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9-2023

When Machines Can Be Judge, Jury, and Executioner: Justice in the Age of Artificial Intelligence (book review)

Stacy Fowler
St. Mary's University School of Law, sfowler@stmarytx.edu

Recommended Citation

Keeping Up with New Legal Titles*

Compiled by Chava Spivak-Birndorf** and Matt Timko***

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    ** Research and Instructional Services Librarian and Adjunct Professor of Law, Drexel University Thomas R. Kline School of Law, Philadelphia, Pennsylvania.
    *** Academic Technologies and Outreach Services Librarian, Northern Illinois University College of Law, DeKalb, Illinois.

Matters remains the only monograph about menstrual equity that I could find centered around the legal aspects of the movement. Researchers might consider the open-access ebook *The Palgrave Handbook of Critical Menstruation Studies*[7] or Anita Diamant's 2021 collection of essays, *Period. End of Sentence: A New Chapter in the Fight for Menstrual Justice,*[8] which explores menstrual equity while not focusing solely on the law. Through their multi-faceted approach, Professors Crawford and Waldman successfully argue that the subject of menstrual equity and the law is worthy of further development from scholars, advocates, and litigators. I look forward to the progeny of *Menstruation Matters* and the growth of this area of law.

Forrest, Katherine B. *When Machines Can Be Judge, Jury, and Executioner: Justice in the Age of Artificial Intelligence*. London: World Scientific, 2021. 134p. $21.00.

Reviewed by Stacy Fowler[*]

¶14 In *When Machines Can Be Judge, Jury, and Executioner*, former federal judge Katherine Forrest raises concerns over the pervasive use of artificial intelligence (AI) in the American justice system to produce risks and need assessments (RNA) regarding the probability of recidivism for citizens charged with a crime. Forrest's argument centers on AI's primary focus on utilitarian outcomes when assessing liberty for individual citizens. This approach leads Forrest to the conclusion that in its current form, AI is "ill-suited to the criminal justice context" (p.xv). Forrest contends that AI should instead be programmed to focus on John Rawl's concept of justice as fairness, the expectation that "certain natural rights will be protected at an individual level" (p.1).

¶15 The author begins with the basics of how AI works: algorithms provide the methods for AI to analyze and use data. AI creates these algorithms by selecting and weighting inputs and data sets. This "determines how useful an AI tool will be, how accurate it can be, and whether it embeds explicit or implicit bias" (p.13). It is these biases, along with the lack of transparency most companies have regarding inputs and data sets, that most concern Forrest about the accuracy and fairness of RNA recommendations.

¶16 The next chapters consist of case studies—frequently drawing on personal experience from Forrest's seven years on the bench—to compare human and machine outcomes, assessing how each group makes predictions and decisions using the risk assessment tools available. For AI, the algorithms provide the data; for judges that input primarily comes from presentence investigation reports and sentencing guidelines. She points out that although many believe AI will "produce results that are both more objective and more accurate than humans can produce" (p.49), this is generally an erroneous

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    7. Palgrave Handbook of Critical Menstruation Studies (Chris Bobel et al. eds., 2020), https://link.springer.com/book/10.1007/978-981-15-0614-7 [https://perma.cc/25WC-SWP8].
    8. Anita Diamant, Period. End of Sentence: A New Chapter in the Fight for Menstrual Justice (2021).
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assumption since humans are the ones compiling the datasets that are used as inputs and deciding which factors AI will focus on to produce results.

¶17 In the final section, Forrest discusses proprietary AI systems currently in use for RNA, primarily focusing on the Correctional Offender Management Profiling for Alternative Sanctions system (COMPAS), which is the "best-studied and most widely utilized AI assessment tool now on the market" (p.65). Using available statistics for determinative factors and accuracy rates, Forrest shows that most AIs exhibit an accuracy rate of 68–71 percent, with the federal government's home-grown system producing the highest levels of accuracy, falling between 75–78 percent. Every system surveyed, however, consistently has lower accuracy rates for minorities when compared with White offenders. She also offers up statistics that humans on the bench are often more accurate than AI and, more importantly to the author, take the individual person into consideration as a major factor when making decisions.

¶18 Academic and public libraries will find *When Machines Can Be Judge, Jury, and Executioner* useful for providing an understanding of the basics of AI and risk assessment tools currently being used by the American justice system, and how various input factors can affect recommendations and accuracy. Forrest's analysis and commentary are both informative and passionate as she advocates for a bottom-up redesign to work toward an ideal balance between utilitarianism and individual liberty.

Houser, Kimberly A. *Legal Guide to Social Media: Rights and Risks for Businesses, Entrepreneurs, and Influencers, Second Edition.* New York: Allworth Press, 2022. 186p. $19.99.

Reviewed by Adam Z. Harness[*]

¶19 *Legal Guide to Social Media: Rights and Risks for Businesses, Entrepreneurs, and Influencers* is a book that should be on the bookshelf of anyone interested in social media and business. Professor Kimberly Houser does an amazing job of laying out all the information needed to make informed decisions regarding the legal pitfalls that surround using social media or the internet to advertise products, not only for the corporations involved but also for the influencers and website designers that help to advertise products.

¶20 The book is split into 10 chapters, each covering a different topic and consisting of multiple subtopics. It is quite easy to look at the table of contents and gauge which chapter would be the most helpful to you. Houser covers almost everything one could think of regarding online advertising: defamation and other tort risks; advertising laws; name, image, and likeness protection; how to avoid infringement on copyrights and trademarks; enforcing IP rights; data security; privacy laws; things to consider when setting up websites; and many other topics.

¶21 Each chapter is organized into multiple subsections with headers formatted as a question that a person may have regarding something happening in their everyday

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