THE LEGAL SYSTEM AND THE ADMINISTRATION OF JUSTICE IN A TIME OF TECHNOLOGICAL CHANGE: MACHINES BECOMING HUMANS, OR HUMANS BECOMING MACHINES?*

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It is a great honour to be asked to deliver this address, bearing the name of a great Chief Justice and great judge, and the inspiration for the Bar in Western Australia.

My topic tonight, I hope, does not evoke images of machines and a deracinated future. Much of the superficial, and some of the not-so-superficial, public discussion of the topic, takes us to places where science fiction would have not long ago reigned. I thought that old folk would shake their heads, hopelessly fearing the future of a lost sensible path; whilst young folk, with a less fearful approach to technology, would see excitement in a new world, but often without asking themselves some basal questions about the human dimension of the changes. But, in fact, there is some research to show that the most enthusiastic are the 50 to 60 year olds no doubt eager to stay ahead of the ever increasing velocity of time; whilst the younger generation, having grown up with technology, are more cynical of its proclaimed advantages.[1]

My topic is technology and the law and the administration of justice, that is: law and justice, being the elements of a just society, bound together as the intertwined fabric of democratic,

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† I wish to acknowledge the invaluable assistance of Mr Peter Taurian in his research and in his helping me understand, to the extent I am able, the detail of artificial intelligence, and to thank him for many thoughtful discussions about the law and the legal implications of AI.

1 See George Burn, Clare Morel de Westgaver & Victoria Clark, *Annual Arbitration Survey 2023: AI in IA: The Rise of Machine Learning* (Bryan Cave Leighton Paisner, 2023) 11, discussed in Susannah Moody, "AI in IA: Survey Highlights Fear over Arbitrator Tech Skills", *Global Arbitration Review*, 9 November 2023.

free society.[2] This has been so, whether the free democratic polity was in a limited form as in ancient Athens or Republican Rome built on slavery, or the New Republic of the United States, built, at least in part, on slavery, or in a nascently wider form in England and Europe in the struggle from absolutist monarchical power from the 17th century.

Law and justice are immanent within ordered civil societies, and frame and protect free societies. They are not separate integers of a mechanism built on logic and words alone. They are part of the one whole. If one conceives of law as the rules, principles and precepts of social and societal organisation, built on the values of society, one can see law as "legally organizable morality".[3]

The Covid pandemic put great strain upon the administration of justice.[4] The physical places of courts and courtrooms were closed and inaccessible. This was a deep impediment to the hearing of cases which required physical presence of the actors in one place — in particular criminal jury cases. But technology (albeit well-known technology available for decades, though now digitally based), properly organised and utilised, allowed courts to continue to hear almost all other cases, with the participants dispersed and located sometimes in their homes and offices.

The ability to put in place and maintain this dispersed system of justice gave many insights, such as: that a court could, systemically, continue to operate using digital technology for communication; that access to justice could be given to people in remote locations; and that disadvantage of those without resources could be overcome by the court itself providing

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[2] See generally Roscoe Pound, *Justice According to Law* (Yale University Press, 1951). On the close relationship between democracy and the rule of law in ancient Athens, see Michael Gagarin, *Democratic Law in Classical Athens* (University of Texas Press, 2020) 155.

[3] Beryl Harold Levy, *Cardozo and Frontiers of Legal Thinking: With Selected Opinions* (Oxford University Press, 1938) 75.

[4] See further James Allsop, "The Courtroom post COVID-19" (Keynote address, ABA National Conference, 28 April 2022).

communication facilities in its premises (in “Zoom rooms”). The insights were always born of the lived experience of the use of the technology and of the thoughtful contemplation of that use and experience. Other insights included: the central importance of the state taking all litigants seriously in the way the technology was made available; the necessity for acceptance by the users — the litigants — that this was the proper and respectful manifestation of just state power; that the judge and counsel had to be recognised as who they were and who the circumstances represented them to be — the essential actors in a real performance of the execution of protective state power by a human, but detached (abstracted in that sense), delegate of the state.[5]

How this balance between in-person and remote hearings is resolved in the future will be a matter of lived experience in the recognised necessity of maintaining confidence in the administration of justice for its fairness, despatch, efficiency, and humanity. Whilst physical presence is important, it is not necessarily universally demanded. The role that the thoughtful and energetic use of available technology played in overcoming a significant challenge to the capacity of the courts to function should not be forgotten.

But tonight I wish to direct myself to the likely transformative changes to our lives, the law and the administration of justice, by digital technology and artificial intelligence. I have mentioned our shared experience of the pandemic to introduce a number of considerations that should be kept near as we discuss these developments that are startling in their capacity to herald change:

- law and justice;
- the protective character of judicial power;
- its consensual foundation built on confidence in the administration of justice;

[5] See Meredith Rossner, David Tait & Martha McCurdy, “Justice Reimagined: Challenges and Opportunities with Implementing Virtual Courts” (2021) 33(1) *Current Issues in Criminal Justice* 94, 97–8.

- the necessary human character of the law and the administration of justice through the interwoven antinomies of abstraction and human experience;
- the judge as the detached (and in that sense, abstracted) representation of state power, but as human, fallible and dutiful;
- the process of justice being perceived as infused with humanity and in which confidence and consent are placed.

These digital and AI technologies and capacities are, of course, not matters that are limited to the law; they will change the whole of society, human and social relationships, and perhaps even our consciousness and sense of humanity. None of these things is definable or predictable. We need to be careful of definition and prescription, and of (over) confident prediction in this field.

I cannot give you a comprehensive expression of the digital and AI challenges that we are facing. But I will say a little about AI itself, not to make you better informed about AI, but to contemplate how it may affect the legal system and the administration of justice.

There are probably other pressing considerations about AI, such as how it will affect man's capacity to develop and use murderous weapons of war or to refine cyber techniques for fraudulent purposes.[6] Nevertheless, how the administration of justice, as the foundation of a free and civil society, will or may be affected is certainly a subject worthy of contemplation and discussion.

It is helpful first to consider the vastness of digital information in its electronic form that is publicly available and that can be reached by computers. Even in a restricted field such as

[6] See generally Jaemin Lee, *Artificial Intelligence and International Law* (Springer, 2022) 191–210.

the legal system, the available digitally recorded information is vast: written in different languages, but nevertheless written.[7]

Take our domestic legal environment. The availability now of huge volumes of legal precedent, the size of statutes and regulations, and the digital multiplication of communication and records, almost demand assistance with optical character recognition and analysis by AI. We have, through digital technology, already created a mass of information which is sometimes incapable of human analysis (even reading) in a short period of time.

So, what is AI that I wish to discuss?[8]

The kinds of AI systems to be considered are "artificial neural networks", an example of "machine learning", where vast bodies of data are examined or read for correlations and patterns, perhaps mimicking in a learning process how the brain works,[9] perhaps setting out on its own course.[10] This is a subject of some interest. Certain systems are designed to work without human supervision and instruction.[11] There is a degree of inexplicability.[12] Nevertheless, it is, ultimately, a form of information processing.[13]

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[7] Covid-19 has further expedited the transfer of print information online: Jas Breslin, "Shelved Forever? How the Pandemic Has Helped Flick the Digital Switch" (2020) 20 *Legal Information Management* 133.
[8] On the much-discussed difficulty of defining AI, see, eg, John Frank Weaver, "Defining AI in Contracts" (2020) 3(6) *RAIL* 435, 435; Christy Ng, "AI in the Legal Profession" in Larry A DiMatteo, Cristina Poncibò & Michael Cannarsa (eds), *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (Cambridge University Press, 2022) 35, 36; Lee (2022) (n 6) 6.
[9] On the history of AI's attempts to mimic the human brain, see particularly Yucan Chen et al, "How Far is Brain-Inspired Artificial Intelligence Away from the Brain?" (2022) 16 *Frontiers in Neuroscience* 1096737: 2–3. See also Jerry Kaplan, *Artificial Intelligence: What Everyone Needs to Know* (Oxford University Press, 2016) 28–9, 32.
[10] See Michael Legg & Felicity Bell, *Artificial Intelligence and the Legal Profession* (Hart, 2020) 31; Rembrandt Devillé, Nico Sergeyssels & Catherine Middag, "Basic Concepts of AI for Legal Scholars" in Jan De Bruyne & Cedric Vanleenhove (eds), *Artificial Intelligence and the Law* (Intersentia, 2021) 1, 4–5 [8].
[11] These systems often record higher levels of accuracy and efficiency than those in which there is human supervision and intervention: see, eg, Qiantong Xu et al, "Self-Training and Pre-Training are Complementary for Speech Recognition" [2022] *IEEE International Conference on Acoustics, Speech and Signal Processing* 3030.
[12] Melanie Mitchell & David C Krakauer, "The Debate over Understanding in AI's Large Language Models" (2013) 120(13) *PNAS* e2215907120: 1; Nathan Colaner, "Is Explainable Artificial Intelligence Intrinsically Valuable?" (2022) 37 *AI & Society* 231, 231.
[13] Devillé, Sergeyssels & Middag (2021) (n 10) 4 [8].

The layers of AI systems are the processes that "join the dots" between input and output.[14] It is possible to establish parameters and principles that guide the processes, and at least in part to reconstruct what the machine has done to arrive at its conclusion. But there is a real sense in which the processes admit of no elaboration, in logical terms, like quantum mechanics.[15]

At this point, it should be remarked that the information for AI to work on must be written and recorded in expression.[16] That is both a statement of the obvious; and a hint of more profound considerations: Is the totality of written knowledge all knowledge? If knowledge cannot be written down, is it knowledge? I would hope that you would answer these questions no and yes, even allowing for the inadequacy and ambiguity in the word "knowledge".[17]

The notion that all knowledge and information can be written down is absurd. Important concepts, feelings, emotions and the implicit can lie between the written words, and meaning often lies hidden in the shape of ideas, in the connotation and the implicit, including implicit metaphor, and in the uncertain context of life.

It is also important to recall that all the knowledge, information and data that AI is examining is existing or past.[18]

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[14] Kaplan (2016) (n 9) 27–8; Peter Érdi, "The Brain-Mind-Computer Trichotomy: Hermeneutic Approach" in Robert Kozma et al (eds), *Artificial Intelligence in the Age of Neural Networks and Brain Computing* (Academic Press, 2019) 79, 83.
[15] Mitchell & Krakauer (2013) (n 12) 3.
[16] See ibid 1.
[17] Relatedly, Cyrus Tata, "The Application of Judicial Intelligence and 'Rules' to Systems Supporting Discretionary Judicial Decision-Making" in Giovanni Sartor & Karl Branting (eds), *Judicial Applications of Artificial Intelligence* (Springer, 1998) 99 observes that the "facts" of a case, despite purporting to be the most objective and basic representation of the reality of what has occurred, are in fact a fictional, legal typology, often arranged for the purposes of securing a conviction: at 113. See similarly Christopher Markou & Simon Deakin, "*Ex Machina Lex*: Exploring the Limits of Legal Computability" in Simon Deakin & Christopher Markou (eds), *Is Law Computable? Critical Perspectives on Law and Artificial Intelligence* (Hart, 2020) 31, 62–3 ("*Ex Machina Lex*").
[18] Matthias Van Der Haegen, "Quantitative Legal Prediction: The Future of Dispute Resolution?" in Jan De Bruyne & Cedric Vanleenhove (eds), *Artificial Intelligence and the Law* (Intersentia, 2021) 73, 83

The layers between artificial neural networks that transmit data from input to output deal in algebra, algorithm and probability.[19] Large language models develop their own vocabulary using numbers, wherein natural language, being words, and parts of words, are assigned numbers, or "tokens". ChatGPT has a vocabulary of 50,257 tokens.[20] Through machine learning, the machine is fed data from which it detects and graphs patterns. The data is vast.[21] This machine learning can be supervised, unsupervised, and reinforced.[22]

It is beyond my ability to state beyond a general expression how this is done, but it is sufficient to recognise what can apparently be done.

Most importantly, by reference to all data available on the internet and prioritised data available in defined sets of data and information, tasks can be requested and not only searches made through recognition of the presence of data (thus searching and retrieving) but tasks of apparent analysis of the bodies of data and expressions of conclusions by reference to questions asked.[23] Thus, analysis of written information can be undertaken by the machine which involves the search for, reading and analysis of, and conclusions drawn from, vast

[20], 86 [24]; Kevin Ongenae, "AI Arbitrators… 'Does Not Compute'" in Jan De Bruyne & Cedric Vanleenhove (eds), *Artificial Intelligence and the Law* (Intersentia, 2021) 101, 108–9 [18]–[19], citing Maxi Scherer, "Artificial Intelligence and Legal Decision-Making: The Wide Open?" (2019) 36(5) *Journal of International Arbitration* 539, 557. This has been regarded as a positive feature for the Chinese courts, insofar as it promotes *stare decisis*: Florence G'Sell, "AI Judges" in Larry A DiMatteo, Cristina Poncibò & Michael Cannarsa (eds), *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (Cambridge University Press, 2022) 347, 357–8. On law as simultaneously backward-looking and forward-looking, see Markou & Deakin, "*Ex Machina Lex*" (2020) (n 17) 63.

[19] Mitchell & Krakauer (2013) (n 12) 1; Devillé, Sergeyssels & Middag (2021) (n 10) 7 [13].

[20] Although this figure is subject to change as ChatGPT updates to new versions of OpenAI's system.

[21] ChatGPT was trained on approximately 175 billion parameters, or 300 billion unique words: Marjan Ajevski et al, "ChatGPT and the Future of Legal Education and Practice" (2023) 57(3) *Law Teacher* 352, 354.

[22] See generally Kaplan (2016) (n 9) 30; Legg & Bell (2020) (n 10) 29; Devillé, Sergeyssels & Middag (2021) (n 10) 6–7 [12].

[23] Perhaps most notably in the legal context is "Quantitative Legal Prediction" — the apparent capability of certain AI systems to determine one's likelihood of winning in court based on the factual scenario fed to them: Kaplan (2016) (n 9) 95; Van Der Haegen (2021) (n 18).

bodies of data, together with any prioritised cohorts of data, to produce an analytical answer in a tiny fraction of the time a human or many humans could execute the task.

These possibilities engender, or should engender, excitement and hope for our legal system. If large volumes of data are able, not only be read and organised by machines, but critically analysed by pattern recognition and mimicking of the human brain, in functional process or result, large tasks of data processing can be undertaken swiftly and at little cost.

This presents a potential radical change to our legal system: a true inflexion point.[24]

It is already a reality: eBay and other e-commerce providers and intermediaries are already providing AI dispute resolution.[25] Given the volume and value of most sales on such platforms, this is not replacing any existing system of dispute resolution. Rather, it provides the only possible system of dispute resolution.

There exist now legal products aimed at substantive law solutions that provide legal services by performing legal tasks targeted at lay as well as professional users.[26]

These kinds of tools should not be left to the private sphere. If public justice is to remain relevant, it must incorporate and give confidence and validity to these tools to improve access

[24] To borrow the terminology of Chief Justice Sundaresh Menon, "Legal Systems in a Digital Age: Pursuing the Next Frontier" (3rd Annual France-Singapore Symposium on Law and Business, 11 May 2023) [3].
[25] See Kaplan (2016) (n 9) 93.
[26] See Douglas Walton, *Witness Testimony Evidence: Argumentation, Artificial Intelligence, and Law* (Cambridge University Press, 2007) 146–50 (analysis of witness evidence); Kaplan (2016) (n 9) 91 (survey of its use in transactional work), 94–5 (e-discovery); Legg & Bell (2020) (n 10) ch 5 (discovery, disclosure and other pre-trial litigation tasks), ch 7 (transactional tasks), ch 8 (regulatory tasks), ch 9 (criminal law); Tracey Ickes, "Negotiating the Use of Technology Assisted Review/Artificial Intelligence in Document Review" (2021) 4(6) *RAIL* 429, 429–31 (discovery and document review); Ajevski et al (2023) (n 21) 356 (producing first drafts of documents; analysing cases and legislation; summarising research).

to justice. For instance, the Singapore Legal Aid Bureau has developed a chatbot to provide information on family and civil disputes.[27]

These kinds of technologies permit or facilitate the growth of alternative legal service providers helping parties create documents and examine and answer questions about large volumes of data and information.

The speed, growing accuracy and lowering cost of large data analysis will have an effect on all aspects of legal practice: a redefinition of what skilled human legal work is; what legal work can be commoditised by automation; and how legal work can be re-organised leading to different roles. The first and most obvious of such new roles is the coming together of computer engineering and legal skills into the same people in their education and in their practice.[28]

The tasks of junior and senior lawyers will change.

Professor Susskind in *Tomorrow's Lawyers* sees new roles of the legal data scientist managing and analysing legal data and the legal knowledge engineer who, he says, will translate legal principle and precedent into code.[29] This last point (translating legal principle into code) raises profound questions about the law and society upon which I will touch shortly.

Generative AI, which can generate new content in text, image and music is in use today with tools such as "Harvey" and "CoCounsel" which are in use by lawyers as we speak, preparing

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[27] Menon (2023) (n 24) [6].
[28] See Dominique Garingan & Alison Jane Pickard, "Artificial Intelligence in Legal Practice: Exploring Theoretical Frameworks for Algorithmic Literacy in the Legal Information Profession" (2021) 21 *Legal Information Management* 97, 97–8.
[29] Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2013).

drafts of documents, producing research briefs, and reviewing and analysing contracts.[30] There is no doubt that legal research and the production of some legal documents, or at least drafts of them, will be more and more done by generative AI.

GPT-4 is said to be able to pass the US Uniform Bar Examination, multiple choice paper at a higher average than the average human test-taker. And it can pass the legal essay and problem-solving task.[31]

There is undoubtedly a challenge and an opportunity for the courts here. The courts must engage with these tools of undertaking legal analysis, in particular where the utilisation could facilitate access to justice for litigants. In a world of vast bodies of data, sometimes expressed in language of impenetrable prolixity, ascertaining the barest outline of the framework of one's rights, let alone an assessment of their likely character, can be, and often is, time-consuming and prohibitively expensive. If the courts, in partnership with respected AI providers, could provide information and reliable analytical apps to litigants, this would open up to large numbers of people a low-cost way of ascertaining, at least to some measure of satisfaction, what their rights are and how they might deal with them. This may and perhaps will involve a broadening of the role of the courts from decision-maker to facilitator of access to justice. It may involve more resources. It may involve a reconfiguration or reconsideration of how to engage with the public and the profession. However, if it is not done, the role will be played by external actors and the courts will lose a measure of control over, and relevance for, a growing sector of the administration of justice. They may become marginalised in a world of unregulated machine-generated answers to questions and disputes.

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[30] See Ajevski et al (2023) (n 21) 356–7.
[31] Daniel Martin Katz et al, "GPT-4 Passes the Bar Exam" (Paper, 15 March 2023) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4389233).

When I was Chief Justice of the Federal Court, my then CEO, Mr Warwick Soden, and I were considering exploring such partnerships. Covid intervened and attention was diverted elsewhere. Covid, in this respect, impeded technological development.

The Singapore courts have begun such partnerships.[32] Other courts have done so also.[33] I know that the Chinese courts have used AI to oversee judgment writing for some years.[34] The scoping of this task is one for the consideration of the Australian Academy of Law and the Australian Institute of Judicial Administration.

But for the purpose of tonight, let us hypothesise a "perfect" AI. Let us assume that in respect of subjects and problems, or parts of subjects or problems, that are amenable to logical binary analysis by reference to large bodies of data, AI will be able to produce an accurate or "correct" conclusion. Let us also assume that aspects of legal work requiring creativity, emotional intuition, evaluative judgement, and social intelligence can be, or will be able to be, mimicked by the AI machine.[35]

It is at this point that it is necessary to say something of what law and justice is, or are. To do this I will seek, first, not to theorise, but to explain by experience.

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[32] Menon (2023) (n 24) [42]–[44]. See also Lee Li Ying, "Small Claims Tribunals to Roll Out AI Program to Guide Users through Legal Processes", *The Straits Times*, 27 September 2023, discussing a Memorandum of Understanding between the Supreme Court of Singapore and Counsel AI Corporation.
[33] See Van Der Haegen (2021) (n 18), referring to Argentina, Colombia and the Inter-American Court of Human Rights: at 79–80 [12]; and Estonia: at 80–1; G'Sell (2022) (n 18), referring to Poland, Serbia and Slovakia: at 348; and Estonia: at 348–9.
[34] See G'Sell (2022) (n 18) 357–8.
[35] Whether AI systems "understand" the data that they assess or emit is a topic of vigorous debate among scientists and philosophers: see Mitchell & Krakauer (2013) (n 12); Markou & Deakin, "*Ex Machina Lex*" (2020) (n 17) 50–1; Devillé, Sergeyssels & Middag (2021) (n 10) 12–13 [30]; Martin Schrimpf et al, "The Neural Architecture of Language: Integrative Modeling Converges on Predictive Processing" (2021) 118(45) *PNAS* e21056461: 1; Robert Epstein et al, "Toward the Search for the Perfect Blade Runner: A Large-Scale, International Assessment of a Test that Screens for 'Humanness Sensitivity'" (2023) 38 *AI & Society* 1543, 1544; Gerhard Paaß & Sven Giesselbach, *Foundation Models for Natural Language Processing: Pre-trained Language Models Integrating Media* (Springer, 2023) 2. For a discussion on whether AI is capable of creativity in particular, see: Julija Kalpokiene & Ignas Kalpokas, "Creative Encounters of a Posthuman Kind: Anthropocentric Law, Artificial Intelligence, and Art" (2023) 72 *Technology in Society* 102197: 3.

What engenders loyalty of society in the law, courts and judges? Is it accuracy?[36] Is it consistency? No, not wholly, though these are not irrelevant considerations. What engenders loyalty is an indefinable mixture of the law (with its rules, principles, and values) and the dutiful undertaking of the task or process of examining the problem or dispute and applying the law to the context and circumstances with diligence, care and intelligence in a fair and impartial way, which recognises the dignity and humanity of the people before the court.[37] The importance is in not just ***what*** is done, but ***how*** it is done.[38] The process is both intensely human and analytical; it is both abstracted and experiential; it reflects a social or human bond between the state and the citizen.

Let me give you three examples of the indefinable humanity of the law and the intertwining of law, of conscientiously undertaken duty, of theory, and of human values.

One of the greatest of Australia's legal scholars and judges died this year, far too young, Paul Finn. He was a generous and kind colleague who was capable of challenging the intellect. He, like all of us on the Federal Court in the 1990s and 2000s, had the task of dealing with a great many immigration cases — often hopeless in law, but always replete with human hopes, fears, and often with suffering. The gentle and evocative obituary by Professor Tim Bonyhady recorded the words of an Iranian applicant before Paul:[39]

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[36] On the problems with this term in the legal context, see Simon Deakin & Christopher Markou, "From Rule of Law to Legal Singularity" in Simon Deakin & Christopher Markou (eds), *Is Law Computable? Critical Perspectives on Law and Artificial Intelligence* (Hart, 2020) 1, 7.
[37] See Frank Pasquale, "Foreword" in Simon Deakin & Christopher Markou (eds), *Is Law Computable? Critical Perspectives on Law and Artificial Intelligence* (Hart, 2020) v, vi.
[38] Deakin & Markou, "From Rule of Law to Legal Singularity" (2020) (n 36) 7.
[39] Tim Bonyhady, "A Distinctive Thinker Who Transformed Australian Law", *Australian Financial Review*, 23 October 2023 (available at https://www.afr.com/companies/professional-services/a-distinctive-thinker-who-transformed-australian-law-20231017-p5ed18).

> "*It does not matter to me if I win or lose, as I sense that the judge is a spiritual man who treated me with such respect that he will do what is right.*"

It was the human recognition of Paul's dutiful engagement in the task, in the process, that revealed to this man, with his insight, that something deep and important had taken place in his experience with, and of, Paul. This is not imagined. It is the social bond of justice being manifested among, and recognised by, humans who come together in an act of supplication and request before state power and authority. It is a bond that is achieved, not by a "correct" result, but by the engagement of the fallible human in the task of ascertaining and applying the law in a detailed and abstracted way, and by the respect shown to the dignity of the parties. The immanent antinomies of individual humanity and abstracted rule and principle, built on, and derived from, the mutual human experiences of the dutiful judge engaging in the task, in the process, and the perception of same by the litigant, communicated something to this man, which process cannot be mimicked electronically in or by a machine, even if the machine may derive the exact same result or answer as the human judge. This man had the poetic gift to express it; many litigants feel the same thing, even if they do not conceptualise or express it in language. This experience emotes a feeling that is most often not expressed: that justice has been done.

The second example further illustrates the same point. Some years ago, a judicial colleague presided over a most distressing murder trial at Taylor Square in Darlinghurst, in Sydney. The venue of the trial is relevant because after 5pm on court sitting days, there was no security staff to open the heavy iron gates to permit egress by a Judge if he or she had a car.

The accused was a man who had stabbed his transgender partner to death in a violent domestic rage. They had met in prison. The relationship was at times tense, at times loving. On the day in question, the accused had become enraged by being taunted by the victim about his sexuality and manhood.

The families of the victim and the accused were present during the trial. Neither was a sophisticated group of people; neither apparently well educated; both apparently of modest means; and each with an air of the capacity to intimidate. There was, however, never any form of misbehaviour in court; though, at times, there was displayed a certain brooding and barely suppressed emotion as some of the evidence fell out. The accused's family had not been aware of the relationship between victim and accused.

The trial was run by the Judge with a gentle, but firm, command, in a clear voice, but with evident compassion and fairness.

After some days of hearing and deliberation, and late in the afternoon, the jury found the accused guilty. He was then remanded in custody. Not long after, in the fading light after 5pm, the Judge was grappling with the padlock on the gate. She noticed, a matter of yards away, the family of the now offender. They were obviously distraught and agitated. One, a sizeable young man, probably a brother of the offender, stood and looked at the Judge. After a time he appeared to recognise, despite the absence of the camouflage of wig and red robes, the Judge who had just presided over the trial, a catastrophic chapter in their lives and in the life of their son and brother. The young man who had noticed the Judge nudged and spoke to the others. They turned, fell silent, and looked at the Judge. Nothing was said, but the young man and one or more of the family nodded to the Judge in apparent recognition of who she was and in apparent acceptance of the fate that had come to them and to their son and brother. This was a silent and deeply emotional acceptance of the fairness and humanity of the process, and of the person who had presided over it. These people did not have the eloquence of the Iranian man before Paul Finn, but their appreciation of the presence of justice was just as profound.

The third example was a case that had a deep effect on me as a judge midway through my judicial career when I began to think deeply about the criminal law, presiding in the Court of Criminal Appeal. This was *Veen (No 2)*.[40] In 1971, Mr Veen, a young man aged 20 years, was convicted of manslaughter, having viciously stabbed his victim many times. He had a formidable criminal record including malicious wounding of his landlady four years previously in an attack with a kitchen knife. He had attempted suicide on a number of occasions. The evidence of his diminished responsibility was given by a psychiatrist, but was unsatisfactory. But what was clear was that he had a long history of alcohol and drug abuse as a child and teenager, and had suffered physical and sexual abuse as a child. Mr Veen had been working as a male prostitute and after having spent the weekend with the client victim whom he had met on the Friday evening at Kings Cross, he violently stabbed the man after drinking heavily and being subjected to racial abuse. He was sentenced to life imprisonment. The sentencing Judge said that the ordinary sentencing principles did not apply and that he had to be imprisoned to protect the community. The Court of Criminal Appeal dismissed the appeal. The High Court, by majority, allowed the appeal, and the matter was remitted for resentencing.[41]

Nine years later in 1988, Mr Veen came before the High Court again. Mr Veen had been released on licence on 20 January 1983 for the earlier manslaughter after resentencing. A little under nine months later, on 27 October 1983, he killed another man, again by repeated stabbing. The victim was also a client of Mr Veen, who had again been working as a prostitute. A plea of manslaughter was accepted on the basis of diminished responsibility. The psychiatric evidence was more cogent on this occasion as to his propensity for violent conduct. Again, he was sentenced to life imprisonment. Again, the Court of Criminal Appeal dismissed the appeal.[42] This time, the High Court, by majority, dismissed the appeal. The reasons of the

[40] *Veen v The Queen (No 2)* (1988) 164 CLR 465.
[41] *Veen v The Queen (No 1)* (1979) 143 CLR 458.
[42] *R v Vincent (aka Veen)* (1986) 33 A Crim R 222 (NSWCCA).

majority (Mason CJ, Brennan, Dawson and Toohey JJ) are important in expressing the principle of proportionality in the law. The minority, Wilson J, Deane J and Gaudron J in their respective judgments would have allowed the appeal on the basis that the length of sentence reflected a measure of preventative detention to protect society without statutory warrant.[43] It is the reasoning of the majority that is of importance for this evening. The judgment has a sophisticated subtlety of the expressed and unexpressed reflecting the true human character of, as well as the antinomies immanent in the conflicting considerations necessary for, sentencing.

The majority recognised that a sentence should not be increased beyond what is proportionate to the crime in order merely to extend the period of protection of society from the risk of recidivism on the part of the offender.[44] However, they said that it did not mean that the protection of society is not a material factor in fixing a proportionate sentence.[45] The majority observed that the practical observance of this distinction, between extending a sentence merely to protect society and properly looking to society's protection in determining the appropriate or proportionate sentence, calls for a judgement of experience and discernment.[46] (I would interpolate: human wisdom.)

The majority lucidly, and with great humanity, discussed the apparent anomaly in the way in which mental abnormality which would make an offender a danger if he were at large is regarded when it reduces the crime of murder to manslaughter. The mental abnormality of diminished responsibility exonerates an offender from liability to conviction for a more serious offence, but that exoneration having taken place may be a factor which sees a heavier punishment that might otherwise be the case. Sentencing was recognised as not a purely

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[43] *Veen v The Queen (No 2)* (n 40) at 487–90 per Wilson J, 493–5 per Deane J and 496–9 per Gaudron J.
[44] Ibid at 472, discussing *Veen v The Queen (No 1)* (n 41).
[45] Ibid at 473.
[46] Ibid at 474.

logical exercise, and the troublesome nature of the sentencing discretion arises in large measure from unavoidable difficulty in giving weight to each of the purposes of punishment: the protection of society, deterrence of the offender and others, retribution and reform. The purposes overlap. None of the purposes can be considered in isolation from the others when determining what is appropriate in a particular case.[47] Sometimes the purposes point in different directions. And so, a mental abnormality which makes an offender a danger to society when he is at large, but which diminishes his moral culpability for a particular crime, is a factor that has two countervailing effects: one tending towards a longer custodial sentence the other towards a shorter.[48]

Reading the whole judgment, with all its lucid subtlety, one can conclude that it was the necessity to maintain public confidence in the processes of criminal justice that was of determinative importance. This is not a question of logic; it is a question of human judgement.

The perfect AI might be able to mimic the result (and perhaps the reasoning) of (and in) the majority judgment, or the judgments of Wilson J, Deane J, and Gaudron J.[49] There was no correct conclusion in this case. The human values expressed by all were moulded and shaped into different conclusions by humans dutifully attending to their task. The acceptance of one

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[47] Ibid at 476.

[48] Ibid at 476–7.

[49] This (ie, AI's abilities to mimic judicial or other legal reasoning) reflects the most recursive topic of interest in scholarship on AI and the law: see Trevor Bench-Capon, "Thirty Years of Artificial Intelligence and Law: Editor's Introduction" (2022) 30 *Artificial Intelligence and Law* 475, 476–7. The notion of AI replacing judges outright has been proposed and discussed with some degree of regularity and seriousness: see, eg, Ongenae (2021) (n 18) 103 [4]; including recently at panels in Australian Arbitration Week 2023 in Perth, notably at a session of the ACICA & CIArb International Arbitration Conference on 9 October 2023 entitled "Arbitration New Frontiers: AI, Sustainable Practices and Other Ideas" and presented by Professor John Swinson, Angelina Gomez, Kiran Sanghera, Schellie Jane Pryce and Daisy Mallett, and an event at Ashurst on 10 October 2023 entitled "Harnessing Generative AI: Large Language Models as Catalysts for Innovation in Arbitration" and presented by Luke Carbon, Lachlan McCalman and Natasha Blycha. Cf G Sartor & L Karl Branting, "Introduction: Judicial Applications of Artificial Intelligence" Giovanni Sartor & Karl Branting (eds), *Judicial Applications of Artificial Intelligence* (Springer, 1998) 1, 1; Deakin & Markou, "From Rule of Law to Legal Singularity" (2020) (n 36) 6; Jean-Marc van Gyseghem, "Fundamental Rights and the Use of Artificial Intelligence in Court" in Larry A DiMatteo, Cristina Poncibò & Michael Cannarsa (eds), *The Cambridge Handbook of Artificial Intelligence: Global Perspectives on Law and Ethics* (Cambridge University Press, 2022) 257, 271.

or other of the judgments is not by its correctness in some binary choice. It flows from the process of human engagement in the infliction of punishment on behalf of the state on Mr Veen who had come before the court.[50] To suggest that a machine undertake this task is to fail, entirely, to appreciate the necessity of human engagement.[51] The capacity to mimic is irrelevant.

These two events, and one High Court judgment should now be placed in a framework of ideas. This is to assist in understanding why humans are integral to the law and the administration of justice. That is not to reject or minimise the likely importance of AI in assisting in dealing with the thickets and forests of data that we have created in modern life and that threaten to choke the law and public administration.

The poetic insight of Paul Finn's Iranian applicant and the intuitively generous and gentle recognition of justice by the distraught family of the offender at Taylor Square, are not just expressions of human feeling or emotion. They help to illuminate the nature of the Rule of Law, a nature, which, when appreciated, can be seen not only to accommodate, but also set the necessary limits for, the enthusiastic use of AI. AV Dicey gave three meanings to the rule of law: first, that no-one is to be punished except for a distinct breach of the law established in an ordinary legal manner before the ordinary courts; secondly, that no-one is above the law, and everyone (whatever rank) is subject to the law and to the ordinary courts; and thirdly, a pervading legal spirit of freedom in the common law.[52]

It is the third meaning that is important for present purposes.

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[50] See similarly Michele Taruffo, "Judicial Decisions and Artificial Intelligence" in Giovanni Sartor & Karl Branting (eds), *Judicial Applications of Artificial Intelligence* (Springer, 1998) 207, 208.
[51] Cf Uri J Schild, "Criminal Sentencing and Intelligent Decision Support" in Giovanni Sartor & Karl Branting (eds), *Judicial Applications of Artificial Intelligence* (Springer, 1998) 46, 50–2.
[52] See AV Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 10th ed, 1962) 202–3.

The condition of society is also important to the Rule of Law. In particular, there is a need for the law to be accessible in its coherence and writing, and for the courts to be financially and practically accessible. In this, with our digitally choked lives, AI, in its proper and reliable use, may be seen to be important to the law's accessibility and so to strengthening the Rule of Law.

An important and pervading consideration to the notion of the Rule of Law is that the law is human in its character, and in its object. Law, being society's relational rules and principles that govern and control all exercises of power, must have a character and form that is adapted to, and suited for, application to law's *human* task. An appreciation of this humanity of the law is central to its proper expression and to preserving its strength.[53]

Law, at its very foundation, is conceived and derived from values. These values inform and underpin a fair and reasonable expectation of how power should be organised, exercised and controlled, at the private and public level. These values find their expression not only in the formal law, but also in societal expectations, behaviour and actions. These transcend cultural boundaries. They lie in the heart of every individual, and at the heart of society — as *human* values. They are honesty; a rejection of unfairness; an insistence on essential equality; respect for the integrity and dignity of the individual; and mercy. Each goes to the core of what we understand humanity and the individual to be, and to what is expected when power is exercised by, or against, individuals. Dignity lies at the foundation of self, and ultimately informs the rejection of unfairness. These values find expression in the rules, principles, precepts and norms developed by society and by the law. But the nature of these values is such as to make it necessary to recognise the limits of text in their expression, drawn ultimately, as they are, from the human condition, and the intuition and sensibility therein. They do not admit of minute definition. Words (and so what is written down) can often be inadequate to express the subtlety of human relations.

[53] See Pasquale (2020) (n 37) vii. Cf Lee (2022) (n 6) 69.

The law, in its creativity and flexibility, has drawn upon these values in numerous manners and forms. The concern of public law to prevent the exercise of power which is arbitrary, capricious, or unreasonable can be seen to reflect a concern with rejecting unfairness. This is the reasonable expectation of each individual that power will not be exercised against her or him in a manner that fails to respect her or his integrity and dignity. The same can be seen in the concern of private law to prevent unconscionability and to deter behaviour that is antithetical to honest, reasonable, mutually beneficial commercial relations.

There is an important balance of values and detailed rules to be struck in this respect. Legal systems and societies cannot be built or sustained by reference only to generally expressed values. Neither, however, can they be built upon a myriad of strict, textually expressed rules alone.[54] Rather, a balance must be struck of rules, principles, precepts, norms and values; a balance which recognises the requirement that rule and principle conform to moral standards as the gauge of the law's flexibility, as its avenue for growth, and in order to accommodate changes in society's conceptions of the application of unchanged values. The balance must also recognise the need for a coherent structure of rules, the absence of which may confound law by a drift into a formless void of sentiment and intuition.[55]

In discussing the nature of law I have often referred to an aphorism of Sir Maurice Byers, a former Commonwealth Solicitor-General. He said:

> "*The law is an expression of the whole personality and should reflect the values that sustain human societies. The extent to which those values influence the*

[54] See, in connection with AI, Bart Verheij, "Artificial Intelligence as Law: Presidential Address to the Seventeenth International Conference on Artificial Intelligence and Law" (2020) 28 *Artificial Intelligence and Law* 181, 187; Van Der Haegen (2021) (n 18) 83 [20].
[55] See Tata (1998) (n 17) 102; Bart Verheij, "The Toulmin Argument Model in Artificial Intelligence: Or: How Semi-Formal, Defeasible Argumentation Schemes Creep into Logic" in Iyad Rahwan & Guillermo R Simari (eds), *Argumentation in Artificial Intelligence* (Springer, 2009) 219, 219–20.

> *formulation of the law varies according to the nature of the particular legal rule in question.*"[56]

Sir Maurice was referring to the humanity of the law, from which one draws an insight into legal and judicial technique, the nature of law, and the content of the Rule of Law.[57]

Rules and textual expression of logically constructed and organised ideas are central to a coherent body of law.[58] But where is the place of logic and of organised abstracted ideas in a personality? Taxonomy is an abstraction of the mind. It is the disembodiment of the whole into its parts, and their placement into an organised logical structure. It can be seen as a depersonalised abstraction; but it can also be seen as a human feature — as part of the human search for order and security. It is a way of thinking abstractly, in particular about parts and their ordering, as opposed to thinking about the whole and its character, including its implicitness — about its whole personality. There is much, therefore, to be said in thinking about the law of the relationship between abstraction and theoretical taxonomical ordering of the parts, on the one hand, and a feeling of the human, the relationally experiential and the contextual, on the other.[59]

The humanity of the character of law, the relationship between rules and values, and the realisation that a just civil society is not based on expressed rules alone, but something far more subtle and complex, are all features central to the conception of the Rule of Law.[60] These features might be seen to inform and illuminate Dicey's legal spirit of freedom. Though the

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[56] Sir Maurice Byers, "From the Other Side of the Bar Table: An Advocate's View of the Judiciary" (1987) 10 *University of New South Wales Law Journal* 179, 182.
[57] For a fuller discussion, see James Allsop, "The Law as an Expression of the Whole Personality" (Sir Maurice Byers Annual Lecture, NSW Bar Association, Sydney, 1 November 2017), published [2017] (Summer) *Bar News* 25.
[58] Markou & Deakin, "*Ex Machina Lex*" (2020) (n 17) 32.
[59] On the difficulties of AI engaging in "abstraction", see ibid 52.
[60] See further James Allsop, "The Rule of Law is Not a Law of Rules" (Annual Quayside Oration, Perth, 1 November 2018).

critical values that inform the law (the dignity of the individual and the rejection of unfairness) are conceptions (that is, abstractions), they are conceptions that are derived from emotion, sentiment, the human condition and social experience.[61] These values come from life and experience. Thus, as important as the relationship between rules and values is the recognition of the relationship between the abstract (in its different forms) and the experiential (in its countless unique manifestations). It is from the experiential that the abstracted human values that sustain societies manifest themselves in concrete situations, in law and in society, and so, as abstractions, gain recognition and importance in real life: just as they did to the Iranian man before Paul Finn and to the family at Taylor Square.[62] It is the human and the experiential that give the proper context for the derivation and expression of rules, principles and law. From that derivation, rules, principles and law become infused with values.[63]

I turn to these jurisprudential considerations to emphasise the need for human judgement in relation to law in so many circumstances.

Logic, definition and precise taxonomy may solve many problems, but human judgement in relation to others is central.[64] I accept that human judgement can be mimicked (at least in result, but also, perhaps, in a body of reasons) by a machine,[65] but that is not the process of undertaking the process and making the human judgement, in particular when the judgement

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[61] See Mitchell & Krakauer (2013) (n 12), referring to the abstractness of human "concepts": at 3.
[62] See also Yoonsuck Choe, "Meaning Versus Information, Prediction Versus Memory, and Question Versus Answer" in Robert Kozma et al (eds), *Artificial Intelligence in the Age of Neural Networks and Brain Computing* (Academic Press, 2019) 281, 282–3.
[63] On the necessity (but difficulty) of infusing AI with "values", see Shengnan Han et al, "Aligning Artificial Intelligence with Human Values: Reflections from a Phenomenological Perspective" (2022) 37 *AI & Society* 1383.
[64] See John L Pollock, "A Recursive Semantics for Defeasible Reasoning" in Iyad Rahwan & Guillermo R Simari (eds), *Argumentation in Artificial Intelligence* (Springer, 2009) 173, 173–5.
[65] Although the suggestion that an AI-generated post hoc justification for a decision that we term a "judgment" is akin to that of a human is quite different to the suggestion that the actual reasoning process conducted by the AI was akin to that of a human: see Schild (1998) (n 51) 48–9; Henry Prakken & Giovanni Sartor, "Modelling Reasonings within Precedents in a Formal Dialogue Game" in Giovanni Sartor & Karl Branting (eds), *Judicial Applications of Artificial Intelligence* (Springer, 1998) 127, 132–5; Taruffo (1998) (n 50) 210.

involves choice between two equally available conclusions: as in the different conclusions of the majority and minority in *Veen (No 2)*.

These considerations are easier to see in dealing with the criminal law. In criminal law — the epitome of public law — one sees the interplay and balance between rule and value, and between the abstracted expression and the experiential.

The need to define, with clarity, the limits and content of criminal liability is clear, indeed, perhaps self-evident. The law as to criminal responsibility should be as certain as possible, with as little place for value judgment as is reasonably possible.[66] This is so even though the criminal law is regulating human relationships and experience from where the substantive content of the rules of liability must be derived. If the rules of criminal responsibility do not conform to, and are not expressed by reference to, and in language conformable with, the relationally human and the experiential, they will lose community consent and respect.

Upon conviction, the criminal must be sentenced to punishment. From the universe of liability where rule is central to legitimacy, one moves to a universe where rule is part, but only part, of an exercise that is experientially intuitive at heart.

Australian law has rejected the rigid rule-based sentencing that is so prevalent in the United States.[67] A human and societal response is called for instinctively and intuitively formed within the framework of statutory rules. The human response dominates. The duty of the sentencing judge is, as the High Court said in *Elias*, "to balance often incommensurable factors and to

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[66] *Taikato v The Queen* [1996] HCA 28; 186 CLR 454 at 466. There are exceptions. Sometimes an evaluative assessment is a central part of an offence. The offence of wilful misconduct in public office includes as elements of the offence "wilful misconduct, by wilfully neglecting or failing to perform his duty in a way that merits criminal punishment": *R v Quach* [2010] VSCA 106; 201 A Crim R 522 at 535 [46]; *R v Obeid (No 2)* [2015] NSWSC 1380 at [22] and [111]–[121]; *Obeid v R* [2017] NSWCCA 221 at [60] and [201]–[235].

[67] And for which AI tools have been used for some time now (and have incurred their fair share of criticism): G'Sell (2022) (n 18) 350–1.

arrive at a sentence that is just in all of the circumstances".[68] The instinctive synthesis[69] is the human, and not mechanical or mathematical, response to the circumstances and to the often conflicting factors and considerations. There are no quantitative boundaries or rules of literal application in sentencing.[70] It is a process concerned with individualised justice in the context of the offender's relationship with society. It is the evaluation of the human context of the offender and society that marks the process, eschewing any structured approach, or mechanical application of any abstracted rule.

The experiential, the implicit and the importance of feeling to the human circumstance allows the Court, as an institution, with its experience and knowledge to express its response as the manifestation of just state power to the inherently human, infinitely varied, often tragic and violent situations before it. One cannot reason out in logic, or even describe, except by conclusions evoked from human feeling, why the sentence imposed on an offender for a violent crime is inadequate. A universe of factors can be expressed, but the conclusion can only be reached intuitively by contemplation, evaluation and elucidation. The comprehensive expression of the precise weight and importance of each factor is impossible, because the task is the assessment of the whole by reference to a human judgment of appropriateness and justice, based on experience and instinct.

One can read the reasons of Sir Frederick Jordan in 1936 in *Geddes' Case*[71] in the gritty, blunt prose of the Depression years and have evoked to the mind the human circumstance, reality and tragedy of Mr Geddes' crime — the drunken beating to death of his physically more powerful rival after the taunts of his estranged partner — an intended "thrashing" that ended a life. It is from the articulation of the reality that the justice of the response, so long ago, is still felt. This is law and justice, because it is not all abstracted rule.

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[68] *Elias v The Queen* [2013] HCA 31; 248 CLR 483 at 494 [27].
[69] *Markarian v The Queen* [2005] HCA 25; 228 CLR 357 at 377–8 [51]–[52] per McHugh J.
[70] See particularly Tata (1998) (n 17) 110–12.
[71] *R v Geddes* (1936) 36 SR (NSW) 554.

That is why the clear articulation or description of why the sentence is appropriate in the direct language of experience and life is so important. The expression will have its limits, but it is not theoretical or logical: it expresses society's human response to the wrong drawn from collective value and feeling, through the judge: the human judgement of the detached human embodiment of just state power.[72]

These are matters which have no one correct answer. The confidence in the acceptance of one judgment comes from a recognition of the human engagement with justice to reach it.

Many fields of the civil law are no different to the criminal law in this respect, though they may sometimes be less emotional. That said, Paul Finn was hearing the civil case brought by the Iranian man.

The law is replete with judgements that involve the evaluation of facts, rules, principles and values about which reasonable minds may differ: the process of characterisation of facts into legal categories; a conclusion on unconscionability or lack of good faith; the reaching of an opinion about the value of property; a conclusion whether a breach of contract was fundamental or whether there has been repudiation of a contract; whether a law bears a particular constitutional character.[73] Often, such questions have no necessarily correct answer.

In many ways we have allowed our society to become mechanised and sterile with a drained sense of spirituality. There is no reason why science should necessarily have done this.[74] The

[72] See further James Allsop, "Being a Judge" (Papua New Guinea Bench and Bar Dinner Address, Port Moresby, 17 November 2022).
[73] See, eg, Deakin & Markou, "From Rule of Law to Legal Singularity" (2020) (n 36) 17.
[74] See further Iain McGilchrist, "God, Metaphor, and the Language of the Hemispheres" in Paul Chilton & Monika Kopytowska (eds), *Religion, Language, and the Human Mind* (Oxford University Press, 2018) 135, 153–5.

machine, as the Emissary undertaking the useful tasks set by the Master, will or may improve or indeed even enrich the legal system.[75]

To mistake the machine for the Master will lead to the end of the spirit of the law as human and free. The danger is not the machine becoming human; it is the human becoming the machine.

How we embrace and usefully use machine learned capacities to reduce the cost of justice and increase the penetration of distilled appreciation into almost impenetrable thickets of available data that we have created should be guided by an appreciation of what the law is, and what the law is not.[76]

The greatest danger is not from the machine, but from the human who thinks like the machine about the law.[77] That danger is real: some lawyers and some Judges can be heard to say at times that text and logic form the law.[78] For them the machine may begin to be human, but it is they who mimic the machine by refusing to accept or appreciate that the law is not abstract logic and words alone (important though they are); it is the indefinable presence of rule, principle and value; ultimately it is organised societal morality. The results of the application of the law may be mimicked by a machine; but for there to be a system of justice there must be the human process of engagement in the manner I have discussed.

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[75] To borrow the terminology of Iain McGilchrist, *The Master and his Emissary: The Divided Brain and the Making of the Western World* (Yale University Press, 2009), from whom I have previously drawn in James Allsop, "Thinking about Law: The Importance of How We Attend to the Matter at Hand and of Context" (Middle Temple Lecture Series, 18 July 2022). McGilchrist vaguely (but perhaps, it seems, falsely) attributes the story of the eponymous "Master" and "Emissary" to Friedrich Nietzsche.

[76] See, making a similar caution, Taruffo (1998) (n 50) 213.

[77] Or, indeed, about the human brain: Steven Fuller, "The Brain as Artificial Intelligence: Prospecting the Frontiers of Neuroscience" (2019) 34 *AI & Society* 825, 826–7.

[78] See particularly, in connection with AI, Ng (n 8) 37; Enrico Francesconi, "The Winter, the Summer and the Summer Dream of Artificial Intelligence in Law: Presidential Address to the 18th International Conference on Artificial Intelligence and Law" (2022) 30 *Artificial Intelligence and Law* 147, 150, 153. See also Tata (1998) (n 17), who, cynically, but not unpersuasively, suggests that this position is sometimes held on account of convenience or pragmatism rather than theoretical reasons: at 101–2, citing P Alldridge, "Anoraks among the Suits and Jeans: Computers, Law and the Legal Academy" (1997) 2 *Journal of Information Technology and Law*.

This may, I hope it does, say something of human consciousness: the human consciousness that allows us to recognise the deep societal and human importance of the response of the Iranian man in feeling and words, of the family at Taylor Square in feeling and sign, and of later Judges contemplating *Veen (No 2)*: All embodying a sense of the presence of justice.

Perth

21 November 2023