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RHETORIC AS A BRIDGE BETWEEN ETHICS AND AI IN PREDICTIVE JUSTICE

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Abstract

The Re A case, discussed by Neil MacCormick, shows how courts confront ethical pluralism through reason-giving rather than through mere rule application. Authorizing the separation of conjoined twins, and saving one child at the cost of the other, forced judges to acknowledge the parents' Catholic convictions while still offering publicly defensible reasons for a tragic choice. This paper uses Re A as a lens to argue that the central weakness of predictive justice is not only technical opacity but a deeper deficit: the inability to provide normative justification contestable by a public audience. Even interpretable models often explain correlations, rather than reasons. I therefore propose a rhetorically informed model of legal AI: systems should function as deliberative interlocutors that map competing considerations, disclose value trade-offs, and support contestation, rather than as authoritative predictors. The paper proceeds in three steps. First, it analyzes Re A to show how rhetoric enables legal institutions to justify decisions under conditions of moral disagreement. Second, it examines predictive justice, arguing that its epistemic structure tends to reproduce patterns while sidelining the justificatory discourse on which legal legitimacy depends. Third, it sketches design-oriented requirements for AI that support judicial deliberation by structuring reasons, surfacing alternatives, and making value conflicts explicit. The core claim is that rhetoric can bridge computational inference and ethical judgment, provided AI is designed to assist reason-giving and public accountability, rather than to replace practical wisdom with scores and predictions.

Keywords: legal rhetoric, legal reasoning, predictive justice, artificial intelligence, legal ethics, reasonableness



1. Introduction: law, ethics, and the problem of justification

A persistent challenge in legal theory concerns how law can remain legitimate when it must decide under conditions of deep moral disagreement. The issue is not simply whether ethics ‘enters’ law, but how ethical considerations can be articulated as reasons that are publicly intelligible, contestable, and institutionally accountable. This challenge becomes acute in hard cases, where neither legal rules nor moral principles yield an uncontroversial answer, and yet a decision is still required.

Re A (children) [2001] 2 WLR 480 (CA) (the “conjoined twins” case¹), analyzed by Neil MacCormick in *Rhetoric and the Rule of Law* (2005) and in *Practical Reason in Law and Morality* (2008), offers a paradigmatic example. The court had to authorize a surgical separation that would save one child while inevitably causing the other’s death. The judges faced a stark conflict between the parents’ Catholic convictions, rejecting the procedure as morally impermissible, and the medical and legal reasoning oriented toward survival and harm prevention. The legal resolution was inseparable from the ethical conflict it sought to navigate.

MacCormick treats *Re A* not merely as a doctrinal puzzle, but as a privileged site for examining the rhetorical structure of legal reasoning: how arguments are framed, how value conflicts are acknowledged, and how justification is addressed to an audience beyond the immediate parties. Rhetoric, in his account, mediates between law and ethics not by eliminating disagreement, but by making decisions intelligible and answerable to public scrutiny.

This paper takes *Re A* as a conceptual starting point to address a contemporary problem: the rise of AI in judicial contexts and, in particular, the development of predictive justice. By predictive justice, I mean data-driven tools that forecast outcomes or risks (e.g., recidivism scores, sentencing or parole predictions, case outcome probabilities) by learning patterns from past decisions (Deffains 2022). The guiding question is whether such systems can support the kind of justificatory practice that *Re A* exemplifies, or whether, even when accurate, they risk weakening the public reason-giving that underpins the rule of law (Sartor 2020).

2. The *Re A* case: ethical conflict and legal decision-making

Re A arose from a tragic medical situation involving conjoined twins, Mary and Jodie. Medical evidence indicated that without separation, both would die within months, while separation would likely save Jodie but inevitably result in Mary’s death. The parents, devout Catholics, refused consent, regarding the operation as the intentional killing of one child to save another. The court thus confronted a dilemma that could not be resolved by mechanical rule application: competing ethical frameworks (the sanctity-of-life doctrine and a consequentialist concern with minimizing death and suffering) were built into the legal question itself.

For MacCormick, the philosophical significance of *Re A* lies less in the final outcome than in the form of justification the judges provided. The court did not dismiss the parents’ position as irrational or irrelevant; instead, it treated it as morally serious while concluding that it could not be determinative for public decision-making. This is a crucial rhetorical move: ethical disagreement is not excluded but managed through a justificatory process that seeks reasons a plural audience can evaluate.

¹ *Re A (children) (conjoined twins)* [2001] Fam 147; [2000] 4 All ER 961 (22 September 2000), Court of Appeal (England and Wales).



The judgment's reasoning is addressed to multiple audiences at once: the parties, the medical professionals, and a broader public that must be able to see the decision as more than an exercise of institutional power. The judges make explicit the tragic structure of the choice and frame the decision as a constrained response to circumstances, rather than as a moral triumph. In doing so, they cultivate what MacCormick calls the argumentative character of law: in hard cases, decisions are not deductions, but outcomes of structured deliberation.

3. Rhetoric and the justification of legal decisions

MacCormick's reading of *Re A* embeds the case within a broader view of legal reasoning as a rhetorical practice. Here, rhetoric does not mean manipulation or ornamentation, but the disciplined practice of offering reasons that can be publicly defended. On this view, the legitimacy of legal decisions depends not only on rule-conformity, but also on their capacity to withstand critical scrutiny.

In *Rhetoric and the Rule of Law* (2005), MacCormick argues that the rule of law presupposes justificatory discourse. Legal certainty is important but not absolute: it coexists with interpretive openness and the need to argue about the meaning and implications of norms. Rhetoric is what holds together stability and flexibility, allowing law to adapt without collapsing into arbitrariness.

Re A illustrates this dynamic particularly well. The judges do not present a morally conclusive solution; they present a decision that is justified as the least unreasonable option under tragic constraints. The persuasive force of the judgment lies in how it frames trade-offs, acknowledges moral loss, and still explains why a public institution must act. Rhetoric, in this sense, functions as a condition of ethical responsibility: deciding without reasons would be arbitrary power; deciding with reasons that erase moral stakes would reduce law to technique. *Re A* shows a third path: publicly accountable justification under disagreement.

4. Reasonableness, *prudentia*, and practical wisdom

A key concept in MacCormick's analysis of *Re A* is reasonableness, which he explicitly connects to the classical virtue of *prudentia*, or practical wisdom (De Caro and Vaccarezza 2020; De Caro, Vaccarezza, and Niccoli 2018). Drawing on the Aristotelian tradition of *phronesis*, MacCormick understands reasonableness not as a purely cognitive or formal capacity, but as an embodied virtue guiding action and judgment in concrete situations. Reasonableness, in this sense, is inseparable from the ethical and rhetorical dimensions of legal deliberation (De Caro, Navarini, and Vaccarezza 2024).

As MacCormick makes clear, the reasonable person is not an abstract rational agent, but a deliberator endowed with *prudentia*, a virtue that is "incompatible with fanaticism or apathy" and oriented toward the balanced consideration of competing values (MacCormick 2008, 166–67). The reasonable judge is aware that any practical dilemma involves a meeting point of different interests and moral perspectives, and that legal judgment requires sensitivity to this plurality rather than its elimination.

This conception is particularly evident in *Re A*. The judges did not treat the case as a problem to be solved by the mechanical application of rules or a simple moral calculus. Instead, they exercised practical wisdom by acknowledging the tragic nature of the choice and by engaging in a process of deliberation that sought to justify the decision in light of the values at stake. The court's



reasoning exemplifies *prudentia* insofar as it reflects an ability to “see and feel the situation” (167), to take distance from one’s own commitments, and to evaluate the human significance of the consequences involved.

MacCormick insists that *prudentia* is not a form of subjective moral intuition, but a disciplined capacity shaped through experience, argument, and public accountability. It involves the ability to listen, weigh reasons, and justify decisions in terms that can be understood and assessed by others. In this sense, *prudentia* is inherently rhetorical: it presupposes an audience and unfolds through justificatory discourse rather than through demonstrative proof.

Reasonableness, therefore, should not be conceived as a first-order value competing with other values, but as a higher-order virtue that governs the balancing of reasons (167). A decision is reasonable not because it realizes a predetermined moral truth, but because it emerges from a process of deliberation that responsibly navigates ethical conflict: this is precisely what distinguishes legal judgment from both moral dogmatism and technical optimization.

If legal reasonableness depends on *prudentia* as a rhetorical capacity, the question arises whether contemporary forms of algorithmic decision-making can even approximate the conditions under which such practical wisdom operates.

5. From *Re A* to contemporary challenges

The *Re A* case demonstrates that legal decision-making in ethically charged contexts cannot be reduced to rule application or outcome optimization. It requires a form of reasoning that is sensitive to values, attentive to audiences, and capable of articulating justifications under conditions of disagreement. Rhetoric, as MacCormick understands it, provides the conceptual framework for this task. This insight forms the basis for the transition developed in the next part of this paper.

As AI systems increasingly inform judicial decisions, particularly through predictive analytics and risk assessment tools, a crucial question arises: can such systems accommodate the rhetorical and ethical dimensions that cases like *Re A* make visible? Or do they risk transforming legal judgment into a “black box” that produces outcomes without justification?

The growing use of artificial intelligence in judicial decision-making has generated significant expectations regarding efficiency, consistency, and predictability. Predictive justice systems, in particular, promise to support judges by identifying patterns in past decisions and forecasting likely outcomes in future cases (Sartor and Branting 1998). However, while these systems may enhance certain technical aspects of adjudication, they raise serious concerns when evaluated from the perspective of legal reasoning as a justificatory and rhetorical practice.

A central problem lies in the epistemic structure of predictive justice. Algorithms typically rely on large datasets derived from past judicial decisions, transforming historical regularities into probabilistic models. As several scholars have noted, this approach risks reproducing and reinforcing existing biases embedded in legal practice (Bex and Prakken 2021; Lagioia, Rovatti and Sartor 2023). More fundamentally, however, predictive justice systems operate in a way that is largely indifferent to the ethical reasoning underlying judicial decisions. They deliver outputs (risk scores, probability estimates, or predicted outcomes) without articulating the normative reasons that would make those outputs publicly intelligible and contestable.

From the standpoint of MacCormick’s theory, this represents a serious limitation: legal reasoning, as exemplified by the *Re A* case, is not merely about arriving at a decision, but about justifying



that decision through reasons addressed to an audience. Predictive systems, by contrast, tend to function as black boxes: they produce results without explaining how competing values have been weighed or why certain considerations should prevail over others. This opacity undermines a core requirement of the rule of law, namely that legal decisions must be open to rational scrutiny and criticism.

The problem is not simply one of transparency in a technical sense. Even when algorithmic models are made partially interpretable, they often fail to provide the kind of normative justification that legal decisions require. Explanations framed in terms of statistical correlations or feature importance do not address the ethical dimension of judgment, nor do they engage with the plurality of values at stake in concrete cases. As a result, predictive justice systems risk reducing legal decision-making to a form of instrumental rationality, detached from the rhetorical practices through which law negotiates moral disagreement.

This gap becomes particularly evident when predictive tools are applied to cases involving ethical conflict or human vulnerability, such as sentencing, parole decisions, or family law disputes. In such contexts, the legitimacy of a decision depends not only on consistency with past cases but on its responsiveness to the specific circumstances and values involved. Without a rhetorical framework capable of articulating and balancing these values, AI-assisted decisions risk appearing arbitrary, even when statistically well-founded.

6. Rhetoric, accountability, and ethical sensitivity in predictive justice

In light of these limitations, this paper proposes a different way of conceptualizing the role of AI in legal decision-making, inspired by the rhetorical insights drawn from MacCormick's analysis of *Re A*. Rather than treating AI systems as authoritative decision-makers or neutral predictors, they should be designed as rhetorical interlocutors within the judicial process.

Drawing on Christopher W. Tindale's conception of rhetorical argumentation (Tindale 2006; 2010; 2024), a rhetorical interlocutor does not deliver final answers, but presents reasons, highlights tensions, and exposes alternative perspectives (Tindale 2004). Applied to AI systems, this approach suggests that predictive tools should assist judges by structuring the space of reasons, rather than by replacing human judgment. Instead of producing a single outcome, an AI system could identify competing considerations, indicate how different values have been treated in similar cases, and make explicit the trade-offs involved in alternative courses of action.

Seen through this lens, the limits of predictive justice systems become even more evident. As typically deployed, algorithms lack *prudentia*: they do not perceive moral salience, feel the weight of tragic choices, or take responsibility. This limitation is not intrinsic to computation in general, but to the design of most current predictive systems, which are optimized for correlation and outcome prediction rather than for normative deliberation. Predictive systems operate at the level of abstraction, whereas legal judgment, as MacCormick's analysis of *Re A* shows, must remain anchored in lived experience.

This gap is structural in standard data-driven predictive systems: they output scores, probabilities, or classifications without articulating the normative reasons that would make those outputs publicly intelligible and contestable. Absent explicit design constraints aimed at reason-giving, these systems reproduce patterns of inference but not the justificatory discourse on which legal legitimacy depends. *Prudentia* cannot be reduced to computational reasoning, because it involves sensitivity to context, ethical imagination, and responsiveness to human vulnerability.



When AI systems are deployed without a rhetorical framework, they risk transforming law into a form of power detached from life, an abstraction that produces outcomes without understanding or justification.

For this reason, the proposal to reconceptualize AI as a rhetorical interlocutor acquires its full significance. A rhetorically informed AI system does not aspire to replace practical wisdom, but to support it. By mapping arguments, exposing value conflicts, and making justificatory structures visible, AI can assist judges in exercising *prudentia* rather than bypassing it. The goal is not to automate judgment, but to preserve the conditions under which reasonable judgment remains possible.

Such a model aligns with MacCormick's emphasis on reasonableness as a higher-order value. Reasonableness, understood as the capacity to balance competing reasons in context, cannot be automated in a strict sense. However, AI systems can be designed to support this balancing process by making relevant factors visible and by facilitating deliberation. In this way, rhetoric becomes not merely an external interpretive lens but a guiding principle for the ethical design of legal technologies.

This rhetorical conception of AI also addresses concerns about accountability. If an AI system is understood as a participant in a deliberative process rather than as an oracle, responsibility for the final decision remains with the human judge. At the same time, the system's contribution can be evaluated, criticized, and improved based on how well it supports ethical reasoning and public justification. This preserves the core features of the rule of law while allowing for technological innovation.

Importantly, treating AI as a rhetorical interlocutor acknowledges the role of the audience in legal decision-making. Judicial decisions are addressed not only to legal professionals but to citizens whose acceptance depends on their perception of fairness and reasonableness. By facilitating explanations that resonate with human values and concerns, rhetorically informed AI systems can help maintain trust in legal institutions in the digital age. To avoid remaining at the level of conceptual metaphor, the next section specifies how the idea of a rhetorical interlocutor can be translated into operational design requirements. These are not technological blueprints, but normative and functional constraints that can guide the development of legal AI systems toward deliberative rather than merely predictive roles.

7. Operationalizing the rhetorical interlocutor: what legal AI should do in practice

If the claim that legal AI should operate as a rhetorical interlocutor is to be more than a metaphor, it must be translated into concrete functional expectations. The discussion that follows refers primarily to current data-driven predictive systems that tend to optimize correlation rather than justification.

The central shift proposed here is simple: in adjudicative contexts, the primary contribution of an AI system should not be to output a prediction as a quasi-decisional signal, but to support the public practice of reason-giving. In other words, the system should be designed to help decision-makers articulate, compare, and contest the considerations that could justify different outcomes to a plural audience, rather than to replace practical judgment with a score.

Operationally, this requires that the system's main output take an argumentative form. A rhetorically informed tool should foreground reasons (legal grounds, principles, and case-specific



considerations) showing how they connect to the facts and why they might count in favour of, or against, a given resolution. Predictive estimates may still be present, but only as secondary epistemic inputs, explicitly framed as fallible and contextual information rather than as justificatory grounds. This distinction matters because interpretability typically explains how a model produced a result, while justification concerns why a certain consideration should be treated as relevant, with what weight, and under which normative constraints. A system that can display feature importance without exposing and organizing the normative premises at stake remains descriptively informative but justificatorily weak.

A second operational requirement concerns comparative framing. Legal justification rarely consists in stating that an outcome is correct in isolation; it often proceeds by showing why one course of action is preferable to plausible alternatives, or why it represents the least unreasonable option under the circumstances. For this reason, a rhetorical interlocutor should present more than a single best answer. It should display alternative resolutions that a reasonable decision-maker could consider and make visible the trade-offs implied by each, including the kinds of objections each pathway would have to address. This design choice encourages deliberation rather than deference, and it mirrors the way courts aim to justify decisions in a manner that can be evaluated by others.

Because the aim is public justification under ethical pluralism, such a system must also make its value-laden assumptions explicit. In domains like sentencing, bail, parole, or family law, the choice of what to optimize and what to treat as salient inevitably expresses a normative stance: prioritizing security over liberty, consistency over individualized equity, risk minimization over proportionality, or welfare maximization over rights-based constraints. A rhetorically oriented tool should therefore not conceal value commitments behind the appearance of neutrality. It should disclose when and where value conflicts arise, what balance is implicitly being adopted, and what kinds of factual or normative changes would plausibly shift that balance. In this way, the system does not pretend to resolve ethical disagreement; instead, it helps render disagreement explicit and discussable.

Contestability is the next essential condition. Justification is not a one-way communication but a practice structured by the possibility of challenge. A rhetorical interlocutor must therefore allow users to contest the inputs and the assumptions that shape its outputs. This means enabling corrections to data, supporting exception-handling and distinguishing factors, and offering counterfactual exploration that clarifies what would have to be different for a competing conclusion to become reasonable. The system should also preserve a record of contested points, so that disagreement does not disappear within the tool but remains visible for accountability. Without such mechanisms, the AI risks functioning as a closure device – ending deliberation rather than enabling it.

A further requirement concerns epistemic modesty. In legal contexts, the authority of reasons depends in part on clarity about their evidential status. A rhetorical interlocutor should present the provenance of the information it relies on, the scope and limits of the data, and the uncertainty associated with any statistical component. It should flag distributional mismatch and out-of-sample cases and explicitly indicate where it lacks a stable basis for inference. In rhetorical terms, the system should reveal when it is not entitled to speak confidently. This is not a purely technical concern: hiding uncertainty or coverage limits undermines the very public accountability the system is supposed to support.

Finally, because judicial reasons are addressed to multiple audiences, the system should be capable of layered communication. The same justificatory structure must be intelligible, in different registers, to judges and lawyers as well as to the parties affected and, more broadly, to citizens whose trust in legal institutions depends on perceived fairness and intelligibility. A rhetorical



interlocutor should therefore support differentiated explanation layers: one that connects considerations to legal authorities and doctrinal categories, another that discloses methodological constraints and uncertainties for expert scrutiny, and a plain-language layer that makes the reasoning understandable without erasing its complexity or its contestable character.

These requirements can be implemented through a minimal workflow that preserves decisional responsibility in human hands. The system can begin from a structured representation of the case, flag missing or bias-sensitive information, and then generate a map of considerations relevant to the legal issue. It can present plausible alternative pathways, highlight the trade-offs each implies, and invite challenge by allowing users to revise facts, test counterfactuals, and introduce distinguishing circumstances. On this basis, it can offer a justification scaffold, an outline of reasons and anticipated objections, without producing a final judgment or assuming institutional authority.

A final clarification concerns two risks that a rhetorically oriented interface may exacerbate if left unchecked. The first is post-hoc rationalization: a system may generate fluent, persuasive-sounding reasons that merely decorate an output rather than subject it to genuine justificatory scrutiny. To mitigate this tendency, the system should be constrained to keep descriptive statistical claims distinct from normative premises, to anchor each stated consideration to identifiable authorities, facts, or openly declared value assumptions, and to present alternative resolutions with comparable argumentative richness rather than privileging a single pathway by default. The second risk is undue deference: the more coherent and legalistic the system's language becomes, the more likely users are to treat it as a surrogate decision-maker. This can be reduced by design choices that avoid recommendatory phrasing, foreground uncertainty and scope conditions, and frame outputs as deliberative prompts, while making explicit that the justificatory and institutional responsibility for the decision remains with the human judge.

In sum, a rhetorical design for legal AI transforms prediction into deliberation, enabling technological systems to serve rather than supplant the justificatory practices that sustain the rule of law.

8. Conclusion

Ultimately, the lesson of *Re A* is that legal judgment cannot be reduced to prediction and calculation. Its legitimacy depends on *prudencia*: the capacity to deliberate responsibly in the face of ethical conflict and to justify decisions through reasons addressed to others (Tomasi 2024; Puppo 2023). Rhetoric is the medium through which this practical wisdom becomes publicly visible and open to contestation.

If predictive justice systems are to be integrated into legal decision-making without undermining the rule of law, they must be designed to respect and support this rhetorical and ethical structure. Treating AI as a rhetorical interlocutor rather than as a decision-maker allows technological tools to contribute to legal reasoning while preserving the central role of human judgment. In this way, rhetoric can indeed function as a bridge between ethics and AI, ensuring that law remains a practice grounded in life, responsibility, and justice rather than an exercise of abstract power.

At the same time, the growing use of predictive tools must not obscure what remains irreducible in legal practice. Such tools may assist lawyers and judges by identifying patterns, estimating outcomes, and clarifying argumentative tendencies, but they do not reach the core of adjudication. Law is not exhausted by the management of probabilities, because forensic practice is not merely a technical operation of optimization: it is, rather, a situated, relational, and interpretive practice in



which facts must be reconstructed, conflicts must be understood, and reasons must be articulated in a form capable of doing justice to the singularity of the case.

This is precisely where the Italian legal philosopher Mittica's idea of a legal *sentire* becomes decisive (Mittica 2019). If legal thought is also a thinking that feels, that is, a form of understanding grounded in attentive openness, listening, and responsiveness to the living reality before it, then no predictive system can replace its essential movement. Mittica's reflection shows that law is not only a system of forms, but also a measure of the living, and therefore a practice that requires sensitivity to what exceeds abstraction, formalization, and calculability. Predictive justice systems can process data; they cannot feel the normative weight of testimony, the human meaning of vulnerability, or the practical urgency of deciding well in the presence of another person. They operate on facts already translated into data, already selected and formalized, whereas lawyers and judges must still confront lived facts in their ambiguity, contestability, and moral thickness.

For this reason, the spread of AI systems used in adjudication may transform the environment of legal reasoning, but it cannot alter its essence. The essence of forensic practice lies in the responsible mediation between fact and norm, between conflict and justification, between institutional form and lived experience. It lies, in other words, in a mode of judgment that is rhetorical, prudential, and responsive to the human stakes of the case. Predictive tools may support this practice, but they cannot find it; they may inform deliberation, but they cannot replace the sensible and ethical dimension through which law remains a genuinely human practice. Only by preserving this dimension of *sentire* can the integration of AI into law avoid reducing justice to computation and instead remain faithful to law's deeper vocation: not simply to decide efficiently, but to decide responsibly in the presence of life.

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