

THE CHALLENGES POSED BY ARTIFICIAL INTELLIGENCE AND MARKET IN TERMS OF THE RIGHT TO INTIMACY AND PRIVACY

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Abstract

AI also generates ethical challenges and significant social risks, especially in terms of human rights. One of the main ones is to reduce the current asymmetries between the information that large platforms have about their users and the lack of transparency about the uses of algorithms and the business models with which they process and exploit this data. This *modus operandi* puts people's autonomy at risk due to its ability to influence their behavior. In this context, technology can always be an ally of progress, but only if it is incorporated into an ethical and legal framework that prioritizes human dignity and respect for human rights. Technology is not something that simply "happens", but it is necessary to humanize it to put human rights at the center of all technological advances. Therefore, the challenge is to build a technological and data management and analysis model focused on people's dignity and respectful of their fundamental rights.

Keywords

Artificial Intelligence, Human Dignity, Platform Capitalism, Right to Intimacy and Privacy, Personal Data Protection, Human Rights.

Summary

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1. - Introduction.

For the first time in human history, autonomous systems can be created capable of conducting complex tasks that we thought only natural intelligence was capable of: processing large volumes of information, calculating and predicting, learning, and adapting responses based on changing situations, and recognizing and classifying objects.

Since these are intangible tasks, by analogy with human intelligence, this wide variety of systems is called "artificial intelligence". Artificial intelligence (AI) is an important form of scientific and technological progress, which can generate great societal benefits. These include: the possible improvement of living conditions and health; the speeding up of justice; wealth creation; strengthening public security; and mitigating the harmful impact of human activities on the environment and climate².

Intelligent machines not only make better calculations than humans, but they can also interact with, accompany, and care for sentient beings. The recent development of generative AI – as is the case with ChatGPT – if used correctly, can provoke an interaction that multiplies the possibilities of collective human intelligence. Because of its increased ability to analyze, establish patterns, and correlate, generative AI can enhance and amplify biological cognitive abilities³.

However, the development of AI also creates significant ethical challenges and societal risks. These include restricting the choices of individuals and groups; reducing the standard of living of the population; disrupting the organization of work and the labor market; negatively influencing policy; conflict with fundamental rights; exacerbate social and economic inequalities; and affect ecosystems, climate, and the environment.

² University of Montreal (2018), Montreal Declaration for Responsible Development of Artificial Intelligence 2018, in <https://declarationmontreal-iaresponsable.com/la-declaration/> online consultation dated 20 November 2023.

³ Corvalán, Juan G., Generative Artificial Intelligence as ChatGPT: A New Renaissance?, in Law 5 June 2023, cites: LALEY AR/DOC/1278/2023

But beyond this specific list, one of the great dangers of the development of artificial intelligence is to believe that we can control the future through calculations. Reducing society to a series of numbers and governing it through algorithmic procedures is an ancient utopia that continues to drive human ambitions.

Though, when it comes to human affairs, numbers cannot consider the greatness and depth of the mystery of life, or calculate the importance of human dignity, or determine what has moral value, or what is most socially desirable.

While scientific progress always involves risk, it is up to citizens to determine the moral and political ends that make sense of the risks taken in an uncertain world⁴. The lower the risks when making use of AI, the greater its benefits.

In this paper we will focus on the challenge presented by the development of artificial intelligence in terms of the right to intimacy and privacy. We will do so from a descriptive, exploratory, and transdisciplinary perspective due to the novelty and complexity of the issue. We will include in this work the reflections of Pope Francis on the question made in various speeches and documents of his magisterium.

Finally, we will reflect on the ethical and legal framework for regulating AI. Due to the global reach of the infrastructure that supports artificial intelligence, it seems to us that adequate legislation must be sought at the international level, to ensure that these disruptive technologies are focused on the dignity of the human being, both for their benefit and for that of global society, and that they minimize or neutralize the ethical risks they entail⁵.

⁴ University of Montreal (2018), Montreal Declaration for Responsible Development of Artificial Intelligence 2018, in <https://declarationmontreal-iaresponsable.com/la-declaration/> online consultation dated 20 November 2023.

⁵ Uriol, L. M. (2023). Analysis of the UN and OECD recommendations on the regulation of Artificial Intelligence. The state of affairs in Argentina. *Aequitas Virtual*, 16(36 accessed

2. - Some contextual aspects that deserve to be highlighted regarding the development of Artificial Intelligence.

2.1. Development of platform capitalism:

One of the consequences of the pandemic and the confinement caused by Covid has been to consolidate the centrality of digitalization. This has meant that technological dependence on large connection providers and Internet giants, also known as GAFAM (Google, Amazon, Facebook, Apple, and Microsoft), has increased more than ever.

For the authors Innerarity and Colomina⁶, cyberspace has become the new geostrategic territory, and the Internet has become the infrastructure where our daily lives are built. Social media has been elevated to the status of a new public square.

Thus, GAFAM has amassed extraordinary power due to unprecedented control over individual data and behaviors, and a massive concentration of communicative exchanges that occur through social media. As a result, tech giants can now play the role of *gatekeepers* of the information that most citizens receive today.

This digital age, in turn, is dominated by an economic model based on data mining to implement personalized commercial advertising and political propaganda strategies. In other words, in digital capitalism it is not enough to identify preferences, it is more profitable to shape them if you have the capacity to do so⁷.

online on November 30, 2023 at:
<https://p3.usal.edu.ar/index.php/acquitasvirtual/article/view/6781>

⁶ Innerarity, Daniel and Colomina, Carme. "Truth in Algorithmic Democracies." *Revista d'Afers Internacionals*, no. 124 (April 2020), p. 11-23. DOI: doi.org/10.24241/rcai.2020.124.1.11

⁷ Riechmann, Jorge "Digitalization is Intensifying Human Alienation" By Bloghemia- November 16, 2023, accessed online December 2, 2023 at <https://www.bloghemia.com/2023/11/jorge-riechmann-la-digitalizacion-esta.html>

On the other hand, it should be considered that online platforms are a new space for social traffic. For this reason, legal frameworks do not yet cover all aspects of this "territory". In this way, the limits of what is legal and what users are willing to accept are put to the test repeatedly.

In this context, the daily and almost permanent use of digital devices means that the more we use them, the more data we generate and consequently the more information we are giving up. In this way we are feeding into algorithmic governance.

Based on this, digital media companies conduct a number of businesses related to the exploitation of data and metadata. Platform owners have become acutely aware of the valuable resource that flows through their networks daily. Sophisticated mathematical models for aggregated data analysis and prediction of social trends turn this incessant flow of data into a very lucrative connective resource⁸.

This whole digital world makes our everyday experience articulate and understand both real and digital elements. That is, we not only interact with the world through a body of flesh and blood, but we also do so from a body of data caused by our digital footprint, which becomes, in fact, getting bigger and more relevant in our everyday experience.

However, despite being something extremely close, constituting, modifying, and shaping our psychic and social reality, we are dispossessed of this body. The cause of this dispossession is that it resides in privatized spaces, in these vast technical infrastructures that we call "the cloud."

In short, our future is increasingly defined by what happens in the digital environment. And this environment depends on the commercial interests of the main technology companies that have the infrastructure and the power to process the copious amounts of data they extract from the public.

⁸ Van Dijck, Joseph. (2016) *The Culture of Connectivity: A Critical History of Social Media*. Buenos Aires. Siglo Veintiuno Editores.

For this reason, digitalization has created new systems of power, new asymmetries, and new social inequalities.

In this context, the future is far from being defined by the primacy of the common good and the centrality of the human person. Consequently, the real digital challenge seems to be to reduce the current knowledge asymmetries between the information that large platforms have about their users and the lack of transparency about the uses of algorithms and the business models with which they process and exploit this data⁹.

2.2. The risk of infringement of the fundamental rights of the human person:

From the perspective of the human person, it has been pointed out that these systems pose a risk to autonomy due to their ability to influence their behavior. This influence is generated from the data they use as input to profile users¹⁰ and then give them "small nudges"¹¹ that affect their decisions without them being aware of it¹².

⁹ Innerarity, Daniel and Colomina, Carme. "Truth in Algorithmic Democracies." Revista CIDOB d'Afers Internacionals, n° 124 (April 2020), p. 11-23. DOI: doi.org/10.24241/rcai.2020.124.1.11

¹⁰ Profiling refers to the process of employing pattern and correlation recognition to create user profiles that represent or identify individuals. Expand on Philip Jansen and Philip Brey, "Ethical Analysis of AI and Robotics Technologies," SIENNA Project, August 31, 2019, p. 67, retrieved from https://www.sienna-project.eu/digitalAssets/801/c_801912-l_1-k_d4.4_ethical-analysis-ai-and-r-with-acknowledgements.pdf [accessed online on 22/11/2023].

¹¹ The nudge theory, proposed by Richard Thaler, is based on the premise that, between two options, people tend to choose the one that is easier over the one that is more appropriate. Expand in BBC Mundo, "What is the 'push theory' that won the American Richard H. Thaler the Nobel Prize in Economics", October 9, 2017, retrieved from <https://www.bbc.com/mundo/noticias-41551856> [accessed online on 22/11/2023].

¹² David Leslie, "Understanding artificial intelligence ethics and safety: A guide for the responsible design and implementation of AI systems in the public sector," *The Alan Turing Institute*, 2019, p. 5, recuperado en <https://www.turing.ac.uk/research/publications/understanding-artificial-intelligence-ethics-and-safety> [accessed online on 23/11/2023].

They also allow the identification, monitoring and tracking of people's activities and behaviors, both in public and private spaces. Not only via facial recognition, but also voice recognition *and tracking of* their movements through the smart devices they carry with them. In other words, these systems have a great capacity for profiling and inducing behaviors, putting people's privacy and intimacy at permanent risk.

On the other hand, the interaction between generative AI (ChatGPT) and human beings generates responses that fall into the categories of correct, partially correct, rational, irrational, negatively biased, hallucinated, invented, false, and multiple nuances among all of this.

Therefore, the massive introduction of data, information and synthetic knowledge caused by these sophisticated AI systems enhances and transforms the problem of false, incorrect, invented, or simulated data and information. This can make it extremely difficult to discern true from false, right from wrong, and truth from lies.

The other aspect to consider is related to digital profiling. Access to people's privacy and intimacy by these conversational agents (e.g., ChatGPT) is enhanced by a digital ecosystem that is based on profiling our tastes, preferences, behaviors, and habits¹³.

In short, intelligent systems pose new and numerous ethical and legal challenges since they can affect personal autonomy for decision-making; the future of employment; access to information, education and health; democracy and the rule of law; the digital divide; consumer and personal data protection; the right to privacy and the right to equality and non-discrimination¹⁴.

¹³ Corvalán, Juan G., Generative Artificial Intelligence as ChatGPT: A New Renaissance?, in Law 5 June 2023, cites: LALEY AR/DOC/1278/2023

¹⁴ Sánchez Caparrós, Mariana "The risks of artificial intelligence for the principle of equality and non-discrimination. Presentation of the problem and some necessary conceptual clarifications under the prism of the Inter-American Human Rights System." in Dial DC3045 retrieved from https://www.researchgate.net/publication/361510404_Los_riesgos_de_la_inteligencia_a

3. The impact of AI since Pope Francis' speech.

3.1. The challenges of AI according to Pope Francis:

In relation to the challenges mentioned above, it seems relevant to us to summarize the thinking of Pope Francis on the irruption of artificial intelligence, its impact, its consequences, and the proposals he formulates to face these challenges. For us, the dialogue between religious discourse and scientific reason is always beneficial for humanity.

Thus, in various speeches and documents of his magisterium, Pope Francis has pointed out a number of issues that are worth examining carefully. The first is that the "digital galaxy", and the so-called "artificial intelligence", are at the very heart of the epochal change we are going through and that they are endowed with immense potential to improve the lives of people and society. These instruments, for the Pope, are a gift from God, which can bear good fruits.

The second is that it is a technology that is increasingly present in human activities and even in human decisions to such an extent that it is changing the way we think and act. Most decisions, even the most important ones, such as those in the medical, economic, or social spheres, are today the result of human will and a series of algorithmic contributions.

The third is that in the socio-economic sphere, users are often reduced to mere "consumers", subject to private interests concentrated in the hands of a few. In this area, from the digital traces scattered on the Internet, Francisco explains, algorithms extract data that allows them to control mental and relational habits for commercial or political purposes, often without the users' knowledge. This asymmetry, whereby a few know everything about users, while users know nothing about them, numbs critical thinking and the conscious exercise of freedom.

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[accessed online on 15/11/2023].

For this reason, Francis warns, innovative technologies are not neutral instruments. Rather, they are instruments that shape the world and engage people's consciences. For this reason, it encourages the maturation of strong motivations to persevere in the search for the common good, even when there is no immediate particular benefit to be derived from that pursuit¹⁵.

Another substantive issue is the scientific and technological paradigm in which AI is inserted. In 2015, in the encyclical "*Laudato Si'*", Francis formulated a forceful critique of both the scientific and technological paradigm and the forms of power that derive from it and launched the invitation to seek other ways of understanding the economy and progress.

There he questioned the tendency to naively believe that every increase in power is simply progress, an increase in security, utility, well-being, vital energy, fullness of values, as if reality, goodness, and truth sprang spontaneously from the same technological and economic power.

Finally, for the Pope, modern people are not prepared to use power wisely, because the immense technological growth was not accompanied by a development of the human being in responsibility, values, and conscience¹⁶.

3.2. Proposals in the face of challenges:

After making the diagnosis and pointing out the risks of AI, the Pope also makes a series of proposals. The first is the need for an ethics of algorithms or "algorithm-ethics" that implies responsibility for each element of the process of developing these tools. As there are many tools involved in the process of developing technological devices (research, design, production, distribution, individual and collective use), each of them must assume a specific responsibility. The aim is to ensure competent and shared

¹⁵ Pope Francis, Meeting with participants in the plenary session of the Pontifical Academy for Life, Clementine Hall, 28 February 2020, accessed online on 15 November 2023 in https://www.vatican.va/content/francesco/es/speeches/2020/february/documents/pa-pa-francesco_20200228_accademia-perlavita.html

¹⁶ Pope Francis, Encyclical Letter "*Laudato Si'*", Rome, 24 May 2015, n°104, accessed online at http://www.vatican.va/content/francesco/es/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html

verification of the processes with which the relationships between humans and machines are integrated in our era¹⁷.

The second is that in the face of ethical challenges, it is not enough simply to trust in the moral sensitivity of those who research and design devices and algorithms, but it is necessary to create intermediate social organisms, which guarantee that the ethical sensitivity of users and educators is represented.

The third is that the principles of the Church's Social Doctrine make a decisive contribution: dignity of the person, justice, subsidiarity, and solidarity. These principles express the commitment to be at the service of each person as a whole and of all people, without discrimination or exclusion.

The fourth and final is that the intrinsic dignity of every man and woman is the key criterion for evaluating emerging technologies. They reveal their ethical positivity as far as they contribute to manifesting this dignity and increasing its expression at all levels of human life¹⁸.

The concept of human dignity, for Francis, demands the recognition and respect that a person's fundamental value cannot be measured by a set of data. That is why, in social and economic decision-making processes, it is a duty to be cautious when entrusting judgments to algorithms that process data collected, often surreptitiously, about people and their past characteristics and behaviors. For the Pope, algorithms should not limit or condition respect for human dignity. Nor should they exclude compassion,

¹⁷ Pope Francis, Meeting with participants in the plenary session of the Pontifical Academy for Life, Clementine Hall, 28 February 2020, accessed online on 15 November 2023 in https://www.vatican.va/content/francesco/es/speeches/2020/february/documents/pa-pa-francesco_20200228_accademia-perlavita.html

¹⁸ Pope Francis, Meeting with participants in the plenary session of the Pontifical Academy for Life, Clementine Hall, 28 February 2020, accessed online on 15 November 2023 in https://www.vatican.va/content/francesco/es/speeches/2020/february/documents/pa-pa-francesco_20200228_accademia-perlavita.html

mercy, forgiveness, and openness to the hope of change in the individual. We believe that both the diagnosis and the proposals made by Francis contribute to designing an ethical and legal framework that regulates the use of AI, placing the dignity of the person and the search for the common good at the center¹⁹.

4. - The ethical and legal framework for AI.

From what has been said so far, one of the main challenges facing AI emerges with singular relevance: reducing the current asymmetries of knowledge and power between large technological platforms, nation states and their users. To this we can add the lack of transparency that exists both about the design and about the tasks conducted by the algorithms and the business models with which they process and exploit this data.

In this context, the risk that personal data and consequently the intimacy and privacy of users is unduly protected. This invites us to think about whether the current legislation is not outdated and based on old models that must be adapted to current realities and needs. We must bear in mind that never in the history of humanity has it been possible to collect such a volume of information.

It should be noted that the right to the protection of personal data is an evolution of the right to privacy. This fundamental right, enshrined since 1948 in the Universal Declaration of Human Rights as well as in the American Declaration of the Rights and Duties of Man, was originally elaborated in the jurisprudence of the United States, as a reaction against the excesses of the press²⁰.

¹⁹ Pope Francis, Address of His Holiness Pope Francis to the participants in the "MINERVA DIALOGUES" Organized by the Dicastery for Culture and Education, Consistory Hall, Monday, March 27, 2023, accessed online October 30, 2023 at https://www.vatican.va/content/francesco/es/speeches/2023/march/documents/2023_0327-minerva-dialogues.html

²⁰ Carranza, Juan M., The Collective Protection of Data Privacy. An effective solution, in Law 30 September 2021, in TR LALEY AR/DOC/2762/2021

In our legal system, the protection of privacy was first provided for in articles 18 and 19 of our Constitution and then with the incorporation of article 1071 bis into the old Civil Code. Finally, with the entry into force of the Civil and Commercial Code, the protection of privacy was included in Article 1770.

It should be clarified that the concept of intimacy developed in those years was totally outdated and sterile to face the threat posed by technological progress. It is for this reason that the need arose to incorporate the writ of habeas data with the constitutional reform of 1994 and subsequently, in the year 2000, to enact the Law on the Protection of Personal Data (Law 25.326).

However, the unsuspected processing of information that is currently taking place once again reveals that our legal system is outdated to protect the fundamental rights of data subjects.

Notwithstanding this, and despite the difficulties that may exist, it is of relevance to guarantee privacy in the digital environment. This implies recognizing the right of citizens to control their personal information and decide on the use of their own data.

The right to data protection must make it easier for the individual to always know who has their personal data, what use they are going to make of it, and to be able to rectify or cancel them according to the will of the subject²¹. In short, the right to the protection of personal data is a fundamental right. In international matters, the United Nations (UN) through the United Nations Educational, Scientific and Cultural Organization (UNESCO) issued the Recommendation on the Ethics of Artificial Intelligence, to

²¹ Serrano Pérez, María Mercedes "The protection of personal data in defense of individual dignity in the face of the risks of loss of privacy" published in "Digital rights in Ibero-America: situation and perspectives. Fundación Carolina – Telefónica, Fundación Carolina, March 2023, Madrid, Spain.

which all member countries adhered at the General Assembly in November 2021, including Argentina.

This recommendation contains a set of principles that, although general and should be delineated more precisely, are nevertheless a useful framework for the protection of the rights of individuals. One of these principles is the protection of the right to privacy and data protection. Of course, the problem to be solved is how nation states manage to ensure the protection of these fundamental rights.

Our opinion, in line with one of the proposals made by Pope Francis, is that the creation of intermediate social bodies where network users and educators are represented can be extremely useful in the protection of rights. In this way, organized social action will converge with the regulations established by the National State. But for this to happen, there needs to be a deep effort to educate and raise awareness among citizens about the importance of data privacy and the need for its protection.

We must also keep in mind that in the digital age we are living in, users of digital products and services are consumers. In this role, we are in a situation of high vulnerability with respect to the processing that can be carried out with our data. For this reason, data protection and consumer law are intimately linked.

Consequently, we believe that collective data privacy processes are an effective solution when it comes to balancing unstoppable technological progress with the protection of fundamental rights such as privacy, intimacy, and confidentiality.

In most cases of violation of privacy or improper processing of data, the owners have no incentive to go to court individually because of the inconvenience and costs that this generates, which will irremediably affect the access to justice enshrined in Articles 14 and 18 of our Magna Carta²².

²² Carranza, Juan M., The Collective Protection of Data Privacy. An effective solution, in Law 30 September 2021, in TR LALEY AR/DOC/2762/2021

That is why collective processes are a valuable tool for protecting the privacy of social network users.

In short, the right to data protection and privacy are today a fundamental right to human dignity that must be protected by the State. Faced with the out-of-date nature of our legal system to protect these rights, international instruments, the principles, and institutes of consumer protection rights – collective processes – and the creation of intermediate institutions that include users and educators, can be effective tools until a more current and adequate legal framework is developed.

5. Conclusion:

We have tried to synthesize the impact of AI in terms of the rights to intimacy, privacy, and protection of personal data. We did this by trying to describe the workings of platform capitalism and the commercial interests that drive it.

In this way, the asymmetry between the owners of the technological platforms, the Nation States and their users is clearly raised. In this context, the contribution of the magisterium of Pope Francis is lucid and valuable for designing a governance of AI systems that protect the fundamental rights of the human person. We still have time to control the AI and algorithms that already control us. To do this, the most important thing is that we put moral reason above technical reason. We need to think carefully about the goals we want to achieve with the digital revolution and how we are going to achieve them.

Because technology can always be an ally of progress, but only if it is incorporated into an ethical and legal framework that prioritizes human dignity. Technology is not something that just "happens". Public authorities, academia and civil society have the possibility to determine how AI will be developed and how it will be applied in the framework of professional activity; You must hold on to this possibility.

That is why it is important not only to focus on what AI can do, but also on what people can do (creativity, empathy, collaboration), what we want them to continue to do, and look for ways that humans and machines can work better together (complementarity).

In short, what we need is to humanize technology to put human rights at the center of all technological advances. The challenge is to build a technological and data management and analysis model focused on people's dignity and respectful of their fundamental rights.