
OKLAHOMA CITY UNIVERSITY LAW REVIEW

VOLUME 48

SUMMER 2024

NUMBER 2

NOTE

ARTIFICIAL INTELLIGENCE IN THE PRACTICE OF LAW: HOW NATURAL LAW THEORY HELPS US DRAW THE LINE

*Timothy D. Geary**

INTRODUCTION

Thinking machines have caught the modern world by storm.¹ Artificial intelligence (or “AI”) has infiltrated global consciousness and daily life.² AI plans dates, writes grocery lists, composes emails, and even provides

* Candidate for Juris Doctorate, Oklahoma City University School of Law, May 2024. I am grateful to Professor David Danks of Carnegie Mellon for having sparked an interest in artificial intelligence ethics. I am also thankful to the academic supervisor of this Note, Dean Emeritus Jim Roth, for his winsome and practical guidance. A special thanks to Jeffrey C. Swall for the encouragement to pursue a law degree; also, to the family, friends, and peers who have offered tireless support and patient understanding. Above all, I thank God who grants us the ability to enjoy the fruits of diligent labor to love Him and our neighbor.

1. Kimberley Hardcastle, *We’re talking about AI a lot right now – and it’s not a moment too soon*, THE CONVERSATION (Aug. 23, 2023, 7:07 AM), <https://theconversation.com/were-talking-about-ai-a-lot-right-now-and-its-not-a-moment-too-soon-211448> [<https://perma.cc/Y7W3-Z3YH>].

2. *See id.*

companionship.³ One of the hottest trending AI platforms is OpenAI's technological wonder, ChatGPT. ChatGPT is an AI-powered system that performs impressive research and writing, detailed art production, and complex data analytics.⁴ Many professions have integrated AI into their workflow and delegated complex tasks to AI systems.⁵

The practice of law requires complex problem-solving processes backed up by reliable sources and predictions of success for any chosen course of action.⁶ Typically, a client conveys disparate facts to their lawyer with a host of potential legal issues. The lawyer's job is to take the client's story, then identify and solve the relevant legal problems. Another layer of complexity is the ever-changing face of what the law is.⁷ The Supreme Court or state legislatures often change the landscape of the law and upend much of our assumed understanding.⁸ Legal problem solving requires interpersonal skills, analytical reasoning, thorough and reliable research, high-level reading capabilities, accurate writing, and cogent presentation skills. Legal practice is difficult, and we should use all the tools we can to solve problems.

AI is currently being used in the legal profession. For example, the legal platform Casetext recently released one of the first AI-powered legal assistants, CoCounsel.⁹ CoCounsel is built of Open AI's GPT-4 and can read, comprehend, and write at a high level.¹⁰ CoCounsel can “[a]ccomplish shockingly thorough, accurate, and efficient work—so you can do more of what AI can't.”¹¹ In the words of Amy Carr, the Senior Manager of Bowman and Brooke LLP, CoCounsel saves hours of attorneys' time, allowing “more time to focus on the more human aspects

3. Francesca Paris & Larry Buchanan, *35 Ways Real People Are Using A.I. Right Now*, N.Y. TIMES (Apr. 14, 2023), <https://www.nytimes.com/interactive/2023/04/14/upshot/up-ai-uses.html>.

4. *ChatGPT*, OPENAI, <https://openai.com/chatgpt> [<https://perma.cc/F3QJ-RGKR>].

5. Darrel M. West & John R. Allen, *How artificial intelligence is transforming the world*, BROOKINGS (Apr. 24, 2018), <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/> [<https://perma.cc/4ZMG-6DZJ>].

6. Edson R. Sunderland, *The Art of Legal Practice*, 7 MICH. L. REV. 397, 398-99 (1909).

7. *Id.* at 398-400.

8. *Id.* at 397.

9. *Meet your new AI legal assistant*, CASETEXT, <https://casetext.com/> [<https://perma.cc/4B9C-J4FD>].

10. *See id.*

11. *The legal AI you've been waiting for*, CASETEXT, <https://casetext.com/cocounsel/> [<https://perma.cc/qq6L-7WU9>].

of law, like developing client relationships.”¹² It is “a groundbreaking way of interacting with legal technology . . . [because] lawyers can reliably delegate substantive, complex work to an AI assistant—just as they would to a legal professional—and trust the results.”¹³ Delegation of research, contract drafting and review, and trial preparation are the main uses of CoCounsel. In many law firms, these tasks are typically delegated to the junior associates. However, some argue that CoCounsel is better than a junior associate because it can simultaneously predict a likely outcome and say what it does not know.¹⁴ With CoCounsel, seasoned attorneys can focus on client interaction, case strategy, and creative solutions.¹⁵ CoCounsel can work on time-consuming tasks traditionally reserved for novice attorneys—research, writing, document review, and discovery.¹⁶

AI systems are powerful and useful for many tasks. Despite the utility of AI systems, attorneys may face ethical discipline if they do not check that their machines “work.” For example, New York attorneys were sanctioned for filing a brief with fictitious Supreme Court opinions.¹⁷ ChatGPT, the AI system that the attorney used to write the brief, “hallucinated—a term for when AI [programs produce] false information[.]”¹⁸ Shortly after, the attorneys were scolded and fined \$5,000 for the fake legal research and arguments generated by the AI chatbot ChatGPT.¹⁹

Popular trends and cultural phenomena, such as CoCounsel or

12. *Id.*

13. *Casetext Unveils CoCounsel, a AI Legal Assistant Powered by OpenAI Technology*, LEGAL TECH BLOG (Mar. 13, 2023), <https://legal-tech.blog/casetext-unveils-cocounsel-ai-legal-assistant-powered-by-openai-technology> [<https://perma.cc/E67D-NPVY>].

14. Joe Patrice, *Legal AI Knows What It Doesn't Know Which Makes It Most Intelligent Artificial Intelligence of All*, ABOVE THE L. (Mar. 1, 2023, 5:44 PM), <https://abovethelaw.com/2023/03/casetext-cocounsel-ai-tool/> [<https://perma.cc/ZW3P-8W9W>].

15. *See id.*

16. *Id.*

17. Rachel Shin, *Humiliated Lawyers Fined \$5,000 for Submitting ChatGPT Hallucinations in Court: 'I Heard About this New Site, Which I Falsely Assumed Was, Like, a Super Search Engine,'*, YAHOO! (June 23, 2023) <https://finance.yahoo.com/news/humiliated-lawyers-fined-5-000-164109050.html?guccounter=1> [<https://perma.cc/T3PE-4DA6>].

18. Rohan Goswami, *ChatGPT cited 'bogus' cases for a New York federal court filing. The attorneys involved may face sanctions*, NBC NEWS (May 30, 2023, 11:22 AM), <https://www.nbcnews.com/tech/tech-news/chatgpt-cited-bogus-cases-new-york-federal-court-filing-rcna86843> [<https://perma.cc/4AJR-Y9P7>] (internal quotations omitted).

19. Shin, *supra* note 17.

ChatGPT, show the complexity of AI in the legal profession. The law is ultimately the force of the State. Those who say what the law is and how it should apply to individuals hold tremendous power. The tasks of researching the law and applying that law to individual cases requires prudent human agents. Delegating legal tasks—traditionally done by humans—to AI-powered machines is no small matter. There is no settled agreement on what AI is or how it ought to be implemented in the legal profession.

In addressing these problems, understanding the purpose of the legal profession and its available tools is critical. The Model Rules of Professional Conduct require lawyers to provide competent representation to their clients.²⁰ Competent representation requires the “legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”²¹ Comment 8 to Rule 1.1 states that, “a lawyer should keep abreast of changes in the law and its practice, including the *benefits and risks associated with relevant technology*[.]”²² Licensed attorneys should understand the benefits and risks associated with advanced technological tools to best represent their clients.

Construction tools such as hammers, drills, or skill saws, have both safety and operation manuals. So too, the technologically-empowered lawyer must read and practice the “safety” and “operation” manuals of AI. This is the first step. Just because a lawyer can use a tool does not mean that they *should*. A hammer is best suited for driving nails—not for cutting precise geometrical shapes. Similarly, AI is best suited for some tasks and not others within the legal profession. Tools should always remain subservient to their maker. That is, tools should serve the good of their creator—we should not fall prey to misuse. As we will see, the legal profession is not entirely on board with the modern hype of AI integration. But caution is still warranted.

Where AI should and should not be used is an unsettled topic of debate. Where to draw the line—the demarcation points of AI use in the legal profession—is unclear. This Note examines the proposition that old truths can solve new problems. Natural law theory helps delineate clear areas of permissible AI usage and the lines not to be crossed. Although no theory is perfect or complete, natural law theory can offer a unique perspective and help resolve the ongoing debate. This Note argues that AI

20. MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2016).

21. *Id.*

22. *Id.* (emphasis added).

use should be drawn at the most consequential legal stage—final judgement. AI is a tool to assist in final judgement. The ultimate resolution and responsibility for any legal dispute must reside with real human beings.

This Note explores the legal tasks best suited for AI-powered tools and seeks to draw the line where AI should arguably *not* be used. In Part One, we will explore the historical and technical background of AI, its uses in the legal profession, and proposed regulatory frameworks. Next, in Part Two, we explore the contours of natural law theory by considering holistic arguments for and against its application in legal practice. In Part Three, this Note argues that final legal judgment and disposition of legal disputes ought to reside with natural human beings—not artificial machines.

I. ARTIFICIAL INTELLIGENCE DEFINED AND USES IN THE LEGAL PROFESSION

Artificial Intelligence (AI)

We humans generally fear what we do not understand. Bowing in subservience to the gods of the unknown is far too common. This section dispels the high aspirations of AI and proposes some basic working definitions of what it is and how it works.

In *Machines That Think*, Pamela McCorduck poses the question “[c]an a machine think?”²³ At face value, this question seems absurd. How can we humans, who struggle to understand how we think and exist in the world, determine whether a machine can think as well?²⁴ We homo sapiens can think, manipulate symbols, interact with the physical world, and plan for an uncertain future—thus lifting ourselves above the uncivilized beasts.²⁵ Despite this, the idea of self-replication and perfection pervades our collective consciousness.²⁶ Our history reveals comical, nutty, legendary, and real attempts to make artificial intelligences.²⁷ These “intelligences” represent the reproduction of “us” in artificial mediums.²⁸ As McCorduck puts it, we flutter “[b]ack and forth between myth and

23. PAMELA MCCORDUCK, *MACHINES WHO THINK*, at 3 (2004).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

reality, our imaginations supplying what our workshops couldn't, we have engaged for a long time in this odd form of *self-reproduction*.”²⁹

The goal of AI is human self-reproduction reaching for the skies of perfection. McCorduck takes our deep-seated desires a step further—AI is an attempt to forge a god complex.³⁰ We desire to create who we are and much more.³¹ McCorduck argues that AI represents the intersection of the humanities and sciences to transcend human experience and become who we are not—all-knowing, immortal, and powerful.³²

Beyond the god complex, there are likely two primary avenues for the dazzling helpmate called AI.³³ The first is the intelligent assistant—currently at work in chemistry, mathematics, medical diagnoses,³⁴ and legal research. The assistant frontloads difficult and time-consuming tasks, leaving time for more creative pursuits.³⁵ The second is “connected with the first, and [sees] AI as a model of how humans think, and therefore how they learn, which will change our methods of education[.]”³⁶ In short, AI is the study and replication of what makes us human—educationally informed, universal laborers, and explorers.

With the end goals and vision of AI behind us, we now explore some working definitions and rudimentary functions of AI. A good starting point begins with defining the common usage of the terms “artificial” and “intelligent.” Artificial is something “humanly contrived often [based on] a natural model.”³⁷ It is an “imitation [or] sham” of something naturally occurring.³⁸ It is fake. For example, the horrifying robot doll in the movie *M3GAN* is an artificial humanoid—it is made by humans and does not naturally occur in the world.³⁹

Intelligence is “the ability to learn or understand or deal with new or

29. *Id.* (emphasis added).

30. *Id.* at 398.

31. *Id.*

32. *Id.* at 412-13.

33. *Id.* at 398.

34. *Id.* at 398-99.

35. *See id.*

36. *Id.* at 399.

37. *Artificial*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/artificial> [<https://perma.cc/9P88-R4KL>].

38. *Id.*

39. Brian Truitt, ‘*M3GAN*’ review: You’ll love the mean-girl robot in this darkly funny, cautionary tale, USA TODAY (Jan. 5, 2023, 11:24 AM), <https://www.usatoday.com/story/entertainment/movies/2023/01/05/megan-movie-review/10994174002/> [<https://perma.cc/9E2J-XZC8>].

trying situations.”⁴⁰ It is also the “ability to apply knowledge to manipulate one’s environment or to think abstractly[.]”⁴¹ For example, a law student who moves from the controlled environment of law school to practice must exercise intelligence to become a competent attorney—each case presents a novel situation. Thus, common word usage and definitions suggest that AI systems are human-made objects that can successfully interact in new situations by applying basic reasoning skills.

Going back to the founding of modern AI further elucidates what AI is. John McCarthy defined AI as “the science and engineering of making intelligent machines, especially intelligent computer programs.”⁴² Building off McCarthy’s definition, “intelligence is the capacity of an information-processing system to adapt to its environment while operating with insufficient knowledge and resources.”⁴³ These definitions are a good starting point. As noted in *Machines Who Think*, we see that the field is seeking to replicate and automate the human components of intelligent behavior.

In the world’s leading AI textbook, *Artificial Intelligence a Modern Approach*, Russell J. Stuart and Peter Norvig provide an excellent overview of what AI is and the goals of the field.⁴⁴ Stuart and Norvig define the study of AI as “the study of [intelligent] agents that receive percepts from the environment and perform actions. Each such agent implements a function that maps percept sequences to actions, and . . . [are either] reactive agents, real-time planners, decision-theoretic systems, [or] deep learning systems.”⁴⁵ Additionally, these agents are successful in terms of faithfulness “to human performance, [or strict] . . . rationality—loosely speaking, doing the right thing.”⁴⁶ Faithfulness to human performance and doing the right thing provide the foundation of four broad categories of what makes AI smart.⁴⁷

40. *Intelligence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/intelligence> [<https://perma.cc/N6GQ-4R6G>].

41. *Id.*

42. John McCarthy, *What is AI? / Basic Questions*, STAN. COMPUT. SCI., <http://jmc.stanford.edu/artificial-intelligence/what-is-ai/index.html> [<https://perma.cc/7LRE-A3WL>].

43. Pei Wang, *On Defining Artificial Intelligence*, J. OF ARTIFICIAL GENERAL INTELLIGENCE, Aug. 2019, at 1, 17.

44. STUART J. RUSSELL & PETER NORVIG, *ARTIFICIAL INTELLIGENCE A MODERN APPROACH* (4th ed. 2022).

45. *Id.* at 7-8.

46. *Id.* at 19.

47. *Id.* at 19-20.

The first category is the “acting humanly,” or Turing test approach.⁴⁸ This approach requires a machine to appear completely human to real human agents in either physical appearance or intelligence.⁴⁹ The machine should successfully interact in the world with other humans by demonstrating rational internal capacities of language, memory, reasoning, questioning, and ability to adapt to new circumstances and detect patterns.⁵⁰ This approach requires computer vision, speech recognition, and an ability to manipulate objects and move about.⁵¹ For example, in the TV series *West World*, robotic hosts interact with real humans and are indistinguishable from natural humans through both their appearance and interaction.⁵²

Second, the “thinking human,” or cognitive modeling approach, emphasizes internal human thought processes.⁵³ These processes include introspection, psychological experiments, and brain imaging.⁵⁴ If AI solves problems just like a human, the more likely the goal of thinking humanly is achieved.⁵⁵ For example, a law student seeking to improve legal reasoning skills should exercise high-level introspection of their study habits and the results they receive. If the student could activate the same brain circuitry of a superstar legal practitioner, they could achieve substantially similar results.

Third, the thinking rationally, or “laws of thought” approach focuses on “right thinking”—irrefutable reasoning processes that demonstrate truth.⁵⁶ This system focuses on precise systems of computational notation about objects in the world and relations among them.⁵⁷ Unfortunately, the current human condition reduces our ability to completely know everything in the world or discern the truth about objects. For example, we do not know how a judge will decide a case. We can only predict the outcome based off prior case law and judgments using probability-based systems. Probability systems help fill in the “uncertainty gap” by taking

48. *Id.* at 20.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Westworld*, HBO, <https://www.hbo.com/westworld> [<https://perma.cc/M4J8-R4DY>].

53. RUSSELL, *supra* note 44, at 20.

54. *Id.*

55. *Id.*

56. *Id.* at 21.

57. *Id.*

raw perceptual information to understand how the world works and making predictions about the future.⁵⁸ We can only make educated guesses about an uncertain future.

Finally, the “acting rationally,” or rational agent approach focuses on “the best outcome or, when there is uncertainty, the best expected outcome.”⁵⁹ This goes back to AI agents doing the right thing—that is, successfully completing the objective or goals we provide. In short, an intelligent AI agent takes the best actions to achieve a goal.⁶⁰ For example, an AI agent programmed to catch errors in contracts would be “rationally intelligent” if it could reliably find and demonstrate those errors. Finding the contract errors is the goal, that if achieved, makes the AI system intelligent.

In addition to these four categories, some experts claim AI is distillable into one explainable form—prediction.⁶¹ Prediction comes from the Latin word “*praedicere* meaning to make known beforehand.”⁶² Prediction is the “process of filling in missing information . . . [which] takes information you have, often called ‘data,’ and uses it to generate information you don’t have.”⁶³ For example, an experienced trial attorney presents her case using currently-known law and evidence that she has and presents it to the court in a fashion most likely to yield a favorable result—a ruling favorable for her client. The trial attorney attempts to “make known beforehand” what the final judgment will be.⁶⁴ The missing information is the final judicial determination. The current law and evidence are the data the attorney uses to “walk” into the future beforehand. Therefore, much of legal practice is predicated on prediction.

Prediction Machines also breaks down the anatomy of a decision into six simple steps—how humans generally make decisions.⁶⁵ A decision requires input data from the world that enables a prediction about the future.⁶⁶ The prediction is possible because training occurred pertaining to relationships between types of data, and which data is relevant and closely

58. *Id.*

59. *Id.* at 22.

60. *Id.*

61. See AJAY AGRAWAL ET AL., PREDICTION MACHINES: THE SIMPLE ECONOMICS OF ARTIFICIAL INTELLIGENCE (2017).

62. *Id.* at 24.

63. *Id.*

64. *Id.*

65. *Id.* at 74.

66. *Id.*

associated with a particular situation.⁶⁷ The decision maker then combines judgment about what matters—the end goal—with appropriate action.⁶⁸ That action leads to an outcome with an associated consequence (the sought reward or payoff).⁶⁹ That outcome is a consequence of the decision. The outcome provides a more complete picture of the situation.⁷⁰ The consequence helps us gauge whether the prediction helped solve the problem with our given data.⁷¹ This is where machine learning—feedback about what happened—occurs. Learning from the consequence in turn produces more data to make more informed predictions and judgments.⁷²

For example, a first-year law student taking their first contracts exam helps elucidate these steps. The typical student’s goal is to get a good grade (one that is hopefully above the curve). The good grade is a future prediction that the student wishes to make reality. The student takes the training data acquired from their studies and classroom interactions and shows their work to reach a final legal judgment. The work is completed within the famous, and sometimes dreaded, “Issue, Rule, Analysis, Conclusion” (or “IRAC”) legal analysis framework. Once grades come out, they are hit with the consequences of the exam. If it is good, they keep doing what they are doing. If it is bad, they (hopefully) seek more data on how to internalize generally accepted fundamental legal principles and how to apply those principles to new factual scenarios that simulate real client-problem-solving skills. The student engages in “machine learning” by objectively analyzing the consequences of their decisions based off the predicted goal of a “good grade.” The cycle repeats.

In addition, many computer science experts divide AI into two distinct categories based upon real world interactions—strong and weak AI.⁷³ Weak AI embodies the current state of AI systems, and it embodies the concept that “whatever the program is meant to do, it is merely trying to replicate or duplicate that function.”⁷⁴ In other words, weak AI simulates decision making from a programmer’s code.⁷⁵ For example, chess

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. Rex Martinez, *Artificial Intelligence: Distinguishing Between Types & Definitions*, 19 NEV. L. J. 1015, 1027 (2019).

75. *Id.* at 1028.

software follows preprogrammed strategies and moves while appearing to think.⁷⁶ However, the chess software is just simulating thought. On the other hand, strong AI is intelligent—it *is* the thing that it does without preprogrammed algorithmic steps.⁷⁷ Today, however, there are no complete strong AI systems that operate independent of their creators.⁷⁸

Artificial Intelligence in the Legal Profession

Can AI systems practice law? Before answering this question, a working definition of legal practice is helpful—both for AI legal practice and traditional legal practice. AI in the practice of law is “the theory and development of processes performed by software instead of a legal practitioner, whose outcome is the same as if the legal practitioner had done the work.”⁷⁹ In other words, an artificially programmed machine—rather than a natural human—completes a legal task with an ascertainable outcome.

The *Task Force on the Model Definition of the Practice of Law* provides a helpful starting point on what legal practice is.⁸⁰ The practice of law is “the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.”⁸¹ Further, a

person is presumed to be practicing law when engaging in any of the following conduct on behalf of another:

- (1) [g]iving advice or counsel to persons as to their legal rights or responsibilities or to those of others;
- (2) [s]electing, drafting, or completing legal documents or agreement that affect the legal rights of a person;
- (3) [r]epresenting a person before an adjudicative body, including, but not limited to, preparing or filing

76. *Id.*

77. *Id.* at 1027.

78. *Id.* at 1028.

79. Sergio David Becerra, *The Rise of Artificial Intelligence in the Legal Field: Where we are and Where We are Going*, 11 PEPP. J. BUS., ENTREPRENEURSHIP & L., no. 1, 2018, at 27, 38.

80. *Task Force on the Model Definition of the Practice of Law*, AMER. BAR ASS'N (Sept. 18, 2002), https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/.

81. *Id.*

documents or conducting discovery; or (4) [n]egotiating legal rights or responsibilities on behalf of a person.⁸²

Additionally, “[t]he primary consideration in defining legal practice . . . is the protection of . . . public” interests.⁸³ Therefore, an *actual person* must be the directed target of the conduct before it can be defined as legal practice.

Further, modern American legal practice begins with a licensed practitioner. If a licensed legal professional delegates any legal practice to another—even an AI system—they are directly responsible for any legal advice or practice.⁸⁴ Under Rule 5.1(b) of the Model Rules of Professional Conduct, “[a] lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.”⁸⁵ Similarly, Rule 5.3 states that a lawyer or firm “has in effect measures giving reasonable assurance that the person’s conduct is compatible with the professional obligations of the lawyer.”⁸⁶ The comments further explain that lawyers “must give . . . [nonlawyer] assistants appropriate instruction and supervision[.]”⁸⁷ Therefore, lawyers have ethical duties to supervise any AI system that renders legal advice or judgment.

So, where is AI being used in the legal profession? AI systems that solve complex legal problems and provide the basis of legal advice are currently being used by some top law firms.⁸⁸ A 2023 survey by *Thomson Reuters* revealed that of 443 lawyers and firms, eighty-two percent of them thought AI *could* be applied to legal work.⁸⁹ However, about one-quarter believed AI *should not* be applied to legal work at all.⁹⁰ In other words, AI can be helpful in the practice of law. However, the ethical and moral question of “should” or “ought to” is a drawback for many legal

82. *Id.*

83. *Id.*

84. MODEL RULES OF PRO. CONDUCT r. 5.1 (AM. BAR ASS’N 2007).

85. *Id.* at 5.1(b).

86. MODEL RULES OF PRO. CONDUCT r. 5.3 (AM. BAR ASS’N 2007).

87. MODEL RULES OF PRO. CONDUCT r. 5.3 cmt. 2 (AM. BAR ASS’N 2007).

88. Erica Sandberg, *How Law Firms Are Using Artificial Intelligence in Their Practices*, U.S. NEWS (July 31, 2023), <https://law.usnews.com/law-firms/advice/articles/how-law-firms-use-ai> [https://perma.cc/7TWW-C7NA].

89. *ChatGPT and Generative AI Within Law Firms*, THOMSON REUTERS INST. at 5, 7 (2023), <https://www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2023/04/2023-Chat-GPT-Generative-AI-in-Law-Firms.pdf> [https://perma.cc/UZY5-JJ7F].

90. *Id.* at 7.

practitioners.⁹¹

Yes, beliefs that AI can assist in legal work are growing. These beliefs that generative AI or ChatGPT can and should be used in the legal profession have not begun on a large scale.⁹² Some firms are weighing the benefits and risks and considering implementation of AI, but many firms say they have no plans for using AI now or in the near future.⁹³ Going against the hype, just three percent of respondents said they are using AI or ChatGPT for law firm operations and two percent plan to integrate AI into their future legal practice.⁹⁴ About thirty-four percent of respondents are considering using AI, and over sixty percent said they do not plan on using AI at all.⁹⁵ Within the small percentage of firms actively planning and using AI in operations, they call it the “experimental phase” in a controlled environment.⁹⁶ Holland & Hart’s director said, “[m]y guess is the first cut of this is going to be, in the same way that a senior attorney may have an associate provide an initial draft and they do some analysis on it: ‘Okay, is that good?’”⁹⁷ Other practitioners using AI say it would be a good non-legal assistant that provides a bit of initial context to start the problem-solving process for clients.⁹⁸

We will now explore some specific tasks that AI can do in the legal field. AI can perform numerous legal processes.⁹⁹ The most prevalent use is electronic discovery (or “e-discovery”) and predictive coding.¹⁰⁰ Generally, legal discovery requires the application of research skills to the review of relevant legal documents.¹⁰¹ E-discovery is performed by computers through application of relevant search terms in legal databases and files from opposing counsel.¹⁰² Predictive coding, also called “technology aided review” (or “TAR”), aims to replace junior-associate-level input with programmed software processes which simulate a seasoned attorney’s research and thought processes.¹⁰³ Some firms report

91. *Id.* at 8.

92. *Id.* at 11.

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. Becerra, *supra* note 79, at 27, 30.

100. *Id.* at 39.

101. *Id.*

102. *Id.*

103. *Id.* at 40.

time savings of over seventy-five percent with associated costs drastically reduced.¹⁰⁴

AI use in legal research platforms is ubiquitous.¹⁰⁵ Well-known platforms include Westlaw, LexisNexis, and Casetext.¹⁰⁶ Traditional computer research is accomplished through a combination of creative keyword searches and is significantly time consuming.¹⁰⁷ This method usually yields a mass number of results with limited metrics for the worth and relevance to the legal issue.¹⁰⁸ AI program experts have replaced keyword searches with semantic natural language searches based on legal relevance.¹⁰⁹ This technology is not in full force, but some start-ups are attempting to capitalize on the potential benefits.¹¹⁰ Currently, AI-based search engines help identify relevant material and the lawyer spots issues.¹¹¹ It is predicted that research platforms will eventually issue spot given facts, find relevant law, and determine the relative strength and credibility of precedents.¹¹²

AI can also help with document generation and drafting in a variety of contexts. Instead of an associate drafting a contract, will, or memorandum, a predetermined legal form that uses combinations of prior relevant documents can provide the initial draft.¹¹³ Software programs, such as ChatGPT, can already generate wills, loan agreements, promissory notes, and contracts.¹¹⁴ The hope is for an AI system that not only automates common legal forms, but also tailors the document to the individual facts and arguments of a particular situation and tracks potential future litigation issues.¹¹⁵ For the foreseeable future, AI programs can only provide a baseline format draft for legal documents.¹¹⁶

But what about AI integration outside the firm and in the judiciary itself? One example is AI used in predicting future behavior of alleged or

104. *Id.* at 40-41.

105. *Id.* at 41-42.

106. *Id.* at 41.

107. *Id.* at 41.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.* at 42.

114. *Id.*

115. *Id.* at 43.

116. *Id.*

convicted criminals.¹¹⁷ The AI-based algorithms for risk assessment “take advantage of machine learning algorithms, which generate risk models based on vast quantities of data.”¹¹⁸ These AI systems are now being used in a variety of contexts in the criminal justice system: prison rehabilitation programs, pretrial risk assessment, and sentencing.¹¹⁹ Several states, including California, use AI tools for dynamic risk assessment, pretrial detention, and release.¹²⁰ One tool is the Public Safety Assessment (or “PSA”) which is used in twenty-nine American jurisdictions.¹²¹ The PSA was built using data from 1,500,000 crimes “spanning 300 U.S. jurisdictions, and it measures risk using a very narrow set of static risk factors relating primarily to the defendant’s age and criminal history.”¹²² The PSA tool helps predict whether detention and release would put society at great risk.¹²³ These tools are used to help the judge make a final decision.¹²⁴ But in some cases, they are implemented at final judgment.¹²⁵

AI is a powerful tool, and many government experts are working on regulatory frameworks. For example, the White House Office of Science and Technology Policy recently published *Blueprint for an AI Bill of Rights: Making Automated Systems Work for the American People*.¹²⁶ The *Blueprint* is not legally binding—it is merely a suggested framework for legislators and governmental agencies.¹²⁷ There are five governing principles: safe and effective systems; algorithmic discrimination protections; data privacy; notice and explanation; and human alternatives, consideration, and fallback.¹²⁸ Most notable for legal practitioners are client data privacy, notice of using AI systems for legal practice, and the

117. Danielle Kehl et al., *Algorithms in the Criminal Justice System: Assessing the Use of Risk Assessments in Sentencing*, DIGITAL ACCESS TO SCHOLARSHIP HARV. 2 (July 2017), https://dash.harvard.edu/bitstream/handle/1/33746041/201707_responsivecommunities_2.pdf?sequence=1&isAllowed=y [https://perma.cc/42KM-6DJX].

118. *Id.* at 9.

119. *Id.*

120. *Id.* at 10.

121. *Id.*

122. *Id.*

123. *Id.*

124. *See id.*

125. *Id.*

126. BLUEPRINT FOR AN AI BILL OF RIGHTS: MAKING AUTOMATED SYSTEMS WORK FOR THE AMERICAN PEOPLE, WHITE HOUSE OFF. SCI. TECH. POL’Y (2022), <https://www.whitehouse.gov/wp-content/uploads/2022/10/Blueprint-for-an-AI-Bill-of-Rights.pdf> [https://perma.cc/9D6A-VXYZ].

127. *Id.* at 2.

128. *Id.* at 5-7.

option to have human alternatives for review and responsibility.

II. NATURAL LAW THEORY

Countless books and articles have been written on natural law. It would be impossible to recount all of that great conversation. However, we can capture the core ideas of natural law. No theory is complete. There are many perspectives to consider, and we will approach natural law theory with measured skepticism. This section proceeds in two parts. First, we explore the foundational ideas of what natural law is and arguments for and against it. Finally, we consider the influence of natural law in the American Nation and its jurisprudence.

At its core, the law embodies and governs the living and breathing interaction of human beings in daily life. In the words of American legal history expert Lawrence M. Friedman, “the strongest ingredient in American law, at any given time, is the present—current emotions, real economic interests, and concrete political groups.”¹²⁹ Thus, law in practice is “social development, unfolding through time.”¹³⁰ Law governs and shapes the contours of people-to-people interaction.

Natural Law: Defined, Critiqued, and Defended

Beginning with the common definitions of “natural” and “law” provides a helpful starting point. Natural comes from the Latin word *naturalis* which means “by birth, according to nature.”¹³¹ *Webster’s Dictionary 1828* expands on this definition and states that natural refers to things “produced or effected by nature.”¹³² Interestingly, natural is contrasted with artificial as something existing in the order of created things, whereas artificial things are created out of the combination of natural things. In other words, natural objects exist without human intervention or creative action. Artificial objects require the combination of two or more natural objects—they would not exist if nature were left to its own course.

129. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* xii (3d ed. 2007).

130. *Id.*

131. *Natural*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/natural> [<https://perma.cc/5SUG-MNBH>].

132. *Natural*, WEBSTERS DICTIONARY, <https://webstersdictionary1828.com/Dictionary/natural> [<https://perma.cc/N27W-W2WH>].

Law comes from the Old Norse *lagu* which literally means “something laid down, that which is fixed or set.”¹³³ *Webster’s Dictionary 1828* defines law as “[a] rule of direction; a directory; as reason and conscience.”¹³⁴ Combining these definitions together we can infer that natural law is a rule of direction for human reason and conscience that exists and is known through the created realm of nature. Thus, natural law exists apart from human action or intervention—it is discovered within nature. It is not made.

Beyond common word definitions, *Black’s Law Dictionary* defines natural law as “[a] philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action.”¹³⁵ In other words, the law exists outside of human creation and initiative and is discoverable only within the bounds of nature itself.

In contrast, the positive law is “[a] system of law promulgated and implemented within a particular political community by political superiors, as distinct from the [natural law.]”¹³⁶ Further, “[p]ositive law typically consists of enacted law—the codes, statutes, and regulations that are applied and enforced in the courts. The term derives from the . . . Latin [word] *established* . . . [T]he phrase positive law literally means law established by human authority.”¹³⁷ The positive law—in contrast to natural law—is created by human initiative.

The *Gale Encyclopedia of American Law* provides an excellent overview of natural law theory.¹³⁸ At its core, natural law is the collection of *unwritten moral principles* undergirding society’s ethical and legal norms that govern and provide a metric for right or wrong human conduct.¹³⁹ Put another way, “[n]atural law . . . maintains that there is a common fund of knowledge, [and] truths we can assume that everyone—anyone—already knows.”¹⁴⁰ This is contrasted with the positive law which

133. *Law*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/search?q=law> [<https://perma.cc/L5SV-PZWS>].

134. *Law*, WEBSTER’S DICTIONARY 1828, <https://webstersdictionary1828.com/Dictionary/law> [<https://perma.cc/7MP6-UCWU>].

135. *Natural Law*, BLACK’S LAW DICTIONARY (11th ed. 2019).

136. *Positive Law*, BLACK’S LAW DICTIONARY (11th ed. 2019).

137. *Id.* (parentheses omitted).

138. 7 DONNA BATTEN, GALE ENCYCLOPEDIA OF AMERICAN LAW (3d ed. 2011).

139. *Id.* at 225.

140. EDWARD B. MCLEAN, COMMON TRUTHS NEW PERSPECTIVES ON NATURAL LAW I (Edward B. McLean ed., 1st ed. 2000).

are the written rules and regulations enacted and enforced by human-made governments.¹⁴¹ Adherents to natural law principles believe that justice is discoverable and fully achieved within nature itself regardless of whether a governing body recognizes those principles.¹⁴² True justice is only achievable when governments incorporate and apply natural law in their legal systems.

There are three general schools of natural law theory: divine, secular, and historical.¹⁴³ Divine natural law is the system of moral and ethical principles revealed or inspired by nature's God or another Supreme Being.¹⁴⁴ These principles are known through authoritative religious texts such as the Holy Bible.¹⁴⁵ Secular natural law is the collection of physical, biological, and behavioral laws within nature discoverable by human rational powers.¹⁴⁶ Historical natural law is the collection of incremental societal customs, traditions, and experiences.¹⁴⁷ In the United States, natural law is best understood as the combination of divine revelation, secular reason, and historical development.¹⁴⁸ However, some argue that the creation and ratification of the United States Constitution replaced Scripture with a "political Bible."¹⁴⁹ In America, the "People" are the sole foundation of democratic authority and responsibility.¹⁵⁰

Beyond these three main categories, perhaps one of the greatest and most foundational statements of natural law comes from the Roman lawyer, statesman, and patriot Cicero:

True law is right reason in agreement with nature, universal, consistent, everlasting, whose nature is to advocate duty by prescription and to deter wrongdoing by prohibition. Its prescriptions and prohibitions are obeyed by good men, but evil men disobey them. It is forbidden by God to alter this law, nor is it permissible to repeal any part of it, and it is impossible to abolish the whole of it.

141. BATTEN, *supra* note 138, at 225.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.* at 230.

149. *Id.*

150. *Id.*

Neither the Senate nor the People can absolve us from obeying this law, and *we do not need to look outside ourselves for an expounder or interpreter of this law.* There will not be one law at Rome and another at Athens or different laws now and in the future. There is now and will be forever one law, valid for all peoples and all times. And there will be one master and ruler for all of us in common—God, who is the author of this law, its promulgator, and its enforcing judge. *Whoever does not obey this law is trying to escape himself and to deny his nature as a human being.* By this very fact, he will suffer the greatest penalties, even if he should somehow escape conventional punishments.¹⁵¹

There are two noteworthy statements in Cicero's writing. First is the statement that "we do not need to look outside ourselves for an expounder or interpreter of this law."¹⁵² This implies that because we are part of creation, the natural law of right and wrong is within our being—woven into the very fabric of our DNA. The right and wrong thing is discoverable and made known within humans collectively and singly. Good people obey the natural law and bad people disobey its dictates on conscience. Second, the statement "[w]hoever does not obey this law is trying to escape himself and to deny his nature as a human being."¹⁵³ Because we are part of created nature and there are natural laws written into the fabric of our being, if we do not follow these laws of right and wrong conduct, we deny the very core of our natural being. Following the dictates of the natural law thus affirms our nature as a created human being—good human beings obey the moral dictates of the natural law.

William Blackstone encapsulated both the physical and moral laws into one divine framework:

When the Supreme Being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he

151. J. Rufus Fears, *Natural Law: The Legacy of Greece and Rome, in COMMON TRUTHS NEW PERSPECTIVES ON NATURAL LAW* 19, 20-21 (Edward B. McLean, 1st ed. 2000).

152. *Id.* at 21.

153. *Id.*

put that matter into motion, he established certain laws of motion, to which all movable bodies must conform Man, considered a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being . . . so, when he created man, and endued him with free-will to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that free-will is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purpose of those laws.¹⁵⁴

Divine natural law further posits that government can only attain truth, compassion, and justice by conforming to commandments revealed in the Holy Bible or other authoritative religious texts.¹⁵⁵ The validity of any human law must harmonize with revealed divine law principles of right and wrong.¹⁵⁶ In other words, if human laws—positive law—clash with the natural law, they are invalid and should not be followed. For example, a human decree requiring all secular citizens to pillage religious groups and kill them is invalidated by the two of the Ten Commandments: “you shall not murder” and “you shall not steal.”¹⁵⁷ Killing your neighbor without just cause is invalidated by the Commandment “you shall not murder.”¹⁵⁸ And therefore, not conforming to the natural law simultaneously makes you a bad person and denies your natural personhood.

In contrast, “secular natural law replaces the divine laws of God with physical, biological, and behavioral laws of nature as” discovered through human intellect.¹⁵⁹ This school of thought seeks to identify ethical and moral norms within human nature.¹⁶⁰ Human intellect is elevated over the spiritual authority of religion in divine natural law.¹⁶¹ The primitive state of human interaction before the creation of complex societies or governments sets the stage.¹⁶² John Locke wrote that “human beings live

154. 1 WILLIAM BLACKSTONE, COMMENTARIES *38-40.

155. See Fears, *supra* note 151, at 20-21.

156. See BATTEN, *supra* note 138, at 230.

157. Deuteronomy 5:17; Deuteronomy 5:19.

158. Deuteronomy 5:17.

159. BATTEN, *supra* note 138, at 227.

160. *Id.*

161. *Id.*

162. *Id.*

according to three principles—liberty, equality, and self-preservation.”¹⁶³ However, the evil constitution of humanity puts all three natural principles at risk.¹⁶⁴ Therefore, the law of nature compels free individuals in the state of nature to join in political society to protect life, liberty, equality, and property.¹⁶⁵ Secular natural law consists of self-evident truths discoverable in the raw natural state of humanity before the development of complex human civilizations.

Historical natural law posits that law must conform to well-established but unwritten customs, traditions, and experiences that evolved through human history. The evolution of human experiences is the foundation of historical natural law. For example, historical natural law played a critical role in American law when English jurist Sir Edward Coke argued that the King’s sovereignty was limited by ancient liberties, “immemorial custom, and . . . rights prescribed by the Magna Carta in 1215.”¹⁶⁶ Further, the Magna Carta inspired many United States constitutional liberties, such as grand juries and due process.¹⁶⁷

Within the divine, secular, and historical divisions of natural law there are three basic guiding principles. In John Finnis’s *Natural Law*, natural law is the set of propositions defining “(1) basic human goods, (2) general requirements of right choosing, and (3) the specific moral norms deducible from those requirements as they [relate to] basic [human] goods.”¹⁶⁸ Any theory of natural law argues that human goods, requirements of right choice, and moral norms are self-evidently true.¹⁶⁹ Each system offers the truth of these propositions—goods, choices, and moral norms—and their practical implications in theory and practice.¹⁷⁰

There are many arguments against natural law theory. To recapitulate the core tenants of natural law theory as argued by William Blackstone: “1) there can be no legally valid standards that conflict with the natural law; and 2) all valid laws derive what force and authority they have from the natural law.”¹⁷¹ Some critics point out that unjust laws are enforced

163. *Id.*

164. *See id.*

165. *Id.*

166. *Id.* at 229.

167. *Id.*

168. 1 JOHN FINNIS, *NATURAL LAW* xi (1991).

169. *Id.*

170. *Id.*

171. Kenneth Einar Himma, *Natural Law*, INTERNET ENCYCLOPEDIA OF PHIL., <https://iep.utm.edu/natlaw/> [<https://perma.cc/68PW-DP4C>].

against persons all too frequently.¹⁷² If the law was so natural or known to legislators or government officials, then why is it not enforced?¹⁷³ Further, the natural law is rooted in strict interpretations of morality.¹⁷⁴ Morality is the strict and necessary condition for the legal validity of laws. However, this validity may not be explainable in all cases.¹⁷⁵ Not everyone agrees on the same degrees of morality which may not “naturally” be known to them.¹⁷⁶ We do not all experience the natural “knowing” of a common ground of morality that informs and validates the natural law through collective experience and application. Hot-button issues demonstrating this point are abortion, gun control, and immigration.

Some legal theorists further argue that natural law theory is a futile mental exercise that fails to account for practical life and daily application.¹⁷⁷ Not everyone agrees that “an unwritten law which is superior to and is the measure of man-made law” even exists.¹⁷⁸ Ultimately, natural law claims to provide objective moral principles that everyone can know.¹⁷⁹ Many ripe criticisms address the controversial assertion that “certain propositions in normative ethics and political theory are self-evidently true.”¹⁸⁰

Those “self-evidently true” propositions embodied in common goods are often pursued in ways that contradict or lessen other people’s “understanding” of their own natural law and hierarchies of prioritization.¹⁸¹ When a person makes a choice, there is no objective measure of what basic human goods are greater than another.¹⁸² If we cannot know which goods are higher, then how can we know an immeasurable truth objectively? Further, there is no way to form a good “coherent life plan” of right living.¹⁸³ A good life plan is “a matter of moral obligation” but there are no agreed upon “criteria for judging whether the

172. *Id.*

173. *See id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. George P. Robert, *Recent Criticism of Natural Law Theory*, 55 U. CHI. L. REV. 1371, 1372 (1988).

178. Alex E. Wallin, *John Finnis’s Natural Law Theory and a Critique of the Incommensurable Nature of Basic Goods*, 35 CAMPBELL L. REV. 59, 60 (2012).

179. *Id.* at 61.

180. *Id.* at 63 (citation omitted).

181. *Id.* at 73.

182. *Id.*

183. *Id.* at 76.

moral obligation is met in a particular scenario.”¹⁸⁴ In other words, the natural law system “[creates] an obligation to act without providing a practical way of judging whether the required act of choosing a life plan is morally right or wrong.”¹⁸⁵

Further, some argue that we cannot be certain what the natural law is to begin with. Even if a “natural law” exists, who are the ones to declare and interpret that law for us?¹⁸⁶ The crux is that “someone’s ‘ought’—i.e., someone’s will—prevails in any case, for law is only directed toward human action where something is done or not done as a result of volition.”¹⁸⁷ “[N]atural law [may] serve as a mere cloak of authoritarianism” where government officials impose “God’s will” on the masses.¹⁸⁸ Further, if people know the law within themselves, is the natural law just what any person simply thinks it is for themselves?¹⁸⁹ The natural law would just be subjective. There is no logically coherent foundation for a legally binding “ought” to govern human interaction and conduct.¹⁹⁰

Another gut punch to the belly of natural law theory is the patent decline in American legal practice generally. In *The Decline of Natural Law: How American Lawyers Once Used Natural Law and Why They Stopped*, Stuart Banner traces the once-prominent role of natural law in American jurisprudence.¹⁹¹ American lawyers once believed that the foundation and rules of our legal system were not human-made.¹⁹² Today, natural law is largely perceived as obsolete in the modern mind.¹⁹³ Banner states that:

The decline of natural law was a fundamental change, because it caused lawyers to think differently about whether, in difficult cases, law is something judges find or make. When natural law provided a reservoir of principles for judges to draw upon in deciding cases that

184. *Id.* at 77.

185. *Id.* at 77.

186. George W. Constable, *Who Can Determine What the Natural Law Is*, 7 NAT. L. FORUM 52, 52 (1962).

187. *Id.* at 56.

188. *Id.* at 54.

189. *Id.* at 55.

190. *Id.* at 56.

191. STUART BANNER, *THE DECLINE OF NATURAL LAW* (2021).

192. *Id.* at 1.

193. *Id.*

existing human-made law did not easily resolve, judges were understood to be finding the law. But when natural law was no longer available to judges [by the assumption that it is no longer needed], the process of judging looked very different. Now, when existing human-made law did not supply a ready answer, judges had nothing else to draw upon. Now judges were understood to be making the law, not merely finding it.¹⁹⁴

In large part, natural law declined due to the separation of religion and the practice of law. A stark example that would raise neck hairs today is the case *People v. Ruggles*. In *Ruggles*, John Ruggles shouted in public that “Jesus Christ was a bastard, and his mother must be a whore.”¹⁹⁵ Ruggles was convicted of blasphemy, fined, and jailed.¹⁹⁶ The court reasoned that

“[t]he free equal and undisturbed, enjoyment of religious opinion, whatever it may be, and free of decent discussion on any religious subject, is granted and secured . . . but to revile, with malicious and blasphemous contempt, the religion profess by almost the whole community is an abuse of that right.”¹⁹⁷

This reasoning takes the consensus of a community’s accepted divine text—the Bible—and imposes it as the rule of right and wrong conduct upon dissenters like John Ruggles.

These are strong counterarguments indeed. Perhaps the concept of divine or secular natural law is rooted in questionable assumptions about God and human intellect. Application of natural law by its adherents may lead to unjust results in some instances. Humanity is error-prone. No theoretical system is infallible, and we must use measured judgment to navigate complex daily problems. However, application of natural law

194. *Id.* at 2.

195. Kody W. Cooper, *What Happened to Natural Law in American Jurisprudence?*, 22 *FED. SOC’Y REV.* 316, 319 (Dec. 13, 2021), <https://fedsoc-cms-public.s3.amazonaws.com/update/pdf/3Nu6DTIEMFiVIOElip8r5NnJviEpbstCRK631Wvd.pdf> [<https://perma.cc/BZ9Q-HPFC>].

196. *Id.* at 319.

197. *Id.* at 320.

principles through critical and free-thinking persons does more good than not.

The honest application of natural law theory promotes discovery of the objective structures of nature and fosters use of reason, group consensus, and appeals to conscience.¹⁹⁸ It aims to effectuate good conduct through human intelligence anchored in the “objective fact of the free, creative bent of [human] volition.”¹⁹⁹ This exercise does not by itself establish an authoritarian structure to impose on the masses.²⁰⁰ Rather, it “gives to all rational persons a franchise” of intellectual coherency for use of personal abilities and property.²⁰¹ Application may not be perfect in all cases. Natural law—whether divine, historical, or secular—elucidates and defines the contours of our collective vision for good and evil.

Natural Law in America

The American Nation is arguably founded on natural law principles. The United States Declaration of Independence states:

We hold these truths to be *self-evident*, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.²⁰²

Substantially similar ends are outlined in the federal Constitution of the United States of America: “We the People” seek to form “a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the

198. Constable, *supra* note 186, at 82.

199. *Id.*

200. *See id.*

201. *Id.*

202. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity[.]”²⁰³ We seek the high ends of unity, justice, peace, protection, general welfare, and liberty. These ends interrelate with the promotion of life, liberty, and a life well lived—happiness.

In Plato’s *Apology* (and no, he was not sorry), we hear the famous statement that “the unexamined life is not worth living.”²⁰⁴ In other words, the examined life is worth living. Our American history is ripe with people either examining or not examining the practical and factual reality of unity, life, liberty, and happiness for all peoples within its borders. However, the self-evident truths that this nation stands for are being brought to more people in pragmatic application and experience. Examining one’s life in relation to the goods of all people is a life worth living.

Even closer to home, the Oklahoma Constitution sets forth the inherent rights of all persons: “All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.”²⁰⁵ This encompasses Finnis’s argument that natural law identifies common goods—for Oklahoma residents, life, liberty, happiness, and gains of industry. Further, the general requirements of right choosing and morality can be inferred from Oklahoma legislation and case law—the laws and judgments of actors in the State of Oklahoma ought to further the naturally derived and inherent rights of all persons.

In a most red and blue contrast, the California Constitution Article 1 § 1 states: “All people are by nature free and independent and have inalienable rights. Among these [rights] are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”²⁰⁶ Maybe there is not so much contrast after all. This list is like the Oklahoma natural goods and general requirements of right choice and morality. The ends are agreed upon as naturally self-evident while the means are left up to good and just governments that reward people pursuing these ends and punishing those who detract from them.

These “self-evident goods” should be viewed pragmatically considering there are strong arguments against natural law theory. These

203. U.S. CONST. pmb1.

204. Plato, *Apology*, in *THE WORLD OF LAW II THE LAW AS LITERATURE* 381, 401 (Ephraim London ed. 1960).

205. OKLA. CONST. art. 2, § 2.

206. CAL. CONST. art. 1, § 1.

ends are rarely achieved for all people and the means to get there are rarely agreed upon. But we do see that American governmental structures exist in *name* to secure the self-evident goods of life, liberty, happiness, and safety. We “the People” say they do. In other words, our government structures are only valid if they uphold good and punish evil. It is good to promote and reward the pursuit of life, liberty, happiness, and safety of fellow citizens—it is evil to neglect the application of these natural truths.²⁰⁷

III. DISCUSSION

In this section we will explore the various applications of AI through the lens of the natural law to see where the sole realm of AI judgments can permissibly reside. This Note argues that the line be drawn—*ought to be drawn*—at any type of legal judgment defined as legal practice affecting individual rights and responsibilities. Because AI is artificial, it can and never should be the ultimate arbiter of legal disputes between natural persons. A natural human ought to be responsible for the result.

Perhaps a “natural” way to draw the line of AI in the legal profession is the sharp and apparent distinction between natural and artificial. As previously demonstrated, natural is not artificial. Humans are natural. Humans are not artificial. As such, natural beings—and natural beings alone—*ought* to be agents of legal practice and advice rendering any binding final judgment. Artificial tools should stay subservient to final

207. *Romans* 13:1-10 (“Let every soul be subject to the governing authorities. For there is no authority except from God, and the authorities that exist are appointed by God. Therefore, whoever resists the authority resists the ordinance of God, and those who resist will bring judgment on themselves. For rulers are not a terror to good works, but to evil. Do you want to be unafraid of the authority? Do what is good, and you will have praise from the same. For he is God’s minister to you for good. But if you do evil, be afraid; for he does not bear the sword in vain; for he is God’s minister, an avenger to execute wrath on him who practices evil. Therefore, you must be subject, not only because of wrath but also for conscience’ sake. For because of this you also pay taxes, for they are God’s ministers attending continually to this very thing. Render therefore to all their due: taxes to whom taxes are due, customs to whom customs, fear to whom fear, honor to whom honor. Owe no one anything except to love one another, for he who loves another has fulfilled the law. For the commandments, ‘You shall not commit adultery,’ ‘You shall not murder,’ ‘You shall not steal,’ ‘You shall not bear false witness,’ ‘You shall not covet,’ and if there is any other commandment, are all summed up in this saying, namely, ‘You shall love your neighbor as yourself.’ Love does no harm to a neighbor; therefore, love is the fulfillment of the law.”).

human judgment and responsibility. Yes, AI can be used in the legal profession for many subsidiary legal tasks. But this relegates the natural to the artificial—something that ought never to happen.

The law is known by nature and through people existing within nature. The laws of science, physics, and biology apply equally to all creatures—both human, non-human, and perhaps divine. However, animals are not governed by the moral or ethical implications of natural law because they act out of preprogrammed instinct. Instinct precludes the free-willed rational choice that each human must bear. How much less will an artificial computer program “know” the natural law if a natural animal cannot? Simply put, the artificial cannot know the natural. The artificial will always have the *illusion* of knowing in a perpetual mirage of eternity. Going back to the overarching principle that law is a social development unfolding through time, we see that law is only known and practiced by real people clashing in daily life.

In the same vein, Bradley Wendel raises the point that there is the fundamental idea that “AI may someday be able to emulate or model human moral reasoning but what it can never do is *be* a free and equal person, in a second-person relationship with another free and equal person.”²⁰⁸ In other words, the artificial dimension is a barrier that, when crossed, brings the law out of the sphere of human relations and accountability. Wendel argues that the relationship of accountability and authority between real humans is the bedrock of obligations and reasons for human action or inaction.²⁰⁹ The capacity to follow legal rules and impose moral and ethical obligations with delegated authority depends on the “shared standpoint of mutual respect adopted by free and equal persons.”²¹⁰ AI systems can be programmed to “know” the law and emulate a human lawyer, *but they will always lack authority* to function as a lawyer.²¹¹ Beyond the routine clerical functions of communication, basic drafting, or discovery processes, the “world of robot lawyers is not on the horizon . . . [because] of the dependency of law on relationships of authority and accountability” between natural humans.²¹² In other words, we humans will not let robot lawyers and judges take over the legal

208. Bradley W. Wendel, *The Promise and Limitations of Artificial Intelligence in the Practice of Law*, 72 OKLA. L. REV. 21, 48 (2019).

209. *Id.* at 48.

210. *Id.*

211. *Id.* (emphasis added).

212. *Id.*

system's project of rights and remedies. That would go against our nature.

Combining the definition of legal practice and natural law further illuminates tasks that can be permissibly delegated to AI systems. Legal practice requires a licensed person with knowledge of legal principles to help their client with real and appreciable consequences. There are many separate and concrete tasks embedded within legal practice—emails, phone calls, conversation, research, writing, communication with opposing counsel, filings in court, judicial decision making, and appealing judicial decisions. Each of these tasks could arguably be completed by AI systems. AI could plead before the court with a brief or motion. However, natural law suggests that court filings, judicial decision making, and appeal of decisions should *never* be delegated to AI systems. It is the combination of what legal practice is with the natural law theory that helps us draw this line. Legal practice as we know it requires a licensed practitioner. Legal practitioners are natural humans licensed to act on behalf of and resolve disputes between real people. The law is known through the living and breathing interaction of humans by virtue of being part of nature.

This does not preclude AI systems from assisting in tasks where the licensed practitioner is ultimately responsible. For example, under the Model Rules of Professional Conduct, a lawyer shall be responsible for the work of an unlicensed practitioner under their direct supervision.²¹³ The licensed practitioner could delegate the task of writing a brief to the Supreme Court arguing that AI systems should be licensed legal practitioners (quite an oxymoron!). The AI system would research, write, cite, and “present” its draft to the supervising attorney. The licensed attorney would verify the underlying legal principles and applications to the dispute and determine appropriate next steps. In this framework, the attorney remains responsible for the ultimate result—legal practice.

In the above example, problems arise if the attorney does not check the underlying work of the AI and submits the brief. This would simultaneously offend the dictates of both the Model Rules and natural law. The attorney failed to be directly responsible for the legal work of the unlicensed AI system. Further, the attorney delegated the application of legal principles affecting individual rights and responsibilities to an artificial sham. An unlicensed and artificial computer program practiced law without oversight or human responsibility. This is a double whammy.

213. MODEL RULES OF PRO. CONDUCT r. 5.1 (AM. BAR ASS'N 2007).

The AI is not licensed and cannot—*will never*—know or appreciate the natural law.

IV. CONCLUSION

The past, present, and future of technological innovation and wonder have arrived. We must prepare and effectively respond. AI is humanity's quintessential modern technological feat posing both high risk and reward. Like any tool, AI should remain subservient to fundamental human values. It is a means to the end of effective legal practice where humans always remain responsible and accountable for resolution of legal disputes. Real people are the players on the "playground" of good, evil, truth, and the search for justice—artificial machines should sit on the sidelines.

Natural law helps us understand that only the natural can contemplate and know reality, rather than be programmed to recognize and mechanically apply nature's laws. Natural is not artificial. The two concepts are diametrically opposed to each other—they are opposites. We can tell AI systems what the law is. But these systems will never *know* with certainty from the human core of being part of the natural order of creation endowed with authority and accountability. Only the natural should practice law.