LEGAL BY DESIGN?

LEGAL PROTECTION BY DESIGN?

Mireille Hildebrandt

COHUBICOL
ERC Advanced Grant 2019-2024

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Counting as a Human Being in the Era of Computational Law

Say cubicle ▪ Think Wittgenstein's cube

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It would be nice if all of the data which sociologists require
could be enumerated because then we could run them
through IBM machines and draw charts as the economists do.
However, not everything that can be counted counts, and not
everything that counts can be counted
— William Cameron, *Informal Sociology* (1963)

J'EXISTE.

Latest news

Hildebrandt discusses her work in the
workshop 'Data-driven Law on Edge?'
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■ Law + Computation.

■ Why not create an algorithm for the rule of law?

■ Because that would be oxymoronic?

■ Probably both oxymoronic and tautological!

rostam j. neuwirth

Oxymoronic and tautological

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- What computers can't do: ambiguity, paradoxes, double negations, irony

- Or can they? Maybe they can simulate all this, learn from our use of language (language as behaviourial data)

- But a simulation is not what is simulated,
  - *a simulation 'parasites' on what it simulates*
  - *the better the simulation, the more deskilling?*

Oxymoronic and tautological

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Law *as* Information in the Era of Data-Driven Agency

Mireille Hildebrandt*

This contribution introduces the mathematical theory of information that 'informs' computer systems, the internet and all that has been built upon it. The aim of the author is to invite lawyers to reconsider the grammar and alphabet of modern positive law and of the Rule of Law, in the face of the alternative grammar and alphabet of a data-driven society. Instead of either embracing

Mireille Hildebrandt[*]

LAW AS COMPUTATION IN THE ERA OF ARTIFICIAL LEGAL INTELLIGENCE: SPEAKING LAW TO THE POWER OF STATISTICS[†]

The idea of artificial legal intelligence stems from a previous wave of artificial intelligence, then called jurimetrics. It was based on an algorithmic understanding of law, celebrating logic as the sole ingredient for proper legal argumentation. However, as Oliver Wendell Holmes has noted, the life of the law is experience rather than merely logic. Machine learning, which determines the current wave of artificial intelligence, is built on data-driven machine experience. The resulting artificial legal intelligence may be far more successful in terms of predicting the content of positive law. In this article, I discuss the assumptions of law and the Rule of Law and confront them with those of computational systems. As a twin article to my Chorley lecture on law as information, this should inform the extent to which artificial legal intelligence provides for responsible innovation in legal decision making.

Keywords: cybernetics, information theory, legal intelligence, legal protection by design, legal services, legal theory, meaning, political economy, Rule of Law, speaking law to power

LbD

Legalism

- Rule by code
  (computational legalism, Diver)

- Atomistic, a-contextual, a-historical
  understanding of legal rules, notably taking
  either a formal or sociological perspective
  (both positivist)

- Efficiency reigns

- Notions of
  - *perfect information*
  - *perfect legal search*
  - *legal singularity*
  - *self-driving law*

LPbD

Legality

- Rule of law

- Relational understanding of law and the rule of law,
  notably as
  - *an architecture of countervailing powers*
  - *(checks & balances against arbitrary reign)*

- Equal respect and concern (Dworkin)

- Horizontal effect human rights

- Effectiveness trumps efficiency

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Legal Protection
ECtHR

- 'practical and effective human rights'

    - NOT paper dragons or practically inaccessible or actually ineffective rights

Oxymoronic and tautological

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Technological Determinism

Technological Solutionism

- What can be done
  - Will be done

- If we don't do it
  - China will do it

- Legal search
  - Legal decision making

- Efficiency, compression
- Neutralism, objectivism

Oxymoronic and tautological

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Legal innovation beyond efficiency

1. **What problem(s)** (of search, work flow management, accuracy, argumentation) is/are being **solved** here?

2. **What problem(s)** (of natural persons, big law, big business) is/are <u>not being solved</u> here?

3. **What problem(s)** (of justice, legal certainty, instrumentality) is/are being **created** here?

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Oxymoronic and tautological

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RSS 1.0

The *Journal of Cross-disciplinary Research in Computational Law* **(CRCL)** invites excellence in law, computer science and other relevant disciplines with a focus on two types of 'legal technologies': (1) **data-driven** (e.g. predictive analytics, 'intelligent' search) and (2) **code-driven** (e.g. smart contracts, algorithmic decision-making (ADM), legal expert systems), and (3) their hybrids (e.g. **code-driven decision-making based on data-driven research**).

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