

EXAMINING THE ARTIFICIAL INTELLIGENCE REGIME AND THE PLACE OF THE RULE OF LAW IN DEMOCRATIC SOCIETIES

BY

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Abstract

Artificial intelligence is being accepted globally in carrying on businesses, security, entertainment, agriculture, education and other spheres of life. This is achieved through the simulation of machines or computers by humans to carry out the duties which human beings ordinarily ought to undertake in running their day to day activities. In carrying out these works or activities of humans by the machines and other simulated technologies in reasoning, learning, planning and creativity, the rule of law and the fundamental human rights of the people have to be observed. This article examined the positive and negative impacts of artificial intelligence, the propagation of the rule of law and the rights of the people in the regime of artificial intelligence, the liability of corporations that procures artificial intelligence mechanisms such as robots, etc. The article adopted the doctrinal research methodology. It concluded that any establishment or corporation that employs the services of artificial intelligence should be held liable in civil and criminal acts or omissions perpetrated by simulated machines (artificial intelligence) since such simulated machines or robots are not humans but artificial, and cannot consequently be sued for damages. It is recommended among other things that international and regional organizations and various countries should create or initiate a legal framework for the propagation, regulation and control of artificial intelligence; that the rule of law and the fundamental rights of the citizenry must be protected at all times.

Keywords: Artificial Intelligence, Impacts, Challenges, Rule of law and Liabilities.

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1.0 Introduction

Artificial Intelligence has no doubt become a buzz word in the lips of many across the globe.¹ In fact, there is no single day that passes without the mention of AI in the media, either in print or broadcast. It is really trending in the information technology and everyone seems to embrace it for obvious reasons. Be that as it may, AI has equally introduced some perplexities as it bothers the rights of the people in every society. These rights are fundamental and God-given and as such cannot be alienated by the people. It does not seem to appear clear whether artificial intelligence as it appears, for example, robots possess the right of a human being, even if they do not have blood that runs in them. For example, assuming a robot malfunctions and tramples upon someone's right, can the robot be sued for claim or breach of fundamental right of the victim? Again, assuming an algorithm, as a problem-solving device gives a wrong calculation leading to great loss or business danger, who would be held responsible? Who would be held liable for offensive information or human-like text messages generated by Generative Pre-trained Transformers (Chat GPT)? Who would be responsible for civil and criminal wrongs done by the AI? These are some perplexities generated by the advent of AI. They are germane and need to be tackled vigorously as artificial intelligence has become the hallmark of our day-day running of every part of human lives.

There is no gainsaying the fact that AI has been accepted globally since it made its debut and that it has so many advantages. It must be stated that it equally have some disadvantages and challenges. So many countries, corporations, institutions of learning and private sectors have embraced AI as the way forward towards achieving global economic growth and advancement. Sequel to this, the Nigerian government has called on her citizens across the globe to help the country to establish her own AI mechanism in order to strategize on how to promote and propagate AI. This idea is to facilitate technological advancement, growth and improvement in the country and to increase productivity and enhance service delivery.² It was also emphasized that recent research showed that 'AI could contribute up to \$15.7 trillion to the global economy by 2030, with \$3 trillion from increased productivity and \$9.1 trillion from new products and services'.³

However, in as much as the quest for artificial intelligence has reached a crescendo among corporations, governments and various institutions the world over, it is submitted that such

¹ Medade, 'The Future of Work: How AI Will Impact Industries in the Next Decade' <https://tushar-medade.medium.com/artificial-intelligence-ai-has-become-a-buzzword-in-recent-years-3c8792905c2d>, accessed 27 November, 2023.

² A. Jolal, 'FG Calls for Top Nigerian Researchers to Execute AI Strategy' Daily Trust online <<https://dailytrust.com/fg-calls-for-top-nigerian-researchers-to-execute-ai-strategy/>> accessed, 1 September 2023.

³ Ibid.

artificial intelligence cannot be said to function properly without a legal framework. This would address the legal relationship between the artificial intelligence which is an abstraction and the human beings it would deal with on a daily basis. In doing so, the perplexities as to crimes and torts committed by the artificial intelligence would have been resolved. Again, it must be noted that law or the rule of law which encompasses liberty and the fundamental rights of every individual can never in any way be compromised whether contravened by the artificial intelligence such as robots or not. The rule of law is universal and it cannot be derogated from by any stroke of chance. It follows that the rights of the people vis-à-vis the propagation and management of AI is of utmost concern to every society and the globe at large.⁴

1.1 Meaning of Artificial Intelligence (AI)

For a proper understanding and grasp of the tenets of artificial intelligence, it is pertinent that the two words (artificial and intelligence) constituting the phrase should be examined differently. Thus, 'Artificial' could mean "made or produced by human beings rather than occurring naturally, especially as a copy of something natural" "(of a person or their behaviour) insincere or affected".⁵ On the other hand, 'intelligence' means "the ability to acquire and apply knowledge and skills".⁶ It could be seen as "the ability to solve complex problems or make decisions with outcomes benefiting the actor."⁷ Having separately stated the meaning of "artificial" and 'intelligence' above, the meaning of 'artificial intelligence' can now be examined, putting the two words together as a phrase.

Laskowski and Tucci defined artificial intelligence as "the simulation of human intelligence processes by machines, especially computer systems."⁸ According to the scholars, "specific applications of AI include expert systems, natural language processing, speeches recognition and machine vision."⁹ On his part, Copeland sees AI as "the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings".¹⁰ According to him, artificial intelligence is always used for the purpose of developing strategies

⁴ Springer Link, 'Preserving the Rule of Law in the Era of Artificial Intelligence (AI)' <https://link.springer.com/article/10.1007/s10506-021-09294-4>, accessed 27 November, 2023.

⁵ Oxford Languages, <<https://www.merriam-webster.com>>, accessed 4 September, 2023.

⁶ *Ibid.*

⁷ See, <<https://www.hopkinsmedicine.org>>, accessed 4 September, 2023.

⁸ N. Laskowski and L. Tucci, 'Definition, Artificial Intelligence (AI) (C10/IT Strategy)' <https://www.techtarget.com/searchenterpriseal/definition/AI-Artificial-intelligence#:~:text=Artificial%20intelligence%20is%20the%20stimulation,speech%20recognition%20and%20machine%20vision> accessed 4 September 2023.

⁹ *Ibid.*

¹⁰ B. J. Copeland, 'Artificial Intelligence', Encyclopaedia Britannica <https://www.britanica.com/technology/artificial-intelligence> accessed, 4 September 2023.

capable of human imputations, including the ability to galvanize and think, find origins, infer in the overall interest and acquire knowledge from previous dealings.¹¹ Again, Salokannel is of the view that AI is “the simulation of human intelligence in machines that are designed to think and work like humans.”¹² The scholar further opined that AI is capable of learning from the past; arriving at a conclusion; and carrying out assignments that need human imputes, ability or intelligence.¹³ Going by the definitions above, it is crystal clear that AI is the process of simulating human reasoning and intelligence in a computer or machine for the purpose of improving or shaping the idea or reasoning of humans. Such machines when simulated, can work on their own without supervision. AI can be globally used to achieve and enhance security, industries, data, health sector, banks and other financial institutions, fraud detection, etc. It is a combination of ‘machine learning’ techniques and ‘deep learning’.¹⁴ Artificial intelligence is mainly the application of machines without humans interfering with the functioning of such machines; it is often regarded as automation revolution which has evolved to systematically ease the ways of doing things across the globe.

1.2 Types of Artificial Intelligence

Artificial intelligence has indeed become a dream come through as far as it concern the gamut of man’s every day activities. It is applied in the transportation sector, healthcare delivery, banking, retail, entertainment, e-commerce, education, and almost every sphere of our lives.¹⁵ It could be categorized into: ‘narrow’, ‘general’ and ‘super’ AI.¹⁶ It could equally be grouped as ‘reactive machines’, ‘limited theory’, ‘theory of mind’ and ‘self-awareness’.¹⁷ This categorization is however, dependant on capabilities. Narrow AI which is also referred to as weak AI concentrates on a particular and specified area of task. Examples of narrow artificial intelligence are Google translate, image recognition software, etc. Also, general artificial intelligence encompasses the learning and understanding of intellectual task which humans can undertake. It is equally known as strong artificial intelligence. Super artificial intelligence is that type that can do such task that humans cannot even undertake; its existence is hypothetical, and it involves reasoning, resolving

¹¹ Ibid.

¹² P. Salokannel, ‘The Impact of AI: How Artificial Intelligence is Transforming Society’ <https://www.3dbear.io/blog/the-impact-of-ai-how-artificial-intelligence-is-transforming-society> accessed, 4 September 2023.

¹³ Ibid.

¹⁴ A. Biswal, ‘AI Application: Top 18 Artificial Intelligence Applications in 2023’, <https://www.simplilearn.com/tutorials/artificial-intelligence-tutorial/artificial-intelligence-applications> accessed, 4 September, 2023.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

issues or problems, taking decisions.¹⁸ Based on functionalities, reactive machine do not store memories as it works only with present data.¹⁹ Again, limited memory trains from past data in decision-making with short-lived memory. And theory of mind is regarded as a concept and an advanced class of technology that understands sentiments, emotions, thoughts, etc.²⁰ Self-awareness on the other hand, is hypothetical in nature; it understands traits, states and conditions. AI is so overwhelming for being faster and smarter than human mind.²¹ No wonder it is turning to a globally acceptable phenomenon capable of leading businesses in every establishments and organizations the world over.

Generally speaking, artificial intelligence is all about the component of technology - machine learning and it requires hard and software. Laskowski and Tucci were apt to describe the nature of artificial intelligence when they stated that AI functions and perform its duty by imputing large amounts of labeled training data, in order to scrutinize and carry out analysis of the data for variables and patterns, and using these variables predict later subsequent occurrences on the subject matter. They further stated that an example is a Chabot that is stocked with examples of short message service (SMS) and is capable of learning how to create discussions between it and individuals or images recognition mechanism can learn to pick, recognize and explain what an object is in an image by examining many of the samples. They posited that generative AI techniques can create realistic SMS, pictures or photographs, sound and such various media.²²

Sequel to the assertions of the scholars above, artificial intelligence encompasses such skills that involves learning, reasoning, self-correction, creativity, etc.²³ They also opined that AI is so germane consequent upon its goal towards transforming the ways of life of humans, attitude to their day-day activities and general well being. It has been important for the purpose of the task of businesses as AI can perform tasks far better than human beings.²⁴ If AI is faster and performs duties better than humans it follows that in the nearest future to come, majority of the jobs undertaken by humans would have been taken over by the artificial intelligence. What then would be the fate of several employees working in various corporations, public and private sectors?

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² N. Laskowski and L. Tucci, 'Guide to Artificial Intelligence in the Enterprise, what is Artificial Intelligence and How Does AI Work?' <<https://www.techtarget.com/searchenterprise/definition/AI-Artificial-intelligence#:~:text=Artificial%20intelligence%20is%20the%20stimulation,speech%20recognition%20and%20machine%20vision>> accessed 4 September 2023.

²³ *Ibid.*

²⁴ *Ibid.*

1.3 Economic Impact of Artificial Intelligence

There is no gainsaying the fact that artificial intelligence has a great deal of economic impact on the society. Apart from its transformative technologies of the 21st century, it has impacted in every aspect of human lives economically, socially and otherwise. Amarjit, a strategic marketing professional stated that:²⁵

The rise of AI has brought with it a wave of automation that is reshaping the workforce, changing the way we approach healthcare, transforming the way we interact with technology, and raising concerns about the potential impact of AI on society. One of the most profound impacts of AI is on the workforce. Automation is replacing human workers at an unprecedented rate, with AI-powered machines taking over routine and low-skilled jobs. While this has the potential to improve efficiency and reduce costs, it also raises concerns about the displacement of jobs. However, it is important to note that AI is not a job killer, but rather a job transformer... While some jobs may become obsolete, new jobs that require skills such as creativity, critical thinking, and empathy will emerge.²⁶

The scholar above stated further that there is the need to have an open and honest conversation about the potential risks and benefits of AI and engage with stakeholders from all sectors to ensure the development of AI.²⁷ According to him, it behooves on the people to organize and properly propagate AI in order to ensure that it achieves its targeted aim, goal and objectives. He enjoined everyone to embrace the new order being power of AI, but that it should also recognize the disadvantages that are embedded in it.²⁸ From the foregoing, it can be deduced that artificial intelligence has come to stay as it has some positive impacts or roles to play in the society. This notwithstanding, artificial intelligence has some adverse economic effects on the society too. Scholars have posited that artificial intelligence would create unemployment in the society if it is encouraged and allowed to carry out human jobs. It is estimated that by 2030, between 75million to 375million workers (3-14% of the global workforce) will definitely be involved in jobs shift

²⁵ Amarjit Sen, 'The Impact of Artificial Intelligence on Society; Opportunities, Challenges, and Ethical Considerations' <https://www.linkedin.com/pulse/impact-artificial-intelligence-society-opportunities-challenges-sen?utm_source=share&utm_medium=member_android&utm_campaign=share_via> accessed, 6 September, 2023.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

and could be rendered redundant thereby leading to skills learning.²⁹ In fact, so many employees in both public and private sectors could lose their jobs and this raises the nagging issue of unemployment especially in developing and undeveloped societies.

Notwithstanding the good impacts of artificial intelligence, there are however, some disadvantages are inherent in AI. Thus, Brenner while stating the demerits of artificial intelligence was of the utmost view that the major demerits of artificial intelligence include a low Return on Investment (ROI). Also, there is as well unimaginative and emotionless content, and AI can spur weakness and look-warm attitude onto those who use it on a daily basis and comes out to produce poor outcome and poor quality or incorrect outcomes or results. Again, collection of data by AI and its sharing information is of great and ethical concerns. Also, unemployment might crop up immediately from some corporations who may not have the expertise know-how of AI and such corporations may immediately sack their workers as a result of the trust they have in AI.³⁰

Brenner equally posited that incorrect information, ‘lack of quality Search Engine Optimization (SEO), unnecessary unemployment, ethical concerns, laziness and indecisiveness, a lack of emotion, limited improvement, high costs for low return on investment, and little or no imagination are some of the disadvantages of AI’.³¹ The scholar stated that AI no doubt has great merits but also has demerits. According to him, AI should be used properly in order to achieve its positive objectives and results. It is submitted that AI has merits and demerits; the demerits notwithstanding, artificial intelligence has helped in promoting economic growth, internationalization or globalization and further development of any society and mankind. It is further submitted that it appears right to state that Nigeria seem to be championing the cause of artificial intelligence in sub-Saharan Africa. In the judicial arm of government, some states such as Lagos, Delta, Bayelsa, Ogun, Nasarawa, Abia, Imo, Abuja, etc have introduced e-filing of processes by litigants and their counsel in the High courts. The government has directed its policy towards enthroning AI in the day to day running of its affairs.

In Nigeria, the constitution provides that government policy should be directed towards “equal and adequate educational opportunities at all levels” and that “government shall promote science and technology”.³² It equally provided that the “state shall encourage development of technology

²⁹ C. Arena, ‘7 Disadvantages of Artificial Intelligence Everyone should know About’

<<https://www.liberties.eu/en/stories/disadvantages-of-artificial-intelligence/44289>> accessed, 6 September, 2023.

³⁰ M. Brenner, ‘9 Disadvantages of AI you Never Thought About’

<<https://www.liberties.eu/en/stories/disadvantages-of-artificial-intelligence/44289>> accessed, 6 September, 2023.

³¹ *Ibid.*

³² S. 18(1) CFRN 1999 (as Amended).

and scientific studies which enhance cultural values”³³ These provisions are enough to buttress the point that Nigeria as country is not mincing words on information technology and artificial intelligence which embraces automation and simulation of machines. Again, the “sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.”³⁴ The government of Nigeria recognizes the importance of science and technology as a source of economic growth and development thus she encourages science and technology including artificial intelligence. It is stated that Nigeria is set to produce its first National artificial intelligence strategy and this strategy will kick start Nigeria’s dire need for transformation and improvement of the country sequel to the introduction of AI for sustainable growth and development of technology and power to bring new ideas, productivity, and to cater for individuals.³⁵ Nigeria is poised to be the foremost artificial intelligence country on the African continent, as she is the first country in the continent to institutionalize a National Centre for AI and Robotics, and the establishment of dedicated government institutions who are fostering a knowledge-based economy, and promoting the research and development of AI systems. Nigeria equally has a progressive Pan-African AI ecosystem with several individual actors, business enterprises and startups sustaining the use, deployment, and development of AI systems.³⁶ However, in a swift reaction, the United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that it is planning to co-operate and interface with countries, Rwanda inclusive to adopt the ethics pertaining to the use of AI. Such AI ethics were made public by the UNESCO in Rwanda during an interactive session with the Rwandan authorities.³⁷ Some of the ethics include but not limited to ensuring diversity and inclusiveness; fundamental human rights; vulnerable people protection; environmental protection; avoidance of danger or harm; ensuring safety and guaranteeing security; avoidance of discrimination and upholding fairness and dignity of human person; enlightenment campaign, awareness and literacy, etc.³⁸ Rwanda is indeed looking forward to AI to boost her economy and tremendously relying on its use to develop the country in order to be reckoned with in the comity of nations. It is however

³³ *Ibid*, s. 21.

³⁴ *Ibid*, s. 17(1).

³⁵ *J.O. Effoduh, K. El-USma and K. Oyeniyi*, ‘Towards a Rights - Respecting Artificial Intelligence Policy for Nigeria’ https://eu.docworkspace.com/d/s/Gmynv_bAcPkjkgG or <https://www.wps.com/d/?from=t> accessed 14 September, 2023.

³⁶ *Ibid*.

³⁷ *M. Nkurunziza*, ‘UNESCO’S 10 Ethics on Artificial Intelligence (AI) Use’ (The New Times News 28 Septmber, 2023) <https://www.newtimes.co.rw/article/11098/news/technology/unescos-10-ethics-on-artificial-intelligence-ai-use> accessed 29 September, 2023.

³⁸ *Ibid*.

submitted that the implementation of AI usage, programme and policies is a herculean task to come by as millions of dollars are expected to be expended on such policy.³⁹

1.4 Natural and Artificial Persons

In corporate law, the concept of legal personality could be classified into natural and artificial persons. Natural persons are described as being natural when such persons are human beings. Thus, in *Gani Faweluinmi v NBA (No2)*⁴⁰, the court defined a natural person as “a human person who has life and blood in him or her whether a citizen of one state or another given protection by law and endowed with human qualities.”⁴¹ The status of a legal person is vested immediately at birth in some jurisdictions.⁴² It follows that a child becomes a person when it has been born alive whether it has breath or not and whether the umbilical cord is severed or not.⁴³ On the other hand, artificial persons are persons who cannot function on their own without the help of a human being or natural person. The court has held that a person can sue and be sued even if that person is natural or artificial.⁴⁴ A corporation becomes an artificial person immediately it is incorporated or registered except the veil of incorporation is lifted.⁴⁵ A juristic person may be able to sue and be sued in its name but it may lack some of the attributes of an artificial person.⁴⁶ From the foregoing, it follows that artificial intelligence such as robots being a simulation from human beings can be sued either through its owners or employers. Legal actions can lie against its employer or owner either in tort, fundamental rights or crime committed by such artificial intelligence. A robot as artificial intelligence cannot necessarily be sued because it is artificial and non-juristic. But its employer can be sued for tort or misfeasance, abuse of human rights and criminality. A person can be described as being a natural person when such a person is a human being.⁴⁷

1.5 Civil and Criminal Liability of Artificial Intelligence

It is obvious that in the nearest future to come, series of law suits would herald the practice and use of AI such as robots, algorithms and machine learning activities across the globe especially

³⁹ L. Glogulska, Artificial Intelligence, Health Care News – Why is AI so Expensive? <https://ts2.space/en/why-is-ai-so-expensive/#:~:text=The%20computational%20power%20required%20which%20infrastructure>, accessed 1 December, 2023.

⁴⁰ (1989)2 NWLR (Pt. 595).

⁴¹ *Ibid.*

⁴² S. 5(2) Chap. I Penal code.

⁴³ See Northern States of Nigeria Federal Provision Act, Cap. P3 vol. LFN 2004.

⁴⁴ *Ibid.*

⁴⁵ See, *Salomon v Salomon* (1879) A.C. 22.

⁴⁶ See generally, *Iyke Medical Merchandise v Pfizer Inc.* (2001) FWLR (Pt. 53) 65.

⁴⁷ *D.F. Tom*, ‘The Criminal Liability of Bodies Corporate in Nigeria Law’ (Enugu: Chenglo Publishers Ltd, 2005) 23.

in the areas bothering intellectual property, fundamental human rights, defamation, image generation, copy rights and patents, etc. So many lawsuits have begun in some advanced countries such as the US on the advent and practice of artificial intelligence and this is sequel to the simple logic or assertion that “just because something is out there for free does not mean it is free of rights.”⁴⁸ The implication of this is that artificial intelligence is governed by law so it is restricted to the whims and caprices of the long arm of the law and the fundamental rights of the people.

This article is of the utmost view that any act or omission of any human simulated object otherwise referred to as artificial intelligence, be it civil or criminal should be visited on its employer. A corporation that employs an artificial intelligence for its use and benefit is vicariously liable for an act or omission or negligence perpetrated by that AI. It is however submitted that such act or omission of a robot or anything invented by a machine through the simulation of humans amounts to vicarious liability and a corporate crime. Therefore, the employer of such artificial intelligence is liable civilly and criminally for such acts or omissions except where such employee is acting on his own as an independent person.⁴⁹ This is because a robot being artificial and non-existence is incapable of being sued, convicted or held liable for any civil act or omission carried out by it. It behooves on the employer to take reasonable and extra care to control, regulate and guide such robot in order not to infringe on another person’s right. It follows that artificial intelligence like robots is an agent of any person or corporation, agency, establishment and institution that bring such robot as security apparatus or to perform or carry out any duty on behalf of the entity. Such entity would be held liable civilly or criminally for an act or omission carried out by such devices. The same way such corporations or any establishments have their rights despite not being natural persons. A corporation is created by laws of a particular state or National law. They can exercise human rights just as human rights can be exercised against them; they can die despite being immortal; they can even be convicted upon commission of crimes through their agents or in persons.

A crime is said to be corporate where it is perpetrated by corporations, their agents and servants in the course of carrying out legitimate business with the corporation. Such agents and servants are not just the staff of the corporation alone but include simulated machines like robots which work for the corporation. Thus, corporate crimes are stated to mean:

⁴⁸ See *D. Walsh*, ‘The Legal Issues Presented by Generative AI’, <https://mitsloan.mit.edu/ideas-made-to-matter/legal-issues-presented-generative-ai> accessed 18 September, 2023.

⁴⁹ See *Barclays Bank Plc v Various Claimants* (2020) UJSC 13 and *WM Morrison Supermarkets Plc v Various Claimants* (2020) UKSC 12.

Illegal acts, omissions or commissions by corporate organizations themselves as, social or legal entities or by officials or employees of the corporations acting in accordance with the operative goals or standard, operating procedures and cultural norms of the organization, intended to benefit the corporations themselves.⁵⁰

Meanwhile, an American billionaire, philanthropist and investor, Bill Gates has called on governments and the private sector the world over to regulate the implementation and use of artificial intelligence so as to achieve its goals. He further stated that the government, private sector and civil society organizations should collaborate to “maximize the technology’s benefit and minimize its risk.”⁵¹ However, in *Tesco Supermarket v Natrass*⁵², it was held that the performance of a duty is measured by due diligence, and a store manager was held to be another person and not a directing mind of the company. Lord Reid succinctly stated that it has often been argued as it was argued in the case of Tesco that “making an employer criminally responsible, even when he had done all that he could to prevent an offence, affords some additional protection to the public because this will induce him to do more.”⁵³ The implication of what the learned justice had said is that in a situation where a company had done its best to caution and prevent its employees from doing an act or omission that would be adverse or detrimental to the company what more can the company do? It is submitted that such employee should be held liable and responsible for such act or omission committed by him/her.

Also, the rule in *Rylands v Fletcher*⁵⁴ is to the effect that a person’s non-natural use of his land, that might lead to another person’s land being destroyed sequel to negative things or issues arising from such land, is strictly liable. The kernel of the rule in *Fletcher* above is to the effect that a person who occupies a land would suffer or be liable for any adverse effect that may arise consequent upon the escape of a dangerous or negative thing in the course of non-natural use of land, the occupier of that land is liable for the damage to another caused as a result of the escape, irrespective of fault. Again, in *Donoghue v Stevenson*,⁵⁵ the duty of care concept was expanded into a coherent judicial test, which must be satisfied in order to claim in negligence. In law, a person legally owes another (neighbour) a duty of care to protect such neighbor from any

⁵⁰ C. Reasons, ‘Crime Against the Environment: Some Theoretical and Practical Concerns’ Crim. L. Q. vol. 34 Nov. 1 1999).

⁵¹ A. Olayiwola, ‘Bill Gates Urges Regulations on Limitless AI Potential’ < <https://punch.com/bill-gates-urges-regulations-on-limitless-ai-potential> > accessed 18 September 2023.

⁵² (1971) 2 ALL ERO 129; (1971) 3 MLR, 676 – 680.

⁵³ *Ibid.*

⁵⁴ (1868) LR 3HL 330.

⁵⁵ (1932) AC 562.

adverse and unreasonable harm or loss. It follows that where a duty of care is breached there is therefore, a liability imposed by law to take care of such neighbour or victim. In essence, where a person or group of persons carries out an act or omission that could cause harm to another person or group of persons physically, mentally, economically or otherwise, a duty of care occur or arise. And the person(s) who suffers such harm (victim(s) are bound to be compensated for the harm or injury suffered. What this implies is that everyone has a duty of care to another and one must take every reasonable step to protect his/her neighbour in whatever he/she do so as not to adversely affect another person, otherwise, the victim would be compensated.

In a nutshell, any corporation or individual that provides or procures AI or a robot controlled by machines simulated by humans to do a task that are usually done by humans should be ready to bear the negative consequences of the acts or omissions of such artificial intelligence or computers or robots. An individual or corporation is vicariously liable for an act or omission of a computer controlled robot where such robot commits a tortuous or criminal act. A robot cannot be held liable neither can it be convicted. Although, where a robot commits a crime, it can be confiscated but its criminal liability lies on the individual or corporation that procures it. Whoever that brings anything that would cause harm to another and results in danger that would harm that other person would be strictly liable. This is akin to the fact that everyone owes a duty of care to another otherwise, where a neighbour is made to suffer for an act or omission of another including a corporation such person who perpetrate such act would be made to pay compensation to the person (victim) who may have suffered.⁵⁶

1.6 Artificial Intelligence and the Rule of Law

Artificial intelligence no doubt, has become very crucial and central in the affairs of corporations and other establishments. AI is applied in almost in every facet of life, be it business, finances, education, health, entertainment and media, law, security, manufacturing, banking, transportation, farming, sports, defence, intellectual property, algorithms bias, discrimination, unfairness, labour protection, privacy and data liability for harms, accountability, surveillance, access to justice, legal personality, cyber security, etc.⁵⁷ Consequently, AI affects the gamut of human life on a daily basis either positively or adversely. The rule of law encompasses the fundamental human rights of individuals and it is encapsulated in various local and international laws and legal instruments including the constitution of every nation. It must be noted that

⁵⁶ On Duty of Care, see, *Diamond Bank Limited v Mocok Onu Nigeria Ltd* (2019) LPELR – 46440 (CA). See also, *Edward Okwejinor v G. Gbakeji & Anor*. S.C 67/2002.

⁵⁷ *Ibid*, (n15). See also *R. Rodrigues*, ‘Legal and Human Rights Issues of AI: Gaps, Challenges and Vulnerabilities’ <<https://www.sciencedirect.com/science/article/pii/S2666659620300056>> accessed 18 September 2023.

“human rights are inalienable, global, indivisible and relates in one way or the other.”⁵⁸ It therefore, follows that all nations are subject to the rule of law and nothing more. And the observance of the fundamental rights of the citizenry must be guaranteed. Corporations and other establishments are equally subject to the observance of the rule of law vis-a-vis the fundamental rights of individuals and their liberty. Regardless of an individual’s race, religion, gender, class, language, his fundamental rights as enshrined in the constitution and international charters are guaranteed. Such rights include rights to freedom of speech, movement, association, assembly, right to life, right to fair hearing, right to dignity, to participate in government, right to information, expression, right to privacy, right against torture, economic and social rights, etc.⁵⁹ These rights are inalienable and governments are to ensure their safeguards. A democratic government guarantees the rule of law and the fundamental rights of the individuals or citizenry. In their day – day usage and applications, AI might offend the fundamental human rights of an individual or a citizen or another corporation.

The Council of Europe’s Ad Hoc Committee on AI⁶⁰ was of the view that overlapping with these human rights concerns is the concentration of power AI affords to its most influential private and public sector developers and implementers. The operators of major online platforms employ AI to choose what content to display and whose voices to make prominent in service of their own, rather than democratic interests. Governments use AI to rank and order information and to monitor and track citizens. Whether done by companies or governments, AI can be used to shape opinions and suppress dissent.⁶¹

The rule of law presupposes the supremacy of the law, equality before the law, predominance of legal spirit, and the fundamental rights and liberty of an individual, accountability, open government, just law and accessibility, open government and impartial judiciary, stakeholders, corporations, institutions and establishments have a duty to ensure the protection and safeguard of the rule of law and fundamental rights and liberty of individuals in the society.⁶² This work is therefore of the view that the rule of law and the fundamental human rights are extended to artificial intelligence including robots, machines, algorithms, etc. When the rule of law is violated and the fundamental human rights of individuals are trampled upon who ever that

⁵⁸ United Nations Vienna Declaration, 1993.

⁵⁹ See Chap. IV CFRN 1999 (as Amended); Chap. I, African Charter on Human and People’s Rights (Ratification and Enforcement) Act Cap. 10 LFN 2004; Arts 1-30 UN Universal Declaration of Human Rights.

⁶⁰ *D. Leslie, C. Burr, M. Aitken, J. Cows, M. Katell and M. Briggs*, ‘Artificial Intelligence, Human Rights, Democracy and the Rule of Law’, (A Primer, The Council of Europe, The Alan Turing Institute, 2021) 17.

⁶¹ *Ibid.*

⁶² *R.H. Fallon*, ‘The Rule of Law as a Concept in Constitutional Discourse (Columbia Law Review vol. 97 No. 1, 1997) 1.

employs such artificial intelligence being artificial person would be held responsible just like in the case of corporate crimes. The employer would be civilly and criminally liable if the rights of persons are trampled upon. The rule of law is the fundamental ideal in every democratic setting, and therefore, must not be undermined with any form of equivocation. Where the rule of law is undermined, the resultant effect is strife, tyranny and absence of order in the society. This culminates or leads to lack of growth and improvement in such society.

The preservation of the rule of law in the era of AI is very pertinent because law itself is made to serve as social control. And if law or the rule of law is to preserve order in the society, there is the need to obey the rule of law and ensure that the fundamental rights of individuals are strictly observed. Any establishment that employs artificial intelligence must ensure that all hands are on deck towards observing the rule of law and the fundamental human rights of individuals. Where there is a breach of the rule of law and fundamental rights of individuals by the application of artificial intelligence, the corporation or establishment that employs such artificial intelligence would be held responsible or liable for such breach. It is submitted that Artificial Intelligence might erode the rule of law and the fundamental human rights in the societies unless they are regulated. Thus, *Greenstein* posited that technology is most time regarded as a ‘double-edged sword’ due to its effects on society as it can be advantageous and also disadvantageous. The inherent nature of AI is without doubt a threat to the rule of law and these must therefore be addressed. It is therefore necessary to categorically state some of the risks to the rule of law.⁶³

However, in *Loomis v Wisconsin*,⁶⁴ the United States Supreme Court refused to grant a writ of certiorari and refused to hear a matter before it. The matter bothers on a challenge of the state of Wisconsin’s use of “closed-source risk assessment software” in the sentencing of Loomis to 6 years in prison. The allegation was that engaging in such software in the process of sentencing contravenes the defendant’s right to due process as it precludes a defendant from questioning the scientific validity and accuracy of such test. It was also alleged that the system in question (COMPAS) vitiates due process rights by taking gender and race into account. The court was of the view that if used properly, observing the limitations and cautions set forth hearing, a circuit court’s consideration of a COMPAS risk assessment at sentencing does not violate a defendant’s right to due process”.

⁶³ S. *Greenstein*, “Preserving the Rule of Law in the Era of Artificial Intelligence (AI)” <<https://www.researchgate.net/publication/353314743-preserving-the-rule-of-law-in-the-era-of-artificial-intelligence-AI>> accessed 12 September 2023.

⁶⁴ 881 N.W. 2d 749 (Wis. 2016); SC. 2290 (2017).

In 2018, the European Union (EU) designed an action plan made public in 2019 suggesting some guidelines and recommendations regarding the propagation of AI as follows:

develop, deploy and use AI systems in accordance with the following ethical principles; respect for human autonomy, prevention of any infringement, fairness, etc. Recognize and resolve potential tensions between these principles... pay particular attention to situations concerning more vulnerable groups such as children, people with disabilities and other groups historically disadvantaged or exposed to risk of exclusion, and in situations characterized by asymmetries of power or information, by example between employers and workers, or between businesses and customers. Recognize and be aware that AI systems certainly bring considerable benefits to individuals and society, but that they also present certain risks and may have negative impacts, including impacts that may be difficult to anticipate, determine or to be measured (for example impacts on democracy, the rule of law and distributive justice, or on the human mind itself). Adopt appropriate measures to migrate these risks, if appropriate, in a manner commensurate with the magnitude of the risk.⁶⁵

From the foregoing, it is obvious that as AI is assisting in advancing and transforming the economy the world over through the use of machines learning, algorithms, robots, there is however, every tendency that this technological advancement would go a long way to violating the rule of law and trampling upon human rights as provided in some international instruments and various countries' constitutions and enabling laws. Some of these laws and instruments are universal, and are all enforceable.⁶⁶ The advent of AI no doubt creates novel circumstances that may require a legal framework for the judiciary and lawyers to tackle. This is very germane because law being an instrument of social control is saddled with the responsibilities of catering for any challenge that evolves in a society from time to time. The society itself grows and develops on a daily basis and it must be controlled by law in order to maintain peace and

⁶⁵ D. Saha, A. Mukherjee, 'Pervasive Computing: A Paradigm for the 21st Century, IEEE Computer, 2003; 36(3): 25 -31, doi, 10.1109/MC. 2003. 1185214 Cross Ref Google Scholar, cited in E.K. Mpinga, N.K.Z. Bukonda, S. Oailouli and P. Chastonay, 'Artificial Intelligence and Human Rights: Are There Signs of an Emerging Discipline? A Systematic Review <<https://www.sciencedirect.com/science/article/pii/S2666620300056>> accessed 12 September, 2023.

⁶⁶ M. Sherman, 'The Debate Between Artificial Intelligence and Human Rights' <<https://www.legalservicesindia.com/legal/article-8831-the-debate-between-artificial-intelligence-and-human-rights.html>> accessed 12 September, 2023.

tranquility. In a seminar in Artificial Intelligence and Evidence (Law and Technology), organized in Singapore on the 15th of September, 2021, Lord Sales was apt to state as follows:

How should legal doctrine adapt to accommodate the new world, in which so many social functions are speeded up, made more efficient, but also made more impersonal by algorithmic computing processes? At least with computer algorithms, one still has human agency in the background, guiding process through admittedly complex computer programming. Still more profoundly, however, how should legal doctrine adapt to processes governed without human agency, by artificial intelligence – that is, by autonomous computers generating their own solution, free from any direct human control?⁶⁷

It is obvious from Lord Sales' words above that there are complexities with the advent of algorithms, machine learning and AI generally and there is the need to enunciate a legal framework to regulate and guide its propagation across the globe. Times have changed and we can now see a situation where we would be dealing with machines and robots rather than humans. When regulated and tamed by law, AI would be embraced globally and it would help in the development and improvement of the growth of the economies of many nations.

1.7 Conclusion

There is no doubt that the global world is in a cusp of technological improvement and advancement. It has become a matter of necessity that the simulation of technology and machine learning is geometrically advancing in every sphere of human life and existence. AI have so many benefits and it is being accepted across the globe for such obvious reasons. It is basically the trending form of businesses in every organization today. It is a system that enables robots and other simulated machines to do what humans can do and even do it better without humans. It is faster and has brought positive and tremendous results. This notwithstanding, the threats and degradation inherent in this advancement must not be over emphasized otherwise it will pose a great danger to human existence and the rule of law. It appears right to say that AI portends danger for the rule of law and human rights; peace and tranquility of human life remain the kernel of fundamental human rights of individuals, 'an underlying implicit assumption being the

⁶⁷ SLN, 'Lord Sales Calls for Regulation of Artificial Intelligence' <https://www.scottishlegal.com/articles/lord-sales-calls-for-regulation-of-artificial-intelligence>, accessed 29 November, 2023.

hierarchical superiority of humankind to other forms of life meriting less protection.’⁶⁸ In order to avoid anarchy and disorder emanating from AI, the sanctity of the rule of law and the fundamental human rights must be preserved globally. AI is necessary and very germane in global economic growth, but its demerits and danger posed against humanity should not be treated with levity in any way. It therefore follows that the activities of AI are subject to the rule of law which encompasses the fundamental rights of individuals.

1.8 Recommendations

1. International, regional, sub-regional and national organizations, civil society organizations should as a matter of urgency establish and put in place legal instruments to guide the activities of artificial intelligence across the globe.
2. The rule of law and the provisions relating to fundamental human rights as encapsulated in various charters and constitutions of various countries the world over should be adhered and maintained at all times.
3. There should be established a legal framework upon which artificial intelligence such as robots should operate and perpetuated in every society where it is carried out.
4. There should be an enactment in each and every nation to control and mitigate the negative effects of algorithms, robots, machines and other forms of artificial intelligence.
5. Corporations, institutions and establishments which procure the services of artificial intelligence must as a matter of necessity, ensure the protection of third parties including any person that the activities of their artificial intelligence might affect adversely.
6. A legal framework to criminalize the unlawful and unwholesome activities of artificial intelligence should be put in place.
7. In order to avoid or reduce the risk of incessant litigations, corporations, establishments and governments must endeavour to properly and adequately train their staff and employees in the area of artificial intelligence.

⁶⁸ *M. Risse*, ‘Human Rights and Artificial Intelligence: An Urgently Need Agenda’
<<https://www.hks.harvard.edu/publications/human-rights-and-artificial-intelligence-urgently-needed-agenda>>
accessed 12 September, 2023.