AI and case law: why jurisprudence matters

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1.-Skepticsim on AI in justice

-New technologies not always improve justice

-Let's avoid mesianic promises

-Great diversity in legal world (e.g. Civil Law vs. Common Law)

-Fixing justice and make it common is not that easy

2.-Let's change the focus

-AI is usually linked to technical improvements

-But it may have an impact on substantial issues

-How can AI help us understand whteher our laws work, how courts apply them and how judicial reasoning evolves?

-The answer: improving case law analysis

3.-Case Law as a sympton of a systemic change

-Jurisprudence is becoming increasingly important (even in countries coming from civil law tradition)

-Three reasons explain this change: (i) more supranational integration (e.g. EU); (ii) social and technological changes that leave written law behind and (iii) the growing need for courts to interpret vage legal dispositions.

-Courts are becomign "quasi-legislators"

4.-Controlling Courts

-If courts are becoming quasi-legislators, how can we control this? Through case law analysis checking if the same Court is reasoning the same for similar cases.

-Limit: judicial Independence. ECHR has highlighted the tension between judicial Independence and legal certainty.

5.-Case law analysis needs a change

-Case law is used poorly.

-Citations are frequently innacurate or inconsistent (we look for the quote but we don't look deeper into the case).

-We tend to cite decisions based on the authority of the Court rather than the relevance of the reasoning.

-We ignore factual context of the case.

6.-How can AI help.

-Tecnhological improvements coming with AI may have an impact in:

(i) Improving acces and identification (specially judicial decisions coming form lower Courts)

(ii) Enhancing Legal Research: AI may identify relevant precedents and trace the evolution of a doctrine.

(iii) Supporting legal analysis: AI can help analyze patterns in judicial reasoning

(iv) Decission-support, not decision-making.

Conclusion

-AI cand profoundly improve legal education and judicial practice

-AI may help us acces to more decisions, contextualize them properly and analyze them deeper

-Legal certainty will be benefited and may help to strenght coherence of our jurisprudence.