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The Role of Lawyers in Shaping the Idea of America: From the Founders to the Age of AI

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Jan 31, 2026

From the beginning, the United States has been a nation imagined and defined through lawyers' participation. The country's founding documents—the Declaration of Independence, the Constitution, the Federalist Papers—were not merely acts of rebellion but feats of legal reasoning. The founding generation's idea of America was born not on the battlefield but in the courtroom and in the public square, where lawyers debated what freedom, equality, and justice could mean in practice.

Today, as artificial intelligence (AI) reshapes human experience, potentially as profoundly as industrialization once did, the legal profession again stands at the frontier of defining how to remain human, free, and responsible in a new age of governance. The question is no longer only how to govern people but also how to govern machines that, in subtle but rapidly expanding ways, are coming to govern people. In this, lawyers, as interpreters, guardians, and architects of the rule of law, remain crucial.

The Founding Lawyers and the Birth of a Nation

More than half the signers of the Declaration of Independence were trained in law. John Adams, Thomas Jefferson, Alexander Hamilton, and James Madison were not just political actors but legal thinkers, steeped in Enlightenment jurisprudence, who became the midwives of the American idea, translating philosophy and jurisprudence into enforceable frameworks.

They believed that law stands above power; that legitimacy arises not from force but from consent governed by rules; that rights are inherent, not granted; and that the law recognizes, not creates, human dignity. The Constitution's checks and balances and the Bill of Rights reflect lawyerly skepticism of concentrated power and commitment to procedural

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fairness. Their insistence that a republic rests on the rule of law, not the will of a ruler, remains their greatest contribution.

In the two and a half centuries since, lawyers have remained central to America's development and self-correction, interpreting its ideals in light of new realities. Abolitionists like Charles Sumner, industrialists like Leland Stanford, statesmen like Elihu Root, reformers like Thurgood Marshall, and advocates for civil rights, women's rights, and environmental justice as well as their opponents, have all attempted to answer the same underlying question: What does freedom and a life of dignity for all mean now?

The Age of AI: The New Constitutional Moment

We stand today at another inflection point—one that the Founders could not have imagined but would have recognized in spirit.

When Jefferson wrote “We hold these truths to be self-evident,” he articulated a belief that law could express moral truth. [Declaration of Independence](#) para. 2 (U.S. 1776). The founding lawyers, understanding that the structures we build reflect who we are, created a republic by reasoning from first principles of liberty, equality, and accountability. Lawyers today must reason anew from those same principles, asking how they apply when intelligence is no longer solely human.

The already widespread use of AI has challenged pillars of the rule of law such as agency, transparency, equality, and democracy. Algorithms already govern large portions of our daily lives. Predictive policing models determine who is watched; credit-scoring systems decide who is trusted; automated human-resource filters influence who is hired. These systems administer rules without consent or appeal, exercising what Mireille Hildebrandt, describing the blend of code and normative architecture, calls “computational law by design.” Mireille Hildebrandt, [“Law as Computation in the Era of Artificial Legal Intelligence: Speaking Law to the Power of Statistics,”](#) 68 U. Toronto L.J. 12 (2018).

Machines lack consciousness, intention, volition, and interests. The law may, for pragmatic reasons, treat autonomous systems as electronic agents capable of binding their human principals—but only by legal fiction. The deeper truth remains: Machines cannot consent; only humans can. Shouldn't lawyers be actively involved in ensuring that humans remain responsible for the decisions made by machines?

Machines also lack values. They have no morality, no sense of dignity or justice, and no understanding of human purposes. What appears as “values” in their outputs is only a reflection of the data and objectives “we” set for them. Without human framing, AI risks

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replacing moral judgment with technical optimization. Shouldn't lawyers have an active role in ensuring that human values set the boundaries within which machines operate?

Machines also lack judgment, the human capacity to weigh principles, understand context, and choose wisely under uncertainty, based on human values. Machines can rank options. They cannot deliberate about moral consequences, such as fairness. Judgment anchors responsibility. And responsibility belongs only to people. Shouldn't lawyers help to supply the judgment that machines cannot?

The Lawyer's New Mandate

Assuming that we can agree that lawyers should be a part of the tech teams working on these issues, the next step is to define their mandate. The lawyer's oath binds us not only to clients but also to the rule of law itself. In the age of AI, that oath must extend to ensuring that technology never substitutes for but rather serves human conscience. As the preamble to the Model Rules of Professional Conduct reminds us, lawyers are "public citizens having special responsibility for the quality of justice." [*Model Rules of Professional Conduct* pmb1. 1](#) (2007). In the algorithmic age, that responsibility requires preserving the space for human judgment and moral accountability.

Interpreters of Human-Centric Law

Lawyers must ensure that technological systems remain subject to human values and human judgment. For instance, when considering the impact of AI on the Rules of Professional Conduct, the ABA's Formal Opinion 512 emphasizes that duties of competence, confidentiality, and supervision extend to the use of generative AI tools.

Architects of Ethical Governance and Guardians of Human Dignity

The European Union's Artificial Intelligence Act (Regulation (EU) 2024/1689) establishes detailed obligations for developers and deployers of AI. The Organisation for Economic Co-operation and Development's (OECD) *Artificial Intelligence Principles* (2019) and the Council of Europe's *Framework Convention on Artificial Intelligence and Human Rights, Democracy, and the Rule of Law* (CETS No. 225) reaffirm that the rule of law must remain the compass for AI governance. Although nothing comparable exists in the United States, a new governance conversation is emerging.

Congress is beginning to grapple with the balance between innovation and oversight through hearings such as "AI Regulation and the Future of US Leadership" (H. Comm on Energy & Commerce, May 21, 2025) and "The Federal Government in the Age of Artificial

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Intelligence” (H. Comm. on Oversight, June 5, 2025). Both the National Institute of Standards and Technology’s (NIST) AI Risk Management Framework (AI RMF 2023) and Executive Order 14110 on AI governance have invited lawyers to play that same crucial balancing role. Exec. Order No. 14110, 3 C.F.R. 14110 (2023) (revoked Jan. 20, 2025). And Congress has begun to translate principles into statutory form through measures such as the *AI Accountability Act* (H.R. 3369, 118th Congress 2023–2024).

States are accelerating their own efforts as well. Tennessee’s “ELVIS Act,” which protects artists’ voices from AI cloning, is one example among a rapidly expanding set of state initiatives tracked by the International Association of Privacy Professionals’ U.S. State AI Governance Legislation Tracker. *See* Ensuring Likeness Voice and Image Security Act, Tenn. Code Ann. § 47-25-1101 (2024). Across the country, legislatures are advancing disclosure requirements for AI-generated campaign materials and debating comprehensive frameworks for AI accountability.

The danger, though, is that if the United States delays comprehensive AI legislation, we may find ourselves litigating under foreign frameworks, becoming rule-takers rather than rule-makers. Shouldn’t American policymakers and lawyers engage globally, ensuring that American values and constitutionalism inform AI governance?

Translators Between Worlds

Lawyers must also, perhaps most importantly, build bridges between, for example, computer science and ethics and algorithms and conscience. Such bridging work is essential to ensuring that the digital order remains answerable to the human order.

Judges too have an important role. For example, the judiciary must decide whether to treat algorithmic outputs as evidence, expert opinion, or a new category altogether. In those decisions lies the first jurisprudence of the algorithmic age. Cases such as *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016), reveal how predictive algorithms challenge due process. Recent litigation, from challenges to AI-generated defamation and deepfakes to disputes over AI authorship and automated decision-making, shows how profoundly these tools disrupt traditional legal categories. Scholars like Frank Pasquale, in *The Black Box Society*, argue for transparency as a constitutional value. Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information 2* (2015). The task before judges is to translate the guarantees of procedural fairness into a landscape of data and algorithm—a new form of “digital due process.”

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After *Frankenstein*: Can Law Still Lead?

Mary Shelley's *Frankenstein* was a moral allegory about creation without conscience. Dr. Frankenstein's tragedy was not that he made life but that he abandoned it. The creature's destruction flowed from the absence of accountability.

This danger now confronts law. The machines are awake—learning, optimizing, executing—while legal systems struggle to keep pace. The tech industry has already built the creature. Will lawyers help to lead us to claim guardianship over its moral direction?

Law's genius has never been speed, but endurance. Every prior technological revolution—the printing press, the steam engine, the atomic bomb—began outside the law and ended within it. Lawyers eventually wrote rules that rehumanized power.

We neither should nor can “turn off” AI. We can, however, turn governance back on by demanding transparency and accountability; by embedding basic rights and due process into algorithmic architectures; and by designing institutions that certify and constrain AI.

Well-designed governance can set guardrails without dictating outcomes, preserving the space for experimentation, creativity, and competition that drives technology forward. Clear rules reduce uncertainty, clarify liability, and foster trust, which enable responsible innovation rather than hinder it. The goal is not to impede or even cage invention but to ensure that its power is aligned with human purposes, rights, and responsibilities.

The lawyer's role is not to fear the creature but to civilize it. The Founders drafted a Constitution for humans. Their heirs must now draft one for algorithmic decision-makers that act on their behalf.

Epilogue—The Oppenheimer Parallel: Lessons for the Lawyers of AI

The moral crossroads facing today's AI pioneers—and the lawyers who must help to govern them—echoes the story and anxiety of another scientific revolution: the fear that a creation meant to advance human flourishing might outpace its makers' ability to control and contain it. J. Robert Oppenheimer understood that a breakthrough intended to advance human knowledge could also outstrip the ethical, legal, and political structures meant to contain it. *See, e.g.,* Kai Bird & Martin J. Sherwin, *American Prometheus: The Triumph and Tragedy of J. Robert Oppenheimer* (2005). Geoffrey Hinton, the “Godfather of AI,” now speaks in strikingly similar terms, warning that systems he helped build may evolve

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beyond their makers' ability to predict or control. *See, e.g.*, Josh Taylor & Alex Hern, "['Godfather of AI' Geoffrey Hinton Quits Google and Warns over Dangers of Misinformation](#)," *Guardian* (May 2, 2023). Both men confronted the same problem: not whether technology will change the world *but whether the world's institutions are prepared to steward that change responsibly*.

For the legal profession, the Oppenheimer-Hinton parallel is a call to vigilance without fear. The threat is not sentient or overwhelmingly intelligent machines but *ungoverned power*—systems deployed without transparency, liability, or oversight. Lawyers have faced such inflection points before. At the founding, during Reconstruction and the Gilded Age, and in the civil-rights era, they reshaped the meaning of liberty in moments when technology, economics, or social upheaval outpaced existing law. We now stand at a similar hinge of history. Our charge is to anchor innovation in constitutional principle, ensuring that the tools of the future remain instruments of human dignity rather than forces that erode it.

Departing quote

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

– Justice Louis Brandeis, *Olmstead v. United States*, 277 U.S. 438 (1928).

References

Charles Sumner, *No Property in Man: Universal Emancipation Without Compensation* (April 8, 1864), in *The Works of Charles Sumner* 371 (1874).

Norman E. Tutorow, *The Governor: The Life and Legacy of Leland Stanford, a California Colossus* (2004).

Elihu Root, Individual Liberty and the Responsibility of the Bar, Address at the Annual Dinner of the New York State Bar Association (Jan. 15, 1916).

G. Todd Butler & Jason Marsh, "Foreword: Celebrating the Life and Legacy of Thurgood Marshall," 27 *Miss. C. L. Rev.* 289, 289 (2008).

Appendix: The Current AI Governance Landscape

Federal Efforts

Algorithmic Accountability Act (S. 2892 / H.R. 6580) (reintroduced 2022–2024)

Artificial Intelligence Accountability Act (H.R. 3369, 118th Cong. 2023)

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Consumer Financial Protection Bureau, "[Adverse Action Notification Requirements and the Proper Use of the CFPB's Sample Forms Provided in Regulation B](#)"

DOT / NHTSA Autonomous Vehicle Guidance (2024, 2025)

[FDA Proposed Framework for AI-enabled Medical Devices \(2024, 2025\)](#)

[Federal Trade Commission \(FTC\)](#) enforcement actions & guidance (deceptive AI claims, AI accuracy misrepresentation, biometric misuse, algorithmic discrimination, data misuse & model deletion, manipulative or harmful algorithms, AI-enabled fraud, deepfakes, impersonation, transparency & disclosure failures, antitrust concerns in AI markets)

National Telecommunications and Information Administration (NTIA) AI Accountability Policy [Reports](#) (2023–25)

National Institute of Standards and Technology (NIST) [AI Risk Management Framework](#) (2023)

Office of Management and Budget (OMB) [AI Guidance](#) (2024–25)

White House [AI Bill of Rights](#) (2022)

State Initiatives

Tennessee: Ensuring Likeness, Voice, and Image Security (ELVIS) Act, Tenn. Code Ann. 47-75-1101 (2024)

California: AI Disclosure for Political Communications (2023–24)

California Consumer Privacy Act (CCPA) + CPRA Regulations (2020–24)

Colorado Privacy Act (2023–25 rulemaking)

Colorado and Connecticut: AI risk assessment bills (2025)

Illinois Biometric Information Privacy Act (BIPA 2024 Amendments)

New York City Local Law 144 (2023)

Washington State: [My Health, My Data Act](#), RCW Ch. 19.373 (2023)

International Frameworks

European Union Artificial Intelligence Act (Regulation (EU) 2024/1689)

G7 Hiroshima AI Process (2023)

OECD *Artificial Intelligence Principles* (2019)

Council of Europe Framework Convention on Artificial Intelligence (2024)

UNESCO Recommendation on the Ethics of Artificial Intelligence (2021)

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Nonprofit Efforts

[IAPP State AI Governance Tracker](#)