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The AI dilemma: How does Artificial Intelligence affect Human Rights?

Sergio Andrés López Zamora 

Valentina Hernández Chinome 

Universidad Santo Tomas Seccional Tunja, Colombia

ABSTRACT

This article analyses the prevalence of human rights in the development of Artificial Intelligence (AI), approaching it from a historical and conceptual review of AI, evaluating its evolution and the impact it has had on society. It highlights how AI has advanced significantly and has been integrated into multiple aspects of human life, facilitating complex tasks and being efficient in various fields; however, it is essential to raise the challenges regarding how it impacts human rights, and the need to establish robust legal and ethical frameworks to regulate its accelerated development and use.

KEYWORDS:

automatic reasoning; globalization; human evolution; regulation; society; specialty; tools.

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Contact: Valentina Hernández Chinome  valentina.hernandez@usantoto.edu.co



Introduction

During human evolution, humans have had to live in society to ensure their survival. Based on this end, each subject has been entrusted with different tasks, giving rise to work and specialization; however, this division of labor has intrinsically brought with it a solution to the need to meet social requirements, thereby guaranteeing harmonious coexistence and the survival of the species.

Through work, humans have dignified their existence and given it value, engaging in various activities, some of which are more complex than others. However, despite the above, each individual has sought ways to facilitate their work, making use of their instinct for creating tools, just as they have used to create their tools.

That advance is in line with collective activities and needs. The gadgets created have facilitated production and, with it, existence itself, reaching previously unthinkable points; so much so that today we have intangible tools that develop highly complex tasks, and their development continues to advance, as in the case of Artificial Intelligence.

The development of Artificial Intelligence (henceforth referred to as AI) has provided individuals with a tool for accessing the world in its entirety. This has also raised several ethical and legal questions, particularly regarding human rights. On the one hand, AIs offer the community considerable benefits in terms of convenience, speed of access to information, efficiency, and innovation. On the other hand, challenges arise that must be addressed to ensure respect and protection of users' fundamental rights.

In this sense, the question arises: What is the theoretical importance of human rights in the development of AIs? This question provides an analysis that will be developed under the following headings:

The age of Artificial Intelligence

AIs are not a creation of the 21st century; on the contrary, they have been developed since time immemorial. According to Vicenç Torra (2019), "The term artificial intelligence (AI) was adopted during the summer of 1956 in Dartmouth at a meeting that brought together researchers interested in the topics of intelligence, neural networks, and automata theory" (p.7). This circumstance makes it possible to establish that AI is not a recent phenomenon, but rather a thought and idea that has been evolving throughout the annals of history. It is only at a certain point in history, not very distant, that it is given a name of its own.

The rapid advance of AI has marked a new moment in human history. It gives rise to a new beginning in which humanity accesses information and technological tools



instantly, according to its needs. These new intelligences have experienced significant advances, mainly in recent years, resulting in access to sophisticated algorithms that offer substantial data processing capacity, as well as a vast array of information.

Despite the advances it has presented, it has been highly complex to define what an AI is objectively; however, “four approaches have been followed throughout history. As might be expected, there is a clash between human-centred and rationality-centred approaches” (Russell, 2008, p.30).

Among the early approaches to defining AIs, the first two focus on the human. A division is made between concepts, the first to analyse part of the system that thinks like a human: “the new and exciting endeavour to make computers think... machines with minds, in the broadest literal sense” (Haugeland, 1985). This is complemented by “the automation of activities that we link to human thought processes, activities such as decision making, problem solving, learning... (Bellman, 1978)”.

The second concept examines systems that behave like humans. It defines AI as “the art of developing machines capable of performing functions that when performed by humans require intelligence” (Kurzweil, 1990). It also states that it is “the study of how to get computers to perform tasks that, for the moment, humans do best” (Rich & Knight, 1991). This is how one can begin to think of AI as the need to bring some human intelligence to everyday tools.

It then becomes clear that the starting point of AI is the human being, their behavior, thinking, and acting; their whole being, intelligence analysis, and knowledge construction, the latter two points giving way to the next approach to the concept of AI.

The second approach to AI focuses on reasoning. Like the previous one, the concept focuses on two points: the first point is systems that reason. This is based on the definition that AI is “the study of mental faculties through the use of computational models” (Charniak & McDermott, 1985). This is made possible through the “study of computations that make it possible to perceive, reason, and act” (Winston, 1992). A concept that satisfies the claims of the need for information required by humans to fulfil their daily obligations but provided using a pre-coded algorithm.

The second point of reasoning lies in systems that act rationally. This item highlights the fact that AI is a creation that must focus on overcoming intelligence, specifically: “Computational Intelligence is the study of the design of intelligent agents” (Poole et al., 1998).

For researchers and authors interested in defining AI for this new era, an absolute concept has not yet emerged, as it depends on the starting point of analysis. However, even though the concepts are changing, some elements have remained con-



stant, such as thinking of AI as a system; the need for the system to take on human intelligence; the idea that these systems should serve as a tool for human beings but based on human reasoning and planning for it to work on its own, through a computer or technological element.

Thus, AI should be understood as a system created by human beings that possesses intelligence capable of rationalizing actions through algorithms specifically encoded with a function, and whose operation materialized through technological instruments. "AI... is related to intelligent behavior in artefacts" (Nilsson, 1998). It is worth noting that in the 21st century, access to technological artifacts has become common, resulting in widespread access to AI for the broader community.

Over the last decade, access to technological elements has increased, resulting in the fact that almost everyone has a computer, a mobile phone, a tablet, and internet access. As we have been saying, to access an AI, it is only necessary to have a computer. This means that technology itself represents AI: an artefact with intelligence capable of instant rationalization, and which is available to a large percentage of human beings around the world.

The fact that every human being can nowadays have access to AI has meant that it must have specific characteristics, which must be approved. The primary need for AI is intelligence, which must be equal to or superior to that of a human being. To determine if it can make decisions, it must be subjected to the Turing Test, proposed by Alan Turing (1950).

Alan Turing proposed that: "if a computer program could fool a set of human judges into thinking it was human, then that program must be intelligent" (Angeles, 2019). The Turing test states that the system must have several features:

- Natural language processing to enable him/her to communicate successfully in English.
- Knowledge representation to store what is known or felt.
- Automatic reasoning to use stored information to answer questions and draw new conclusions.
- Machine learning to adapt to new circumstances and to detect and extrapolate patterns (Russell, 2008, p.31).

In trying to resemble human intelligence, in order to fulfill the above capabilities, AI must learn as humans do. It is in this way that Machine Learning is incorporated, which is a "method of data analysis that learns from experience, allowing computers to find hidden information without being explicitly programmed" (Angeles, 2019). However, despite this and as is recognizable throughout this analysis, AI evolves and



its elements with it; in such a way that the union of Deep learning is realized. Deep learning is a concept that emerged in 2010:

It aims to mimic a human neural network through artificial intelligence, deep learning as it is also known, which is based on the design of individual layers of connections that maintain communication with other layers of information subject to an unlimited amount of data that is used first individually and then generally, for a specific task (just like a human neural network), is an aspect of machine learning that was designed to expand the contexts in which it was applied (Morán, 2020, p. 281-322.

This is centered on the fact that, in this technological era, artefacts are beginning to feature AI, endowing objects (such as cars, computers, appliances, tools, and even accessories) with the ability to serve humans. This is a result of the technological quest and the need to upgrade items to perform increasingly complex tasks that only human intelligence can perform.

Thus, for this era, it is established that AI systems are evolving and endowed with human intelligence, created to facilitate the existence of subjects. Due to globalization, they must be able to serve everyone, which is why they are constantly advancing; however, it should be noted that the use and access to intelligence by different subjects are beginning to generate an ethical and social debate.

Although they are great tools for this new technological era, adapted to the needs of subjects in general, they can be used in a counterproductive way against a third party. Some thinkers, such as Volker Türk, the United Nations High Commissioner for Human Rights, have established that AI is the future of humanity, a change that will lead to economic, social, political and cultural globalization; on the contrary, others, such as Yuval Noah Harari, author of "Sapiens" and "Homo Deus", have stated that AI can threaten the work of the community, provoke mass unemployment and economic inequality. This extends to affecting human rights, which are fundamental guarantees for every individual.

Challenges for the law in the face of artificial intelligence

As mentioned, the new era of AI brings about technological advances, but these advances also raise legal issues. AI is a human creation that seeks perfection, but throughout history, it has been shown that perfect is not a universal term but a personal one; the example of the Second World War and its implications.

Thus, it cannot be denied that personal biases of each user can be found within the algorithms that feed AI. Indeed, AI learns empirically about human behavior, but this is where one of the many concerns begins to emerge: human behavior is not always



the most appropriate, and this leads to the AI adopting discriminatory, immoral, or unlawful behavior, which in turn affects the social environment.

Algorithms can be biased if they are based on incomplete data or if different perspectives are not considered. It can already be affirmed that the main problem law faces is the lack of regulation for the development of ethical, but mainly legal, issues that come with these technologies. This is how the law, being “a set of rules that control the conduct of men” (Carnelutti, 2018, p. 3), must offer a limitation for the functioning of these AIs; as tools they are excellent, but as weapons they can be fatal, “their improper use, intentional or not, can also damage people’s rights” (Carnelutti, 2018, p. 3). Ethical and legal issues debate the allocation of responsibilities and obligations in situations involving intelligent systems (Grigore, 2022).

To establish a starting point, AI, as seen from the Turing concept (developed in the previous title), can potentially compromise individual rights, including privacy, intellectual property, equality, and labor rights, among others. Thus, the union of these rights gives rise to fundamental guarantees, which must be protected, as they are derived from the dignification of the human being through struggles and evolution itself.

Law cannot be taken merely as a limiting norm but must also address collective advancement; it must be appropriate to the context. Thus, “law is a social phenomenon, and society is a different object from nature because it comprises a completely different network of elements” (Kelsen, 2011, p. 41). In this sense, it becomes clear that the social phenomenon represents human behavior, which changes over time, and it is the duty of the latter to adapt to and protect from the same evolution what is, by nature, the property of man, such as his fundamental rights.

Thus, it is the duty of law to begin to protect human rights, for although many belong to man by nature, others have been the result of a struggle. “Every right in the world had to be acquired by struggle” (Von Ihering, 2015, p. 40-60). Moreover, for the protection of these, it is necessary to establish criteria that go beyond grammatical and interpretative systems, and contrary to these, limited conduct responds to personal freedoms. It regulates behaviors that have “objective meaning that is linked to the act, and the meaning it has” (Kelsen, 2011, p. 41). This is to set aside the mere narrativization of conduct and begin to truly protect rights, as Kelsen stated within the real utilities of law.

Therefore, the lack of regulation of AIs poses another challenge for the law, which is to address the potential human rights violations that may occur through their use. This is because, by not limiting the development of AIs and not regulating their ethical and legal use, there is no guarantee of transparency in their use; in other words,



Als acquire autonomy, which can lead to their algorithms violating rights, both consciously and unconsciously.

In order to understand the above, the case of Tay will be taken as an example:

Tay is a bot for Twitter developed by Microsoft (a bot is a program that executes tasks on the internet), capable of automatically interacting with users and learning from them. In a few hours, Tay learned racist, xenophobic, misogynistic, and fascist expressions and had to be blocked from the social network (Grigore, 2022, p. 165).

It is challenging to make use of AI when the value of these technologies is inclined to ignore respect for other users, not by creation, but by algorithmic data collection and the omission of transparent data collection models; a situation that has left a clear precedent for the use of AI and the vulnerability of users and their rights when it comes to their use. It is clear that the violation of these guarantees in many cases is unintentional, but their existence cannot be ignored.

There must be a sense of equality among developers and creators of intelligence. However, they must also create methods for selecting information, not radicalizing topics, but rather contexts. In other words, AI must be an impartial entity, in which respect for equality and diversity stand out; this is the way for systems to limit themselves to adopting the necessary information, but to discard the prejudices represented by the mass of the population.

In this understanding, it is clear that the purpose of AI is not to offend anyone, much less to violate rights in general; on the contrary, it aims to facilitate human activity and existence in general, but "in order to fulfil this task, to behave like humans, to place people at the center of the development of new technologies, any solution, any regulation, must be based on respect for human rights" (Türk, 2023).

The law must adapt to the rapid evolution of Als; however, currently, only a limited number of countries have regulated this issue. By 2024, the United Nations (UN) General Assembly adopted a "historic solution on the promotion of 'safe and reliable' artificial intelligence (AI) systems that also benefit sustainable development for all" (UN, 2024).

However, even though the scope of AI is beginning to regulate, it is also necessary to understand that there will continue to be harm. One of these is the aspect of the right to privacy and data protection, as we must not lose sight of the fact that these intelligences work through the collection of algorithm information, a circumstance that, on the part of Als could undermine people's autonomy and freedom, as well as expose them to risks such as manipulation and discrimination.



Regarding the latter, it can be argued that discrimination is one of the primary violations that AIs exhibit. It is not against their development per se, but against the algorithm that prioritizes unfiltered adoption of data, thereby taking personal biases into account. This poses a significant challenge to justice and the protection of fairness and equality, presenting severe problems for the criminal justice system, fundamental guarantees, and access to employment, among others.

Work and economic acquisition are other challenges that the law will face. For it is no riddle that many of the AIs currently being developed are ultimately intended to replace human tasks. This situation would leave many workers or laborers both jobless and economically helpless. The industry will produce more goods and services with AI than with human labor; a point that, beyond technological advancement, results in a deterioration of human dignity.

Ultimately, to address the various challenges posed by AI, a comprehensive legal framework must be implemented, accompanied by clear context and a focus on the ethical use of AI. These rules should focus primarily on implementing transparent means for collecting algorithm data that respects diversity, equity, and privacy, among other values. However, the implementation of these technologies should be designed and regulated to benefit humans rather than harm them.

Human rights as an interpretative framework for AI

Human rights have various definitions; however, there is a meeting point in their conceptualization, and it is that "human rights are norms that recognize and protect the dignity of all human beings" (Unicef, 2015). In this understanding, it can also be understood that human rights are a set of rules and principles that lead to norms, which focus on guaranteeing the dignity, freedom and equality of all people "without distinction of any kind, such as race, sex, nationality, ethnic origin, language, religion or other status" (UN, 2023).

Human rights have five characteristics that articulate their existence: "they are rights, first, moral, second, universal, third, fundamental, fourth, abstract, and fifth, in terms of moral validity, they have priority over all other norms" (Alexy, 2015, p. 194). AIs must initially respond to the interpretation and guarantee of these universal mandates. Although their evolution has been beneficial for existence, it is also a reality that no limits have been placed on them, as stated in the previous title. These limits must be regulated in light of human rights, which serve as the basis for all regulation.

To talk about human rights, according to the High Commissioner for Human Rights, one must talk about:



Risks, with a focus on self-regulation and self-assessment by AI developers. Instead of adhering to detailed rules, risk-based regulation emphasizes identifying and mitigating risks to achieve results (Türk, 2023).

Thus, to regulate the application, operation, creation, and development of AI, one must begin to respect moral rights. This means that “moral rights represent more than individual will and could not exist if social life played no role” (Dávila, 2014, p. 20). Norms must address a broad social field, such as a population, but their application must be between autonomous individuals; disrespect for these mandates can break individual fundamental rights.

To complement the above, there is the case of deepfake or fake images, of which, in recent times, different women, especially those with a public image, have been victims. These are “videos in which false images are shown, usually of a person’s face, which appear to be real, and which have been produced using artificial intelligence” (Visus, 2021). Through this, content has been created mainly with sexual themes, which have had repercussions on the personal lives of those who falsely appear in the reproduction; thus, generating a violation of human rights and their moral themes.

On another point, the universality of human rights must be established, and this is where the responsibility of AI becomes necessary. AI “can create the basis for designing even more powerful tools for societal control, surveillance, and censorship” (Türk, 2023), which can be detrimental to states at war, in internal and external conflicts, with totalitarian and arbitrary rulers, and as the UN High Commissioner for Human Rights, Volker Türk, mentions: “can become vehicles for mass surveillance in our public spaces, ending any concept of privacy” (2023).

The aforementioned responds to the basis of human rights, materialized within states, i.e., fundamental rights. The fact that the use of AIs is not regulated also means that violations of fundamental rights will occur within each State; this is evident in the personal aura of each individual, as exemplified by the cases mentioned above, including discrimination, political participation, civil liberties, and access to public services.

Therefore, in terms of control and respect for fundamental rights, as a materialization of human rights within each State, it is necessary for:

All states must protect people from AI-induced human rights abuses, which means aligning their regulatory frameworks with their obligations under human rights law (UN, 2023).

Therefore, each State must legislate what is necessary for the protection of these rights, with the understanding that despite the existence of global measures, these have to be grounded in each specific territory, thus fulfilling the abstraction of



human rights, which occurs when “we idealize human beings, we assign them a series of adjectives and we define them as a desirable profile that should be attended to” (Durán, 2016, p. 75–81).

Nowadays, the majority of people worldwide have access to technological elements, including AI. Understanding that not all cultures are the same, it is necessary to regulate access to AI and its development according to the needs and management of these in each territory; it is not the same to generate a regulation in the United States, where its progress is abysmal, as in an African country where technology and internet progress is an innovation. “Existing regulations and protections must be applied, for example, regulatory frameworks on data protection, competition law, as well as sectoral regulations, including in the fields of healthcare, technology, or financial markets” (Türk, 2023).

Moreover, it is here that the last point for interpreting human rights must be addressed, as this is the priority that this regulation must have over the other rules. Thus, as a guarantee of human dignity, AI developers and creators must ensure that, in every algorithm, respect for human rights is paramount, thus avoiding transgressions based on race, gender, and other factors, in the words of Volker Türk:

The human rights framework provides a fundamental basis that can facilitate protections when employing efforts to exploit the enormous potential of AI, while preventing and mitigating its enormous implicit risks (Türk, 2023).

It is for all of the above that Artificial Intelligences must respond to human needs, properly speaking. It must be a tool to help, which must be a guarantor of human rights, and not, on the contrary, infringe upon them. Indeed, the use of these tools will always create new debates. However, the important thing about them is that, from their very development, the objective should be respect for rights and the harmonious existence of the community. A human rights perspective applied to the development and use of AI will have limited impact if it is not accompanied by adequate respect for human rights in the broader regulatory and institutional landscape (Türk, 2023).

Conclusion

The theoretical importance of human rights in the development of AIs lies in the need to seek respect for dignity, equity, and privacy in the use of these new technologies. Likewise, it aims to provide a starting point for states to base their regulations on, regarding the use, creation, and development of AIs. The advancement of intelligence cannot be restricted; however, it is necessary to regulate it in order to ensure



the responsible use of technologies and promote social harmony, non-discrimination, freedom, and respect for individual differences.

Disclaimer

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About the authors

Sergio Andrés López Zamora is a Lawyer and Legal Conciliator from Santo Tomás University. He holds a Postgraduate Degree in Virtual Education from the National University of Quilmes and a Postgraduate Degree in Legal Sciences with an emphasis on Criminal Law from the University of Buenos Aires; Specialist in Criminal Law and Criminal Procedure from Santo Tomás University and Candidate for a Specialization in Criminal Cassation from Gran Colombia University; Master's Degree in Criminal Law and Criminal Procedure from Santo Tomás University and Master's Degree in Human Rights from the Pedagogical and Technological University of Colombia; PhD in Public Law from Santo Tomás University and PhD candidate in Criminal Law at the University of Buenos Aires. He has 12 years of litigation experience in criminal law and human rights. He teaches undergraduate and postgraduate courses at Santo Tomás University (Bogotá and Tunja), Luis Amigó Catholic University (Medellín), and the Pedagogical and Technological University of Colombia (Tunja). Member of the Criminal Cassation Lawyers' Association.

<https://orcid.org/0000-0003-1350-6310> - sergio.lopezz@usantoto.edu.co

Valentina Hernández Chinome is a Lawyer graduated from Santo Tomás University, Tunja Branch.

<https://orcid.org/0009-0006-6468-1679> - valentina.hernandez@usantoto.edu.co

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