

ACCESS TO JUSTICE UNDER ATTACK

What's about AI?

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Avv. Marco Bona



TORT WARS

**Lawyers and claimants without funds
do not go anywhere: no access to
justice**



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Question:

how AI will impact on future tort reforms and access to justice/full compensation?

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apart from availability of financial means and clients willing to fight tort wars, the resistance against tort reformers' attacks also require:

- ❑ skilled, motivated and independent judges and lawyers**
- ❑ judges and lawyers capable to detect and resist the tort reformers' manipulations and campaigns**
- ❑ access to reliable information**

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What do tort reforms need to be successful and stabilise in the long period?

- ❑ **de-skilled, homologated, dumb, unempathetic judges and lawyers**
- ❑ **devitalization of legal reasoning meaning jurists' zero capacity of developing counter-rules and rules not corresponding to the regime's model of justice (standardisation of legal reasoning)**
- ❑ **reformers' full control over the development of case-law, including capacity of hiding/devitalising uncomfortable/antagonist precedents (if any)**

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United Nations

A/80/169



General Assembly

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Eightieth session

Item 72 (b) of the provisional agenda*

**Promotion and protection of human rights: human rights
questions, including alternative approaches for improving the
effective enjoyment of human rights and fundamental freedoms**

Independence of judges and lawyers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the Independence of judges and lawyers, Margaret Satterthwaite, in accordance with Human Rights Council resolution [53/12](#).

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Automation bias and amplification of bias (for example, the myth of “over-compensation”)

- ❑ **risks to independence arise when AI suggests a particular approach or outcome to judges and lawyers**
- ❑ ***“The human tendency to defer to algorithmic recommendations and rely on the ostensibly scientific quality of AI can, almost imperceptibly, erode judicial discretion and lead to automation bias”***

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Automation bias and amplification of bias (for example, the myth of “over-compensation”)

- ❑ ***“Tools that assess risk or suggest or predict a legal outcome based on prior jurisprudence entail such dangers”***
- ❑ ***moreover, “any AI outputs may be uncritically trusted if judges do not receive adequate training and guidance regarding the problems and limitations of these technologies, undermining the capacity of the human-in-the-loop approach to maintain oversight over AI decisions”***

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Judicial de-skilling and epistemic capture

- ❑ ***“the mechanistic approaches promoted by AI will gain prominence over critical thinking and ethical and culturally embedded forms of judicial deliberation”***

“AI systems are designed to draw conclusions based on patterns of aggregate data points; a judge ruling in the same way will be constrained by what the system has encountered before”

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Judicial de-skilling and epistemic capture

- ❑ ***“risk to skills”***: judges and lawyers relying on AI may lose their capacity for legal research, opinion drafting and even judicial reasoning

“Particular legal procedures and theories of justice – whether rehabilitative, retributive, redistributive or otherwise – should not be overturned or imposed through stealth or accident, via the operation of an ostensibly neutral AI tool. Such epistemic capture is

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Judicial de-skilling and epistemic capture

“Particular legal procedures and theories of justice – whether rehabilitative, retributive, redistributive or otherwise – should not be overturned or imposed through stealth or accident, via the operation of an ostensibly neutral AI tool. Such epistemic capture is particularly concerning when AI tools are dominated by State actors that seek to exercise control over judges. However, it is also a risk when tools designed by private companies, which have inbuilt preferences for the most dominant modes of problem-solving, are relied upon by judges who must, at times, depart from the path most commonly taken to achieve justice”

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The risks of artificial intelligence authoritarianism and techno-capture

- ❑ ***"Influence over AI tools is likely to be a focus for executive or legislative actors seeking to capture judicial systems for their own ends"***
- ❑ ***"The involvement of private sector actors in the design and introduction of AI tools also poses risks to judicial independence. The monopolistic nature of the technology industry reduces the number of businesses from which to procure AI tools, risking vendor lock-in and the privatization of public services"***

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Interference with the right to a human independent judge

risks because of the sensitivity, nuance and human understanding required by cases involving ethical/emotional/social issues

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The myth of verification

Verification is often identified as a corrective to AI risks, requiring judges and lawyers to check and confirm AI outcomes to spot errors and to ensure that a decision remains the judge's or lawyer's own

Nevertheless, judges and lawyers cannot easily go into the black box of an algorithm and determine whether it was informed by flawed, manipulated or discriminatory data + verification requires knowledge, proper skills and time

"one of the key promises of AI – saving time – would be negated if judges were required to manually repeat the work of an AI tool to verify its outputs".

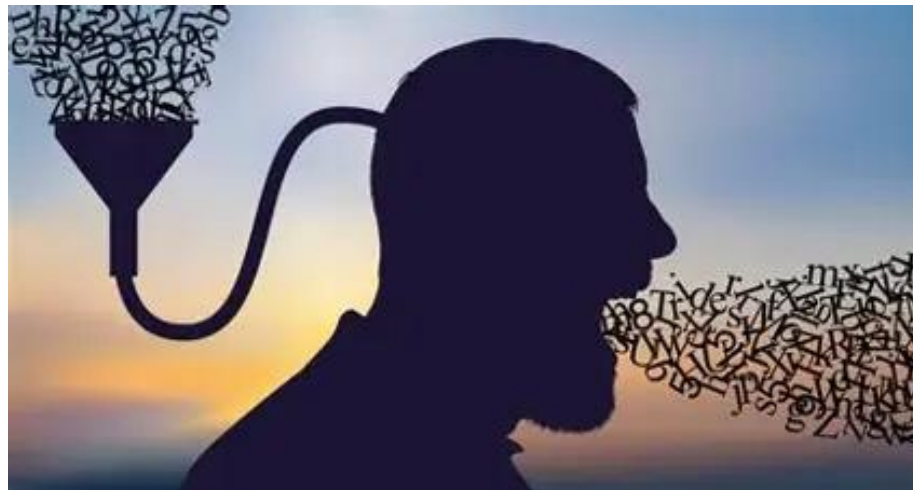
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What would become of tort law reforms if AI were employed to

- ▣ **determine the evolution of case law**
- ▣ **diminish the capacity of judges, lawyers, and legal scholars to “reason the law” and to exercise critical assessment of the rules**



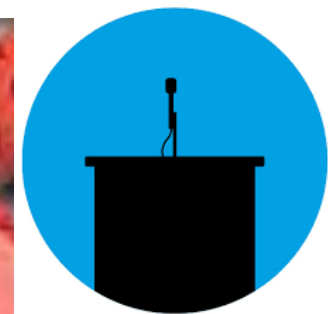
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Grazie!

DEBATE



Thank you for your attention

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THANKS!

