

**Algorithmic Bias: Do Existing Anti-Discrimination Laws Protect Individuals from
AI-Based Decisions?**

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The proliferation of algorithmic decision-making — the application of artificial intelligence (AI) in decision-making and decision-support systems across recruitment, credit, housing, and public administration — continues to affect individuals' lives significantly. Although current anti-discrimination laws in the United States offer a modicum of protection, they fall short in addressing the specific challenges posed by AI. Recent research demonstrates that the U.S. legal system, at least in its current form, is incapable of providing substantive protection against algorithmic bias and underscores the need for new and revised laws and regulations (Akpobome, 2024). This essay addresses the need for legal reforms that expose the impacts of AI-powered systems on decision-making processes by developing protections against algorithmic bias, ensuring transparency, and safeguarding data privacy in line with anti-discrimination laws.

AI-driven bias can occur even when characteristics such as race or gender are not explicitly used. Algorithms can employ proxy variables or data aggregation methods that disproportionately affect certain groups. For example, neutral variables such as credit history, location, or web activity can introduce bias because they correlate with race (Kallus, Mao, & Zhou, 2021). Many affected individuals are unable to understand the reasoning behind decisions due to the lack of transparency in their "black-box" models. As a result, they cannot prove a case of bias or discrimination.

More recent regulatory and legislative activity demonstrates that governments have started to extend their coverage of anti-discrimination provisions to AI. Within the European Union, the emerging EU Artificial Intelligence Act is intended to complement existing EU anti-

discrimination legislation and data protection law by permitting, subject to strict safeguards, the processing of sensitive data — such as data about a person's racial or ethnic origins or religious beliefs — to identify and mitigate bias in certain high-risk AI systems (Lunca, 2025). These scholars advocate for such AI legislation alongside privacy laws and equality legislation as the best way to achieve accountability and real fairness. However, real-world impact remains to be seen.

Under conventional non-discrimination law, protection is based on race, sex, religion, or disability — but AI can discriminate based on "algorithmic groups," which are clusters derived from complex combinations of data points that are not associated with traditionally protected grounds (Kozcuer, Mollen, & Bießmann, 2024). These groups are functionally immutable because they embody a person and dictate their access to employment, housing, credit, and other public resources — and yet, a majority of equality legislation still ignores these groups. Legal scholars are proposing the concept of "artificial immutability", which argues that these groups are deserving of the same protection as other traditionally protected classes.

In addition, procedural and evidentiary obstacles are a limiting factor for the effective implementation of existing legislation. For discrimination to be proven, plaintiffs are usually required to establish a direct relationship between a protected characteristic and a negative impact. However, AI systems are anything but straightforward and transparent. For instance, they might integrate numerous variables, retrain frequently, and employ proxies, all of which make it nearly impossible to identify causation. The gap between how these incorrect practices are perceived as the result of human discrimination versus how easily they might result from algorithmic discrimination is a significant contributor to why so many negative impacts are overlooked in existing legislation.

These paradoxes highlight the urgent need for a clear legal framework for the regulation of AI, a need shared by both the Council of Europe and the European Union. Nevertheless, the legislation being considered by the Council of Europe does not specifically address Algorithmic Injustice. As it stands, the legislation's excessive focus on the potential and probable burdens of algorithmic regulation may curtail the protections it is meant to afford. Legislation is also disjunctive to the extent that it is entirely predicated on the presence of algorithmic regulation, with the automated decision-making system's algorithm potentially designed to respect the ideals of substantive rationality and objectivity, only to contribute, in a perverse way, to structural inequalities. As it stands, AI regulation is unlikely to support the elimination of substantive inequalities over time.

These paradoxes highlight the urgent need for a clear legal framework for the regulation of AI – a need felt not only by the Council of Europe but also by the European Union. Nevertheless, the legislation being considered by the Council of Europe does not appear to focus specifically on Algorithmic Injustice. As things stand, the legislation's excessive focus on the possible and probable burdens of algorithmic regulation may stifle the very protections it purports to afford. Legislation is also disjunctive to the extent that it is entirely predicated on the presence of algorithmic regulation, whereby the automated decision-making system's algorithm is designed, albeit in a perverse way, to respect the ideals of substantive rationality and objectivity while exacerbating structural inequalities. As things stand, AI regulation is unlikely to reduce substantive inequalities over time.

To summarise, anti-discrimination laws already in place provide a base, but do not adequately shield people from the unique injuries AI decision-making promotes. Because of this, many instances of discriminatory algorithmic practices will continue to go unnoticed and

unchallenged, even when the law offers little support. To provide equality and equity in the digital age, there must be an alteration of anti-discrimination laws to include additional categories of protected people, the inclusion of transparency and accountability in AI, the combination of privacy and data protection, anti-discrimination laws, and the equality law to protect from the negative outcomes of algorithmic discrimination.

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