.

The use of AI and algorithmically driven tools in policing and penalising persons has now become commonplace; one example would be law enforcement's use of facial recognition and predictive policing technologies. Predictive policing involves using algorithms to analyse massive amounts of information to predict and help prevent potential future crimes. Many European countries have implemented these predictive identification systems; one of them being the Netherlands in which they used a pre-crime detection called the Dutch SyRI (System Risk Indication). This was designed to determine whether individuals were likely to commit public benefits fraud. Following the use of this system the courts ruled that the implementation of this system, which was primarily introduced in areas with high rates of immigration and low income, was in violation of human rights. This means that system fails to protect the rights of these vulnerable populations and is further creating injustice and distrust in the justice system.

In addition, predictive policing raises concerns about privacy – a critical human right-, as the algorithm may collect information about individuals who live in areas with high crime rates, leading to profiling and over-policing of marginalized communities. Thus, paving the way for discrimination based on a person's race, gender, or socioeconomic status. Even though it is intended to predict which cases are likely to result in wrongful convictions to establish preventative measures, AI algorithms are only as unbiased as the data used to train them. If the data used to train AI systems are biased or incomplete, then the algorithms themselves may also be biased. This could lead to unjust and discriminatory actions that violate human rights and therefore don't benefit our legal system in the slightest.

Although face recognition algorithms have high classification accuracy (over 90%), these results are not universal. A study conducted by the National Institute of Standards and Technology (NIST) found that facial recognition algorithms used by law enforcement agencies were less accurate in identifying people of colour and women than they were in identifying white men. This means the assistance of AI, could result in more false arrests and convictions, particularly for populations that are already overrepresented in the criminal justice system. We are fully aware of how the existing systematic racism that the legal system perpetuates has led to disproportionate arrests of Black people. This was evident in all the media coverage and outrage following the murder of George Floyd in 2020 and how black people are overrepresented in mugshot data, which face recognition uses to generate predictions. As stated by the Algorithmic Justice League, "Face surveillance threatens rights including privacy, freedom of expression, freedom of association and due process." This raises the question of whether the alleged benefits of this technology outweigh the possibility of increasing prejudice against these minority groups.

One of the obstacles of implementing AI in the judicial system is ensuring that the system's decisions remain transparent and accountable. If we fail to explain or debate the facts presented by AI, then marginalised groups are at greater risk of being dealt with unjustly. In the UK, an AI-powered system used by the Home Office to help assess visa applications was discovered to lack transparency by allowing "speedy boarding for white people" from the algorithm's most favoured countries via a channel marked "fast lane." This made it difficult for underrepresented populations not only to understand but also to begin to protest this unjust system. Edwards and Veale (2017) highlight, the lack of contestability - in relation to algorithmic systems, i.e., the "lack of an obvious means to challenge them when they produce unexpected, damaging, unfair or discriminatory results". Individuals have the right to challenge and request a review of automated decision-making that significantly affects their rights or legitimate interests under the European Union data protection law (GDPR 2016/679). This reduces the extent to which AI fails to be held accountable, but it should be in the first place.

In China, an AI-powered court system was criticized for relying too heavily on technology, with defendants having limited opportunities to defend themselves against charges. This overreliance on technology can lead to unfair outcomes for marginalized groups who may not have access to the same technology or resources as others. This will likely expedite less critical thinking and decision-making skills in our legal system. In turn, acting as a hindrance when it comes to making quick decisions due to the lack of reflection and human judgement involved resulting in potential errors. Although AI is error-free in theory, there's no guarantee that it will never be subject to any mistakes.

Despite numerous failed attempts by AI to reduce the level of discrimination, stigmatisation, and violations of human rights in the legal system. Its positive effects are not overlooked, as seen by enhanced efficiency in Human Rights work. In October 2017, in partnership with Amnesty International, the Centre of Governance and Human Rights launched a Digital Verification Corps. This incorporated a global network of digital volunteers who used digital verification tools to advance human rights by fact-checking and verifying images and videos from sites of crime investigations. According to Amnesty International, the use of the DVC has enabled the organization to process up to 10 times more user-generated content than before, resulting in more efficient and effective

human rights investigations. In this case, AI has freed up time and resources for the human rights organisation to focus on more pressing matters. This is demonstrated by AI and automation taking over up to 23% of a lawyer's everyday tasks. Since June 2017, JPMorgan has been using an AI-powered COIN program to decipher commercial loan agreements; hence work that would take lawyers hours is now completed in seconds.

The emergence of AI-powered chatbots and virtual assistants can provide marginalised groups, who often have limited access, with legal information and counsel. As well as, offering legal information in different languages and formats, making it accessible to a wider range of people. Ultimately, enabling individuals to navigate the legal system more easily. A prime example of this is the UK LawBot, which offers free legal aid via Facebook Messenger, hence improving access to legal information for marginalised groups who may not have access to legal services or information.

On the contrary, the increased use of these AI technologies implies that we are foregoing the need for some level of personal interaction and support that individuals may seek while being assisted with legal concerns, particularly those pertaining to human rights. As a result, people are denied the opportunity to speak with a human rights specialist or a legal advisor, which could be of greater assistance in certain instances compared to interacting with a machine. In addition, not everyone has equal access to technology and the internet. This could lead to a digital divide, further excluding individuals who are already marginalised from obtaining essential information about their human rights.

The cost of implementing may be greater than its benefits. Most AI solutions for the legal industry can range from a few thousand dollars for smaller, cloud-based solutions to hundreds of thousands of dollars for more comprehensive AI systems. The financial drawback of this creates an opportunity cost in which the money can be used for judicial expenditures which may include law libraries, public defenders, witness fees, prosecuting and district attorneys, etc. Regardless, relatively smaller firms may not have the financial strength to adopt the new technology which put individuals who can't afford to receive legal assistance from bigger firms at a disadvantage.

In conclusion, the harms that AI can cause are multi-faceted and intersectional. While the benefits of AI are undeniable, including increased efficiency and access to legal information, it is crucial to ensure that these benefits do not come at the expense of marginalised groups. By implementing AI in our legal system, we increase the risk of exacerbating injustice and inequality for these marginalised groups due to AI's bias in algorithms, lack of transparency, and our overreliance on technology. With AI taking over many industries one of them being law we can't do much to prohibit it from developing instead we need to make a concerted effort to mitigate the negative effects it causes. By doing this, ensuring the benefits are realised and risks are managed, we are able to leverage the power of AI's ability to achieve a more just and equitable legal system for all.