FREE SAMPLE

Law and Artificial Intelligence

Four Studies

Ricardo Rivero Ortega

These are the first pages of the book. The full edition is on sale on Amazon, in all 17 stores worldwide.

Kindle eBook · Buy on Amazon **4.99 €**

Paperback · Buy on Amazon **9.99 €**

Book page, prices and other stores:
amicuscertus.es/en/catalog/law-and-ai/

AMICUS CERTUS

Law and Artificial Intelligence

Law and Artificial Intelligence

Four Studies

Ricardo Rivero Ortega

Translated from the Spanish

Amicus Certus

Law and Artificial Intelligence: Four Studies

by Ricardo Rivero Ortega

Edited by José Francisco Adserias Vistué

Published by Amicus Certus.

Translated from the Spanish original, *Derecho e Inteligencia Artificial. Cuatro estudios* (2023).

© Ricardo Rivero Ortega, 2023.
English translation © Ricardo Rivero Ortega, 2026.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the copyright holder, except for brief quotations in critical reviews and certain other noncommercial uses permitted by copyright law.

Quotations from Spanish-language sources have been translated by the translator unless otherwise indicated. Bibliographic references are given in their original language.

Introduction: Law and Artificial Intelligence

1. Meditations on Technics and the Law

In his *Meditations on Technics*, José Ortega y Gasset anticipated lucid reflections that apply today to the debates surrounding artificial intelligence. The prestigious Spanish philosopher considered the human being incomprehensible without technology; the progress of computing would never have frightened him, while machine learning would have fascinated him as one more advance in humanity's technical history (after polished stone, agriculture, iron, and electricity).

The apocalyptic prophets of our time seem timid by comparison with Ortega. Byung-Chul Han, Harari, and Zuboff warn of dystopian dangers and calamities, just as others did before them. Not even the COVID crisis has brought us as many disasters as those predicted in connection with the new technologies. Although we are accustomed to living in an artificial environment on which we depend completely, we believe that adding further mechanisms will turn us into something different from what we have been for millennia: a blend of nature and tools.

Of course, new instruments always carry risks for people. The arrowhead and fire were, and remain, inventions capable of causing harm and destruction. Many catastrophes have been produced by potentially harmful technologies, so the reluctance of societies, expressed in alarmist debates over every advance, should come as no surprise.

Whether it was the steam engine, the railroad, mobile telephony, or vaccines, several years always pass before their advantages are accepted without reservation, far outweighing their drawbacks. Nuclear energy is an extreme example of this tendency: controversial to this day, it offers possibilities for development and quality of life that are hard to reject. Consider

also the advances of medicine: chloroform for anesthesia, hygiene against microbes, antibiotics (Gerste).

The reminder of the outrages committed in history through the use of machines—by the hand of human beings, of course—does not restrain society's will to seize opportunities and expand life choices. If a technique enlarges this range of options, it will be incorporated into the toolbox that configures us as what we are. We possess an ever greater number of capabilities, though at the cost of relinquishing our own physical and cognitive ones, which we ought to keep cultivating.

Beyond individual decisions to accept technology in contexts of freedom, setting limits and preventing risks falls to the legislature; yet regulators have always proved laggard, indolent, and anything but proactive in the face of complexity, late in their normative response to new technological realities.

2. Ethical Debates and General Principles

Throughout the world, ethical and principle-based proposals aimed at preventing the abuses and excesses of artificial intelligence have proliferated. The good intentions of those who compose lists of principles do not, however, endow them with the effectiveness required to control the technology companies. Ethics serves to guide appropriate conduct, but it does not make it possible to identify obligations or impose sanctions for their breach. We should not be surprised, then, by the funding received by a growing number of centers and institutes devoted to the ethics of artificial intelligence, in contrast with the few statutes enacted to regulate it.

Moreover, intelligibility or transparency, and even the beneficial (non-harmful) character of the new technologies, seem more like idealistic wishes than concrete requirements (Cotino, García Mexía, Huergo Lora). How is one to achieve the accessibility of sophisticated programs whose source code is the key to their productivity and to corporate profit? More than principles, we need precise safeguards against the risk of the new products: a codified definition of harmful conduct and abuses, penalties in the event of transgression, and information duties incumbent on those responsible for the applications.

The current principle-centered moment in the legal literature on artificial intelligence expresses the lack of technical knowledge sufficient to translate the need for regulation into precise norms. All these principles are inspired by a vague idea of precaution, the recurrent response to the unknown of those who lack adequate information. Proposals for a moratorium on the development of artificial intelligence, however, have not prospered—an un-

derstandable fact given the context of global competition and respect for the freedom of technological creation.

3. Regulation and Oversight: A Specialized Agency?

At this moment, principles ought to inspire the enactment of statutes with concrete norms: duties and obligations for the creators and providers of algorithms. The legal literature emphasizes the need for limits on their use and for guarantees that rights will be respected. Some texts with this content have been published, but the delays in adopting the European regulation of reference explain the wait-and-see attitude of national legislators, although partial regulations have gradually been enacted to prevent discrimination (the problem of biases) or to introduce certain conditions on automated management or use in the workplace.

One of the most relevant debates concerns the oversight body, with the proposal for the possible creation of a specialized agency. Although I do not believe there is only one appropriate solution for monitoring and sanctioning the excesses of algorithms, over recent decades independent regulators have proved competent when they have managed to navigate between Scylla and Charybdis: political interference and corporate capture.

4. Idealistic *Garantismo* or Practical Realism

From my point of view, the regulation of artificial intelligence must also avoid two opposite errors: passivity and overreaction. The absence of norms can be as dangerous as a guarantee-based approach (*garantismo*) ignorant of the practical reality of this technology could be harmful to its development.

Thus, it seems advisable to me to opt for an informed constructivism (Ackerman), a normative approach based on factual foundations, not on prejudices. A non-apocalyptic view of algorithms shows us that those we ought to fear are irresponsible people, not the technologies that can help us overcome many of our imperfections (Sunstein).

References

Ackerman, Bruce, A., *Del realismo al constructivismo jurídico*, Ariel, 1988.

Byun Chu, Han, *Infocracia. La digitalización y la crisis de la Democracia*, 2022.

Cotino, Lorenzo (Dir.), *Derecho de la inteligencia artificial*, 2023.

García Mexía, Pablo (Dir.), *Claves de inteligencia artificial y Derecho*, 2022.

Gerste, Ronald D, *Sanar el mundo: La Edad dorada de la medicina (1840-1914)*, 2023.

Harari, *Sapiens: de animales a dioses. Breve historia de la humanidad*, 2015.

Huergo Lora, Alejandro (Dir.), *La regulación de los algoritmos*, 2020.

Ortega y Gasset, José, *Meditaciones de la técnica*, Revista de Occidente, 1939.

Sunstein, Cass R, "Governing by Algorithm? No Noise and (Potentially) Less Bias," *Duke Law Review*, 2023.

Zuboff, Shoshana, *La era del capitalismo de la vigilancia*, 2018.

Smart Public Management, Innovation, and Information: Opportunities and Risks of Administrative Big Data[1]

Abstract

An intelligent administration will be one capable of embracing innovations in its organization and procedures, including the massive management of data (Big Data) and the rethinking of its strategies for using information. In this way it will be able to notice its own errors and incorporate more precise and objective criteria into its decision-making techniques. This paper presents some possible applications of Big Data to the real administrative world, along the lines of what can already be observed in the most innovative companies.

Keywords: Intelligent administration. Innovation. Big Data. Administrative reform. Public management.

JEL Classification: O30, O33, O38.

I. Intelligence and Administrative Innovation

Adaptation to changing circumstances and the need to interact with the environment, through movement and other reactions, is the raison d'être of the nervous system. Its most advanced consequence, intelligence, is the

[1]This article is the result of the research project "La innovación social para la mejor aplicación de las normas DER 2015-66599."

capacity to process all the information received through the senses and to use it efficiently to satisfy needs, solve problems, or achieve objectives.[2]

To a large extent, it is preexisting properties and endowments that determine the degree of intelligence of an individual or an organization. Although multiple intelligences can be distinguished, there is no doubt about the differences in comparative levels of success or failure. Speaking of the administration, the personnel and material resources at its disposal, as well as the way they are organized, will be key.[3]

The degree of administrative intelligence, however, does not remain unchanged over time. It can increase or decrease depending on the development or acquisition of new capabilities. Good practices can serve to increase intelligence, as Herbert Simon's pioneering work on decisions demonstrated over the course of the last century.[4]

Today, when we speak of administrative best practices, we are referring to innovation, which its scholars explain through evolutionary theory. Consider, by way of example, the importance of collaboration or of proper information management for understanding the true adaptive pressures, bearing in mind the concept of the information and knowledge society formulated by Drucker.[5]

In earlier contributions we have explained the keys to administrative innovation, among which are emulation and exaptation, low-cost methodologies for change that underlie benchmarking and public exemplarity. Learning from those who achieve better results is advisable, as is studying the cases in which the greatest difficulties have been overcome in order to confront one's own problems.[6]

The French sociologist Gabriel Tarde explained the laws of imitation, pointing out the consequences of these phenomena for law and social behavior. Organizations, too, orient themselves in one direction or another with an eye to the tendencies of the members of their networks, so that an innovative attitude tends to foster others, just as resistance is likewise contagious.[7]

Such an approach accords with the thesis of the diffusion of innovations, formulated by Everett Rogers, which distinguishes innovators,

---

[2]See Stenberg / Detterman, *¿Qué es la inteligencia? Enfoque actual de su naturaleza y definición*, Pirámide, 2003.

[3]See Arenilla, Manuel (Dir.), *Administración pública 2032. Teclas para transformar la Administración pública española*, INAP, Madrid, 2014.

[4]See Simon, Herbert, *Decision making proccess in Administrative Organisations*, 1947.

[5]See Drucker, Peter, *The age of discontinuity: Guidelines to our changing society*, New York, 1969.

[6]See Rivero Ortega, Ricardo / Merino Estrada, Valentín, *Innovación en los gobiernos locales. Estrategias innovadoras de municipios y diputaciones en un contexto de crisis*, INAP, Madrid, 2014.

[7]See Tarde, Gabriel, *Las leyes de la imitación: estudio sociológico*, Madrid, 1907.

early adopters, late majority, and laggards—attitudes perfectly classifiable among the various administrative organizations, although the predominant tendency is clearly that of the late majority or even the laggards.[8]

To accelerate these processes, networks of innovators are being formed among us, supported even by official institutions such as the National Institute of Public Administration (INAP), whose contributions in this regard in recent years are noteworthy, promoting publications on knowledge management, innovation, open data, and the purposeful reuse of information in the Spanish public administration.

Data, its conversion into knowledge, and its dissemination through networks are presuppositions of the concept of intelligence, understood as working memory applicable to problem solving. By projecting these theories onto the organization and procedures of the public administration, we will know how to obtain information and convert it into applied knowledge, in order to put it to good use.[9]

This raises the prospect of understanding administrative entities as knowledge managers, a characteristic hitherto proper to universities and other research centers, but one that must be exapted to the rest of our institutions, which would have to transform themselves into intelligent organizations specialized in orienting their policies on the basis of a systematized memory.[10]

All institutions must be capable of taking advantage of what others have learned, applying it to their own needs in the face of multiple challenges: the use of new technologies (in procedures or in contracts), new models of staff recognition and incentives, or alternative regulatory strategies (based to a large extent on cognitive psychology).[11]

II. Data and Public Management: From Statistics to Big Data

Public policy and the social sciences should also take advantage of the extraordinary possibilities offered by Big Data, some as unexpected as the early detection of epidemics from Google searches or the discovery of vari-

[8]See Rogers, Everett, *Difussion of innovations*, 2003.

[9]See Allee, Verna, *The Knowledge Evolution: Expanding Organizational Intelligence*, 1997.

[10]See López Sánchez, José Ignacio / Carretero Díaz, Luis Eugenio, "La importancia de las técnicas de decisión basadas en la gestión del conocimiento: la ingeniería del conocimiento en España," *Economía Industrial*, no. 326, 1999.

[11]See Rivero Ortega, Ricardo, *La necesaria innovación en las instituciones administrativas*, INAP, Madrid, 2012.

WANT TO KEEP READING?

Law and Artificial Intelligence

Four Studies

Ricardo Rivero Ortega

These are the first pages of the book. The full edition is on sale on Amazon, in all 17 stores worldwide.

Kindle eBook · Buy on Amazon **4.99 €**

Paperback · Buy on Amazon **9.99 €**

Book page, prices and other stores:
amicuscertus.es/en/catalog/law-and-ai/

AMICUS CERTUS