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The Fine Line Between Business Reorganization and Bankruptcy Crime: Penal Challenges of Digital Proceedings and Legal Framework in Ecuador

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Published: 15 January 2025

OECD classification: 5.5 Law; 5.2 Economics and business.

Abstract

This article analyzes the existing tension between business reorganization and the configuration of bankruptcy crimes within the Ecuadorian insolvency regime. From a legal and economic perspective, it argues that reorganization must function as a mechanism to preserve viable companies, protect employment, and guarantee an orderly and equitable payment to creditors. However, the digitization of bankruptcy proceedings introduces new challenges related to document control, manipulation of financial information, and alteration of digital records. The study examines the boundary between legitimate liability restructuring and fraudulent conduct penalized by the Comprehensive Organic Criminal Code (COIP), highlighting figures such as fraudulent insolvency and fraudulent bankruptcy. Likewise, it identifies the information asymmetry among administrators, creditors, judges, and regulatory bodies as a factor that may favor opportunistic behavior and moral hazard. In response, it proposes strengthening preventive mechanisms such as concordat agreements and Compliance programs, aimed at improving financial controls and reducing criminal risks. Finally, it proposes a balanced articulation among the Companies Law, the COGEP (General Organic Code of Processes), and the COIP, ensuring legal certainty and avoiding the excessive criminalization of business risk, while continuing to sanction deliberate bankruptcy fraud.

Keywords: Insolvency, business reorganization, bankruptcy crime, digital proceedings, economic criminal law.

Introduction

The legal and economic analysis of the insolvency process in contemporary Ecuador requires a careful examination of the tension between corporate rescue mechanisms and the punitive rules that sanction bankruptcy fraud. Under an approach grounded in efficiency, market incentives, and strict compliance with commercial and criminal law, business reorganization is presented not only as a technical procedure for financial restructuring but also as a crucial institutional mechanism for preserving the productive unit and protecting the payment chain in modern markets.

In this context, the present study addresses how the transition from traditional commercial models toward rigorous judicial and digital frameworks reconfigures the responsibilities of administrators, opening a thin boundary line between the legitimate restructuring of liabilities and the configuration of conduct criminally reproachable under the Comprehensive Organic Criminal Code (COIP).

The Ecuadorian Insolvency Environment

The Ecuadorian insolvency environment is articulated around the fundamental premise that business reorganization must prioritize the preservation of the company as a source of employment and wealth, moving from a purely liquidating vision toward continuity schemes. The core purposes of this system encompass the protection of the productive fabric and the guarantee of an orderly and equitable payment to creditors.

Nevertheless, the implementation of digital proceedings, characterized by the electronic filing of statements of

financial position and income statements before the Judiciary Council and the Superintendency of Companies, Securities, and Insurance (SCVS), introduces unavoidable operational and regulatory challenges. Although digital modernization provides celerity in the judicial admission of applications, it also generates critical vulnerabilities in documentary control. In its strictly judicial phase, the formal cessation of payments process is governed by the parameters of the Insolvency Procedure enshrined in the General Organic Code of Processes (COGEP, Art. 414 et seq.).

The Ius-Economic Dilemma in Consumer Law and Insolvency

From the perspective of the Economic Analysis of Law, insolvency rules oscillate permanently between two opposing vectors: the maximization of company value and social redistribution toward the most vulnerable agents in the market. On one hand, the efficiency criterion seeks to minimize the commercial transaction costs borne by companies regulated by the SCVS, allowing a fluid allocation of capital.

On the other hand, the redistribution criterion operates through reinforced protection mechanisms, such as the preferential credits of workers and the safeguard of consumers affected by the company's liquidity crisis. The practical limit of this balance lies in the fact that excessive procedural formalism or deficient regulatory coordination may prematurely destroy the value of a company that is economically viable, transforming a temporary cash flow problem into a definitive bankruptcy.

When Reorganization Becomes Criminal Fraud

When restructuring tools are used abusively or fraudulently, the legal order reacts through the punitive system. The Comprehensive Organic Criminal Code (COIP) severely punishes bankruptcy intent aimed at eluding responsibilities toward creditors, distorting the economic purpose of the proceeding.

Among the most relevant criminal offenses are Fraudulent Insolvency (Art. 205 of the COIP), which sanctions with a prison term of three to five years anyone who simulates a state of insolvency or bankruptcy to defraud creditors, and Fraudulent Bankruptcy (Art. 208 of the COIP), focused on penalizing the deliberate alteration, concealment, or destruction of assets and liabilities in accounting. Likewise, it should be noted that Article 205 of the COIP contemplates the criminal liability of legal persons, imposing severe sanctions such as the definitive closure of establishments and corporate fines of great impact.

Criminal Challenges of Digital Judicial Proceedings

The digitization of judicial and commercial processes has optimized the transmission of financial information, but it has simultaneously fostered new vectors for deliberate accounting manipulation. The obligation to submit statements of financial position and financial statements through electronic platforms exposes the system to considerable technological risks, such as the improper modification of digital files, the alteration of records in accounting software, and opacity in transactions executed through virtual accounts or dematerialized instruments.

This reality directly connects insolvency law with the punitive sphere, configuring offenses of material and ideological falsification, as well as the use of false documents in procedural proceedings. The public credibility of documents is thus threatened by sophisticated practices of asset elusion that escape traditional automated controls.

Information Problems in Creditors' Proceedings

One of the main economic problems faced by creditors' proceedings lies in the severe information asymmetry between the administrators of the company in crisis and affected third parties. Managers know with exactitude the

accounting and financial reality of the company, while creditors, judges, and regulators depend on the veracity of the reports displayed in digital systems.

This information gap incentivizes opportunistic moral hazard behaviors, where administrators may take advantage of the procedural terms of the proceeding to divert or squander corporate assets to the detriment of the creditors' estate. Historically, the rigidity of previous regulatory frameworks limited the timely negotiation of preventive agreements, automatically pushing cases toward contentious judicial and criminal channels.

Reforms and Instruments of Efficient Reorganization

Faced with the limitations of traditional models, the Ecuadorian legal framework evolves toward the search for instruments oriented to business continuity. An example is the strategic use of the preventive concordat regulated in corporate legislation, conceived to restructure liabilities by mutual agreement before reaching forced liquidation.

Likewise, academic and legislative debates on the Draft Law on Preventive Proceedings for the Strengthening of Business Continuity reflect the imperative need to update the national regulatory ecosystem. The central objective of these reforms consists in instituting agile preventive mechanisms that reduce unnecessary criminal litigation, encourage private negotiation under flexible judicial supervision, and shield market stability in contexts of macroeconomic crisis.

The Role of Compliance in Corporate Bankruptcy

In this scenario of high regulatory demand, compliance programs are consolidated as an indispensable strategic tool to mitigate insolvency and criminal risk. The implementation of rigorous internal controls allows companies to audit their financial and accounting data before submitting restructuring applications to the SCVS.

A solid compliance program acts as reliable evidence of corporate good faith, allowing the demonstration before jurisdictional bodies that an eventual insolvency responds exclusively to the ordinary business risk of the market and not to a deliberate fraud plan. In this way, an adequate separation is achieved between the responsibility of the company and the personal criminal responsibility of directors and managers in light of the provisions of Article 205 of the COIP.

Toward a Reliable Institutional Architecture in Ecuador

The construction of a reliable institutional architecture in Ecuador requires a harmonious and precise articulation among the preventive tools of the Companies Law, the due insolvency process provided in the COGEP, and the punitive contours of the COIP. Legal certainty in this matter depends on guaranteeing a balanced and last-resort use of the insolvency regime, avoiding the excessive criminalization of business risk while firmly punishing fraudulent intent.

Defending the integrity of electronic commerce, digital accounting, and financial transparency is an indispensable requirement to consolidate investor confidence and ensure long-term economic stability in the country.

Bibliography

Código Orgánico General de Procesos (COGEP). (2015). Procedimiento concursal, artículo 414. Registro Oficial de la República del Ecuador.

Código Orgánico Integral Penal (COIP). (2014). Insolvencia fraudulenta, artículo 205. Registro Oficial de la República del Ecuador.

García Rodríguez, C. E. (2026). Eficiencia y redistribución en el derecho de consumo y sus límites prácticos. En R. C. B. Méndez Reátegui (Ed.), Derecho y economía: debates contemporáneos (5.ª ed., pp. 673-680). Tirant lo Blanch.

Proyecto de Ley de Concurso Preventivo para el Fortalecimiento de la Continuidad Empresarial. (2026). Asamblea Nacional del Ecuador.

The CSDDD Directive and Colombian SMEs: Risks and Opportunities in Transnational Value Chains

Juan Pablo Calle Gallego y Nassira Jiménez Gaviria
Published: 11 February 2025

OECD classification: 5.5 Law; 5.2 Economics and business.

Abstract

Directive (EU) 2024/1760 on Corporate Sustainability Due Diligence (CSDDD) represents a significant shift in the governance of transnational value chains by establishing binding obligations to identify, prevent, mitigate, and remedy adverse impacts on human rights and the environment. Although its application is primarily targeted at companies connected to the European market, its effects reach Colombian small and medium-sized enterprises (SMEs) through a trickle-down effect due to their role as suppliers to large corporations. This article analyzes the risks and opportunities arising from this regulatory transformation. Key risks include irresponsible de-risking, the exclusion of suppliers deemed high-risk, and the reduction of compliance into formal auditing practices. However, the CSDDD can also foster productive upgrading for SMEs that incorporate ESG standards alongside traceability and compliance systems. To leverage these opportunities, the article proposes strengthening sectoral and institutional cooperation, establishing fair contractual terms, and promoting multi-stakeholder partnerships as well as green financing mechanisms. In this context, coordinated adaptation among the State, business sector, and trade associations is essential to turn these new regulatory requirements into a sustainable competitive advantage.

Keywords: Due diligence, responsible business conduct, global value chains, SMEs, sustainable development.

Introduction

The adoption of Directive (EU) 2024/1760 on Corporate Sustainability Due Diligence (CSDDD) marks a decisive milestone in international corporate regulation. This binding legal framework transcends the old concept of voluntary social responsibility to completely redefine the rules of the game in transnational value chains (TVCs). Through a risk-based model, the directive imposes on companies operating in the European market the obligation to identify, mitigate, and remedy adverse impacts on human rights and the environment throughout their entire chain of activities.

Although it is a norm enacted in the Global North, its effects have a clear extraterritorial design. In economies such as Colombia's, where micro, small, and medium-sized enterprises (MSMEs) account for 99.5% of active enterprises, the CSDDD is not received as direct regulation but through a profound trickle-down effect as critical suppliers to large global buyers.

1. The European landscape: from cascading compliance to the risk-based model

Historically, governance mechanisms in global chains depended on cascading compliance: a practice in which codes of conduct and traditional private audits unilaterally transferred compliance burdens to the weakest links in the chain, without resolving the underlying structural failures. The CSDDD seeks to break this scheme by structuring operational responsibilities around OECD standards and the United Nations Guiding Principles (UNGPs).

The directive segments the chain into upstream activities (B2B relationships with suppliers) and downstream activities (distribution and marketing phases). The sanctioning scope is strict: it includes considerable financial penalties and publication of non-compliance, further activating a regime of joint and several civil liability. Therefore, European corporations are legally incentivized to thoroughly audit their direct and indirect business partners, regardless of the geographic jurisdiction in which they are located.

2. Critical risks for the Colombian business sector

For the Colombian context, this regulatory gatekeeping generates considerable asymmetric pressures. Sectors such as coffee, cocoa, flowers, light manufacturing, and the mining and energy sector operate primarily under buyer-driven schemes, characterized by a marked disparity in market power in favor of the buyer from the Global North.

One of the most imminent dangers of this architecture is the phenomenon termed irresponsible de-risking (Calle Gallego & Jiménez Gaviria, 2026). Faced with high inspection costs and civil liability risks, European firms might choose to unilaterally disengage from suppliers or entire regions perceived as high-risk, rather than using their influence to improve local conditions. This would disproportionately affect small agricultural and mining producers, pushing them toward less regulated markets and deepening economic exclusion. Likewise, compliance runs the risk of becoming a merely formal box-ticking exercise through superficial audits that act as disguised non-tariff barriers.

3. Opportunities and strategic mitigation pathways

Notwithstanding the threats described, the CSDDD also opens a window of opportunity toward productive upgrading for those SMEs that manage to anticipate and internalize ESG standards comprehensively. Under a regulated ecosystem, certified sustainable suppliers will become scarce assets of high strategic value for the European market.

To materialize these benefits and prevent sustainability from translating simply into a sunk cost, a coordinated response is required that goes beyond the purely individual effort of SMEs. It is essential to articulate collective industrial policies that include:

1. Sectoral and institutional intervention. Creation of shared knowledge platforms, preliminary internal audits, and mutual compliance centers that drastically reduce the individual costs of traceability and digital verification.

2. Fair contractual clauses. Require European buyers to comply with the obligation to provide specific and proportionate support to SMEs, as contemplated in the text of the directive (European Parliament and Council, 2024), preventing the unjustified transfer of risks.

3. Multi-stakeholder partnerships. Promote preferential financing or green funds through financial intermediaries to leverage the necessary technological upgrading.

4. Conclusion

Ultimately, the CSDDD redefines the normative frontiers of global business. If the Colombian business sector adopts a purely reactive stance, the directive will operate as a mechanism of exclusion and economic coercion. However, if the State, trade associations, and companies coordinate a strategy of institutional adaptation and process sophistication, Colombia will be able to transform this challenge into a long-term competitive advantage, consolidating more equitable, transparent, and sustainable transnational trade.

Bibliography

Directiva (UE) 2024/1760 del Parlamento Europeo y del Consejo, de 13 de junio de 2024, sobre la diligencia debida de las empresas en materia de sostenibilidad. Diario Oficial de la Unión Europea. https://eur-lex.europa.eu/eli/dir/2024/1760/oj

Organización para la Cooperación y el Desarrollo Económicos (OCDE). (2011). Líneas Directrices de la OCDE para Empresas Multinacionales. OECD Publishing. https://doi.org/10.1787/9789264115415-es

Naciones Unidas. (2011). Principios Rectores sobre las Empresas y los Derechos Humanos. Oficina del Alto Comisionado para los Derechos Humanos.

Insolvency Law in Chile: The Second Chance and the Preventive Deficit

Patricio Valdés Fuentealba
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OECD classification: 5.5 Law.

Abstract

The article analyzes the insolvency of natural persons in Chile and argues that it is not merely a financial problem but a multidimensional crisis affecting access to credit, employment prospects, health and family stability. Drawing on Law No. 20,720 and the 2023 reform, it examines which problems the current framework solves and which remain open. The study highlights the progress represented by the second chance as a mechanism for access to justice and economic reintegration, and warns that the system remains reactive: it intervenes once the crisis has already occurred and lacks preventive instruments. The absence of financial education and timely legal information appears as a decisive factor in the reproduction of over-indebtedness. It concludes that prevention, far from being an expense, is an investment in the stability of the financial system and in the confidence of economic agents.

Keywords: Insolvency, insolvency law, second chance, over-indebtedness, prevention.

A person who cannot pay their debts is not merely an individual who must overcome financial problems: they are a person affected by stress, with employment-related limitations on access, with "lost" assets and with a history that may repeat itself if no one intervenes in time. Chilean insolvency law has taken an important step. This article examines what it resolves, what is missing, and why prevention remains the great outstanding debt.

1. The Real Consequences of Insolvency: Beyond the Estate

The loss of assets given as collateral (housing, vehicles, productive assets) is only the most visible consequence of insolvency for natural persons. What follows is the practical impossibility of obtaining new credit, which closes both personal and business doors. Then come attachments and judicial executions. And with all of this, a psychological impact, with permanent stress and anxiety, which traditional law tended to ignore as if it were irrelevant to legal analysis.

Some professions or jobs require credit reputation, which turns insolvency into a concrete obstacle to employment. And in extreme cases, the actions of the insolvent person may even have criminal consequences. Insolvency is not a state of the estate: it is a multidimensional crisis that the law must also address from that complexity.

2. Law No. 20,720 and the 2023 Reform: A Renewed Framework

Until the Insolvency and Re-entrepreneurship Law, natural persons who were not merchants in Chile had practically no access to insolvency mechanisms of their own. They had to wait for their creditors to initiate individual enforcement proceedings, without the guarantees of universality that characterize insolvency law. Law No. 20,720 corrected that gap, and the 2023 reform, through Law No. 21,563, deepened it with a new procedure and the creation of the Superintendency of Insolvency and Re-entrepreneurship as a specialized supervisory body.

The legislation in force now offers three (3) procedures for natural persons. The first is debt renegotiation: an administrative, free-of-charge process that the debtor may initiate voluntarily in order to propose a viable

payment plan to creditors. If the majority accepts it, it is approved by the court. It is the preferred instrument for those who can still pay and merely need different conditions.

The second is liquidation, whether voluntary or forced, which entails the realization of the debtor's estate to satisfy creditors, with subsequent extinguishment of the debts. It is the endpoint of the process for those who no longer have the capacity to reorganize. The third, introduced by the 2023 reform, is the simplified voluntary liquidation procedure: designed specifically to reduce procedural time and costs, allowing a more agile financial recovery, and intended especially for individual debtors and micro and small enterprises.

Behind these procedures lie factual principles that must be identified precisely: economic rationality (preserving what can be preserved), continuity of activity, and procedural celerity. Prompt adjudication is not an administrative luxury; prolonged uncertainty destroys economic value and aggravates the harm to the debtor.

3. The Second Chance: Access to Justice as Public Policy

One of the most significant contributions of Chilean legislation is the second chance: the possibility for a natural person to obtain, in extreme cases, the discharge of their debts and to start afresh. This figure recognizes something that the market alone never recognizes: that economic failure should not be permanent.

But the second chance has access costs. The process requires demonstrating genuine over-indebtedness and inability to pay, and submitting to judicial assessment. The foregoing presupposes being "honest" about the practical barriers that persist: excessive workloads in the courts, lack of procedural celerity, absence of incentives for creditors to participate in mediation, and insufficient information to debtors about the available mechanisms. The law has created the right; effective access remains a challenge.

4. The Great Debt: The Prevention of Insolvency

Chilean insolvency legislation, however sophisticated, is reactive: it regulates the effects of insolvency once it has occurred. There is no systematic framework of prevention. The law waits for the person to fall and then helps them to rise. But it does not teach them not to fall.

More revealing still: the insolvency legislation in force does not impose on a debtor who has undergone a reorganization or liquidation process the obligation to receive financial education. This means that the probability of relapse into insolvency is not structurally reduced. The system cures, but it does not vaccinate.

In this vein, we propose four concrete preventive measures. The first is financial education with legal components: that individuals know how to manage income and expenditure, but also that they know their rights and the tools available before reaching a crisis. The second is advice on voluntary debt restructuring: specialized support for those who detect early warning signs, without the need to activate formal procedures.

The third is guidance on the debt ratio: that each person know the proportion of their debt relative to their assets and understand their real borrowing capacity, identifying preventively the probability of falling into insolvency before it becomes inevitable. The fourth, more structural, is the mandatory incorporation of financial education within insolvency proceedings themselves, for those who have already gone through the process.

5. Conclusion

The conclusion points toward the systemic level: an economy with financially educated and legally informed citizens not only has fewer insolvency proceedings, but generates greater confidence among economic agents, reduces state expenditure on the processing of proceedings and produces healthier markets. Prevention is not an

expense; it is a long-term investment in the stability of the system itself.

The Dynamic Law and Economics of Housing Affordability

Andrew T. Hayashi
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OECD classification: 5.2 Economics and business; 5.5 Law.

Abstract

The article analyzes why housing markets in the United States fail to produce sufficient, accessible and well-located housing, even though housing accounts for 33.4% of average annual household spending. The explanation lies not in a single failure but in the combination of three factors: land-use regulation that restricts density and slows productivity in residential construction, tax incentives that stimulate demand without expanding supply, and a structural mismatch between a mobile economy and an immobile, durable housing stock. The study examines the mortgage interest deduction, the preferential treatment of single-family homes in property taxation and the land value tax as an alternative. It argues that affordability is a problem of legal, fiscal and institutional design, and that reforms should facilitate a more dynamic and resilient supply rather than subsidize demand.

Keywords: Housing affordability, land-use regulation, tax incentives, law and economics, public policy.

Housing accounts for 33.4% of average annual household spending in the United States and is far more than a consumer good: it shapes health, human capital, labor mobility and financial stability. Yet housing markets systematically fail to produce sufficient, accessible and well-located housing. The reason is not a single market defect but the combined effect of distorted regulations, poorly designed tax incentives and a structural incompatibility between the rigidity of housing as a physical asset and the dynamism of the modern economy.

1. The supply problem: regulation and productivity

Residential construction in the United States has experienced a 30% decline in productivity over the past fifty years, while overall productivity in the economy has doubled. This gap is in itself a powerful explanation for the sustained increase in housing costs.

A significant part of the problem is regulatory. Land use is controlled mainly by local governments, which impose zoning restrictions, maximum heights, minimum lot sizes and limits on the number of residents per dwelling. All these rules reduce residential density and favor high-cost single-family housing, excluding low, and middle-income households from areas of greatest demand. These restrictions are compounded by administrative processes involving multiple layers of review and community consultation that extend construction timelines and make projects more expensive.

2. Tax incentives that distort demand

The federal tax system amplifies the problem on the demand side. The mortgage interest deduction does not increase the number of homeowners but rather the size of the homes purchased by those who would have become homeowners anyway. It disproportionately benefits higher-income households and even subsidizes the acquisition of second vacation homes. The result is that fiscal spending is channeled toward larger homes, not toward more homes.

The property tax reinforces this bias: in many major cities, multifamily rental properties face effective rates far

higher than those on single-family homes. In New York in 2011, the effective rate on the largest rental properties was triple that on small single-family properties. This asymmetry discourages the construction of dense, affordable rental housing.

A promising reform is the land value tax, which taxes exclusively the value of the land and not the improvements built on it. By eliminating the disincentive to build more densely, this mechanism can induce better use of urban land. Detroit is the first major American city to implement it; if it succeeds, it could inspire similar reforms in other jurisdictions.

3. Structural mismatches between supply and demand

Beyond construction costs and tax incentives, there is a deeper structural problem: housing is immobile, durable and costly to transform. When the economy changes, housing cannot keep pace. This mismatch has three dimensions: spatial mismatch, generated by mass urbanization that shifted demand toward cities while the rural housing stock ages without use; environmental mismatch, which emerges with climate change and raises insurance costs in coastal and forested areas; and demographic mismatch, the result of the reduction in average household size against a stock dominated by large single-family homes.

4. Public policy responses

The article proposes four lines of action. First, reduce regulatory barriers to construction by simplifying zoning and administrative processes. Second, leverage telework to deconcentrate demand: if employees can work from anywhere, pressure on the most expensive urban markets diminishes. Third, make the existing housing stock more flexible by allowing subdivisions and room rentals. Fourth, and less preferable but sometimes necessary, limit speculative foreign investment when regulatory barriers prevent supply from responding to capital flows.

5. Conclusion

Housing affordability is not only a market problem: it is a challenge of legal, fiscal and institutional design. Housing cannot move; the economy can. As long as the law does not adapt to facilitate a more dynamic, resilient and equitably distributed supply, the gap between what people need and what the market produces will continue to grow.

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Civil Liability for Acts of Artificial Intelligence

Agustín Borja Pozo
Published: 10 April 2025

OECD classification: 5.5 Law.

Abstract

The article examines the legal vacuum that arises when an artificial intelligence system causes harm and the law cannot identify a responsible party. Starting from the case of the Watson system, which in 2017 recommended a potentially lethal cancer treatment in a Danish hospital without anyone being convicted, it argues that Latin American civil liability was built on the premise that behind every harm there is a person who decided. The autonomy, unpredictability and opacity of autonomous systems, expressed in the black box problem, exceed those categories, while negligence liability still requires identifying the responsible party, proving fault and establishing causation. The study identifies three structural limits of the regulatory state and rules out both full confidence in the market and maximalist interventionism. It proposes an integrated system combining precaution, traceability, insurance and distributive justice, with legally enforceable ethical standards and regional convergence to avoid regulatory arbitrage.

Keywords: Civil liability, artificial intelligence, algorithmic opacity, law and economics, regulation.

In 2017, IBM's Watson system recommended, in a Danish hospital, a cancer treatment that would have been lethal for ten patients. No one was convicted. No existing law was capable of assigning that responsibility clearly. This question (who is charged for the harm caused by an algorithm?) defines one of the most urgent legal challenges of our era.

1. The vacuum: when AI causes harm and the law does not know whom to blame

Latin American legal systems have been built on a basic principle: behind every harm there is a person who decided. Civil liability for negligence requires identifying the responsible party, proving fault and establishing causation. But what happens when the damaging agent is not a person but an algorithm that no one specifically programmed to do what it did?

In this sense, three characteristics of autonomous artificial intelligence can be identified that collapse traditional legal categories. Its autonomy: it operates without direct human supervision in tasks of varying complexity. Its unpredictability: it does not necessarily follow an anticipatable logical sequence of reasoning. And its opacity: it is technically difficult, and sometimes impossible, to determine why it made a given decision. The so-called "black box problem" is not a literary metaphor; it is a concrete legal obstacle.

Faced with this vacuum, Latin American legal systems have resorted to forced solutions: applying manufacturer liability for defective products to systems that are not products in the conventional sense, or extending strict liability to contexts for which it was not designed. The result is a normative distortion that creates more uncertainty than it resolves. The lack of specific legislation in Ecuador and Peru contrasts notably with the European Union's proposal to harmonize algorithmic liability.

2. The three structural limits of the regulatory state

The problem is not only normative but institutional. Latin America faces three deficits that combine and mutually

amplify each other.

First, regulatory capture and the pressure for innovation. Subjecting those who develop advanced technology to strict liability could discourage precisely the most responsible innovation. The risk, paradoxically, would be to penalize those who use more sophisticated solutions. If those who employ an AI system are subject to strict liability while those who do not employ one are liable only for fault, technological adoption would be discouraged.

Second, the lack of regional normative coordination. Fragmentation among countries creates spaces for regulatory arbitrage: AI companies will operate under the most permissive legislation. Without shared regional frameworks, any national regulation is partially emptied of content. Differences among countries and the unique characteristics of AI for each State make the convergence process heterogeneous and slow.

Third, the technological gap in supervisory entities. One cannot oversee what one does not understand. Latin American regulatory bodies generally lack the technical capacity to audit AI systems, which generates the "risk paradox": seeking legal certainty through human supervision of systems that exceed human capacity for understanding, even generating the risk of an "infinite regress" by seeking to assess supervision with more artificial digital supervision.

3. Neither the market nor a maximalist State: principles for an integrated system

We consider that both the option of "leaving risk management to the market", since insurance and limitation clauses have proven insufficient, and that of a maximalist statism impossible for the institutional capacities of the region are per se unviable. We propose instead five (5) intermediate principles.

Prior technological warning. "High-risk" AI systems must undergo prior assessments with verifiable standards: training data management, periodic validation and external audits. The European AI Regulation serves as a reference, not as a direct model to be copied.

Reversal of the burden of proof. Given the black box problem, the victim cannot be required to explain how the algorithm that caused the harm worked. The burden of proof must shift to whoever develops or deploys the system. European case law has already recognized this need to make the principles governing the distribution of evidence more flexible.

Compensation funds. Given the possibility of the responsible party's insolvency or the impossibility of identifying that party, mandatory funds, similar to those existing for traffic accidents, would guarantee effective reparation, focusing on proving the harm and the causal link rather than fault.

Binding ethical standards. Privacy, distributive justice, transparency, accountability, non-discrimination, social welfare and democracy: these principles, today largely rhetorical, must be integrated as legally enforceable standards. Bioethics offers a consolidated model that several authors propose to adapt for AI.

Progressive regional convergence. The key is not to import the European model, which responds to a very different institutional reality, but to build shared principles that respect Latin American particularities while eliminating spaces for regulatory arbitrage. A solid yet flexible legal framework, with a differentiated approach according to the system's level of risk.

The conclusion is as simple as it is urgent: autonomous artificial intelligence is not a future threat that the law will

be able to address when it is ready. It is already operating. It is already causing harm. The Latin American civil liability system must adjust, with precaution and distributive justice as its main criteria, in order to respond to a reality that will not wait any longer.

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Artificial Intelligence and Legal Design: Optimizing Contractual Efficiency from a Law and Economics Perspective

Rubén Méndez Reátegui
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OECD classification: 5.5 Law; 5.2 Economics and business.

Abstract

The article examines how the convergence of Law and Economics, Legal Design and artificial intelligence can reduce the transaction costs imposed by contractual formalism. Drawing on Coase and Williamson, it argues that contracts drafted by lawyers to be read by lawyers increase information asymmetry and impose an invisible tax on transactions for consumers and small businesses. Legal Design, understood as the architecture of legal information rather than ornament, lowers ex ante friction costs through plain language, timelines and comparison tables. Automation and smart contracts further enable dynamic efficiency: predictive review of clauses and autonomous execution of verifiable obligations. The article warns about the formalism of the civil law tradition and about the billing incentives of the legal market, and concludes that contractual clarity is a form of technical rigour and social utility.

Keywords: Legal design, artificial intelligence, transaction costs, contracts, law and economics.

Introduction

In the contemporary economy, contracts constitute the essential institutional mechanism for the efficient allocation of resources and the mitigation of risks among economic agents. However, the traditional formalism of contract law often creates barriers to understanding that unnecessarily raise transaction costs. In this setting, the convergence of Law and Economics (L&E), Legal Design and Artificial Intelligence (AI) is presented not as a mere methodological trend, but as an imperative necessity for modernizing legal practice. This article examines how the visual simplification and intelligent automation of legal texts can optimize the efficiency of contracts, maximizing social surplus and reducing litigation in the Latin American market.

Transaction Costs and Information Asymmetry

From the pioneering perspective of Ronald Coase (1960) and the subsequent developments of Oliver Williamson, transaction costs, that is, those associated with searching for information, negotiating, drafting and enforcing an agreement, determine the viability and structure of contracts. In conventional legal practice, contracts are usually drafted according to an inward-looking logic, designed by lawyers to be read exclusively by other legal professionals or by judges in judicial proceedings. This practice significantly increases information asymmetry, since one of the parties (frequently the consumer or the small business) signs conditions that it does not fully understand.

When a contractual document is opaque, lengthy and saturated with archaic technical jargon, economic agents incur high opportunity costs in deciphering its clauses. In the worst case, they assume a blind risk by omitting to read the text, which triggers market failures and a high probability of costly ex post litigation. Therefore, the inefficiency of traditional legal language acts as an invisible tax on commercial transactions, undermining the competitiveness and dynamism of the regional market.

The Role of Legal Design as a Reducer of Friction Costs

Legal Design is defined as the systematic application of design thinking to the legal ecosystem, whose purpose is to make legal systems, services and documents accessible, comprehensible and user-centred. Far from constituting a mere aesthetic intervention or a superficial ornamentation of contracts by means of graphic elements, Legal Design restructures the very architecture of legal information (Méndez Reátegui and Álvarez Meythaler, 2020).

By employing visual timelines to delimit obligations, comparison tables to structure penalties and plain language, the cognitive processing cost of information is drastically reduced. From the perspective of Law and Economics, this translates directly into a mitigation of ex ante friction costs. A contractual instrument designed under these principles accelerates the negotiation phase, precisely aligns the expectations of the parties and reduces interpretation errors, consolidating a solid foundation for long-term commercial relationships.

Automation and Artificial Intelligence: Towards Dynamic Efficiency

The incorporation of Artificial Intelligence enhances this optimization, making it possible to move from a static co-design towards dynamic efficiency (Méndez Reátegui, 2024). Advanced language models and automation systems now facilitate the predictive audit of contracts. These technological tools process thousands of clauses in seconds, identifying hidden risks, regulatory inconsistencies or deviations from optimal market standards.

Likewise, the convergence of AI with smart contracts based on distributed ledger technologies enables the autonomous execution of obligations upon the fulfilment of verifiable objective conditions. This eliminates the need for ex post intermediation for collection or verification, substantially reducing certain execution costs. However, the true added value arises when AI interacts directly with Legal Design: technology not only optimizes the processing of internal data, but also generates dynamic explanatory interfaces so that non-expert decision-makers understand the financial and legal impact of each agreement in real time (Méndez Reátegui, 2026).

Regulatory Challenges and Prospects for Latin America

The adoption of these innovations in Latin America faces significant cultural and regulatory barriers. The deep-rooted formalism of the civil law tradition tends to distrust non-traditional formats, under the mistaken premise that written solemnity is an unequivocal synonym of legal certainty. Nevertheless, modern regulatory frameworks and pioneering institutions such as the Latin American and Caribbean Association of Law and Economics (ALACDE) show that legal validity does not depend on the complexity of language, but on informed consent and the lawfulness of the object.

The challenge for academia and professionals in the region lies in redesigning the incentives of the legal market. Law firms and corporate legal departments must migrate from a billing model based on complexity and page length towards a scheme focused on preventive value, clarity and the reduction of litigation risk. Data protection regulation and consumer law will also play a key role, gradually requiring greater transparency and accessibility in contracts of adhesion.

Conclusion

The simplification and digitalization of contractual infrastructure do not constitute a renunciation of the technical rigour of law; on the contrary, they represent its highest expression of social utility. By integrating Legal Design

and Artificial Intelligence under the analytical lens of Law and Economics, we transform contracts from instruments of friction and asymmetry into true catalysts of efficiency and innovation. The future of the Latin American market demands professionals capable of designing legal solutions that not only withstand judicial scrutiny, but also facilitate economic exchange and empower citizens in the information society.

Bibliography

Coase, R. H. (1960). The Problem of Social Cost. Journal of Law and Economics, 3, 1-44.

Méndez Reátegui, R. (2024). National Development Plans and Market Process: A revision from Law & Economics, IA, and the Public Issues perspectives. Vniversitas Jurídica, 73, 1-28.

Méndez Reátegui, R. (2026, 19 de marzo). Reflexiones sobre Legal Design Thinking y Legal Tech. Blog de Derecho de las Telecomunicaciones, Universidad Externado de Colombia.

Méndez Reátegui, R. y Álvarez Meythaler, A. (2020). Regulation or deregulation: a reflection from design thinking. Desde el Sur, 12(2), 365-376.

Regulatory Asymmetries between Credit Institutions and Commercial Fintech Companies: Some Reflections

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Abstract

This article analyzes the regulatory asymmetries in Colombia between traditional bankssubject to strict supervision by the Financial Superintendence due to public deposit-takingand Fintech companies, which grant loans exclusively using their own capital under commercial law and the oversight of the Superintendence of Corporations and the Superintendence of Industry and Commerce (SIC). From a Law and Economics perspective, this regulatory disparity generates four critical effects: it incentives traditional banks to create unregulated subsidiaries to evade compliance costs; it increases liquidity risks with negative externalities on investment funds financing shadow banking; it places the regulator in the dilemma of either easing the banking burden or restricting financial inclusion with tighter control; and it leaves consumers vulnerable to ancillary charges that disguise interest rates to circumvent statutory usury ceilings. In conclusion, the regulatory challenge lies in designing a harmonized legal framework that eliminates unjustified competitive disadvantages without stifling Fintech technological innovation, focusing on radical transparency regarding the total cost of credit so that users understand the real price of money, regardless of the lender's legal regime.

Keywords: Financial regulation, competition, consumer protection, financial inclusion, law and economics.

This article from the ALACDE Forum analyzes the profound regulatory asymmetries faced by traditional banks and credit institutions compared with technology-based commercial companies (fintech) that grant loans using exclusively their own resources in Colombia. Whereas the former are subject to the rigorous and institutionalized oversight of the Financial Superintendence of Colombia, the latter operate under the protection of ordinary commercial law and the supervision of the Superintendence of Industry and Commerce (SIC). Drawing on Law and Economics (L&E), the article breaks down the consequences of this imbalance in the market, the rise of the global phenomenon of shadow banking, and the implications for market efficiency and adequate consumer protection.

1. Understanding the Problem: Two Regimes for a Single Market

Traditionally, the market for intermediation and placement of legal credit in Colombia has been concentrated in institutions directly and strictly supervised by the State. Setting aside black or informal markets, loans of money to natural and legal persons have historically been disbursed by credit institutions supervised by the Financial Superintendence of Colombia, or by savings and credit cooperatives under the control of the Superintendence of the Solidary Economy. These traditional entities are characterized by funding their loan portfolio through authorized public deposit-taking, using mass instruments such as checking accounts, savings accounts, and term deposit certificates (CDTs).

Since these institutions directly manage public savings, the systemic risk of an operational or liquidity failure is extremely high. For this reason, the Colombian constitutional and legal order imposes a hyper-restrictive regulatory framework through the Organic Statute of the Financial System, decrees of the Financial Regulation

Unit (URF) of the Ministry of Finance, and dense guidelines issued in the Basic Legal and Accounting Circulars of the Financial Superintendence. Complying with this standard requires enormous investments in corporate governance, risk control, capital provisions, and highly qualified human resources.

On the other hand, Colombian commercial law has for decades allowed natural persons or commercial companies to grant monetary loans, provided that they use exclusively their own resources and refrain from engaging in massive and habitual deposit-taking of public funds, which would constitute a typical offense under article 316 of the Criminal Code. Historically, this modality of direct credit with own resources was a marginal and atomized phenomenon. However, the computer revolution of recent decades and the maturation of financial technologies (fintech) radically altered this panorama.

Today, sophisticated algorithms, online platforms, and agile data architectures allow commercial companies to connect massively with users who demand financing. These companies fund their operations not through public deposits, but through direct capital contributions from their shareholders, private investment funds, or corporate loan schemes. Successful examples in the Colombian market show that this segment efficiently serves low-amount niches that tend to be excluded or underserved by traditional banking.

2. Regulatory Asymmetry and the Rise of Shadow Banking

Despite the undoubted positive impact of fintech on financial inclusion in the region, this ecosystem has consolidated an evident and troubling regulatory asymmetry. Economic agents that provide the same service, credit, compete on a playing field under abysmally distant legal frameworks. Whereas a bank bears the high costs of financial regulatory compliance and constant government supervision, a fintech commercial company operates under the common civil and commercial framework, being generally subject to the oversight of the Superintendence of Corporations and, in matters of consumer rights, to the Superintendence of Industry and Commerce (SIC).

This marked regulatory gap is what specialized literature and multilateral organizations call shadow banking. By operating outside the perimeter of traditional banking regulation, fintech companies that lend with their own capital enjoy structurally lower operating costs. This creates an uneven playing field, where transaction costs imposed by the State artificially alter the incentives and competitive advantages of the actors.

3. Economic Analysis of Financial Law and Its Effects

From the methodology of Law and Economics (L&E), the institutional presence of shadow banking generates various collateral effects of profound relevance:

A. Incentive to seek the shadow. The intense regulatory pressure imposed by the Financial Superintendence generates incentives for traditional credit institutions themselves to seek protection in the shadow. This materializes through the creation of parallel non-financial subsidiaries or commercial companies that place their own resources under the ordinary commercial regime. In this way, traditional financial intermediaries seek to evade administrative obstacles in order to capture the high profitability margins offered by microcredit through the indirect charging of endorsements, guarantees, insurance, and commissions for the use of technological platforms.

B. Liquidity risks and externalities. Although shadow banking entities do not take deposits from the public and, therefore, the direct systemic risk of banking contagion is lower, unbridled and disorderly growth of this sector is not free of dangers. The insolvency or lack of liquidity of large fintech credit platforms as a block may transmit

severe negative externalities to the local and international investment funds that leverage them, distorting the efficient allocation of capital in the real economy.

C. Pressure toward relaxation or tightening. This dynamism poses a dilemma for the macroeconomic regulator. On the one hand, it may be forced to relax the heavy regulatory burden on traditional banks to allow them to compete on equal terms. On the other hand, it may choose to tighten and extend the financial regulatory arm toward commercial credit schemes with own resources, a measure that could bring to a sudden halt the advances achieved in financial inclusion.

D. Consumer vulnerability and disguised interest rates. Perhaps the most immediate impact is observed in the final consumer. Given the absence of strict preventive control over adhesion contracts and associated costs, there has been a profusion of ancillary charges (such as mandatory fees for the use of platforms, legal advice, or surety premiums) that, in practical terms, constitute concealed interest. These charges operate as a mechanism for circumventing the legal caps on the usury rate set by the Colombian State, which undermines informational transparency, increases the risk of over-indebtedness among the most vulnerable families, and comes dangerously close to abusive conduct in the financial industry (shark loans).

4. Regulatory Perspectives and Conclusion

In Colombia, recent legislative initiatives have sought to balance these imbalances by promoting financial inclusion through the regulated use of new technologies. The great regulatory challenge for the future of the region lies in designing a harmonized legal framework that eliminates unjustified regulatory asymmetries without nullifying the disruptive innovation of fintech. Intelligent regulation, informed by economic efficiency and the mitigation of market failures, should focus on radical transparency of the total costs of credit, ensuring that consumers understand with precision the price of money, regardless of whether their lender is under the sun of the Financial Superintendence or under the shadow of ordinary commercial law.

Bibliography

Armour, J. et al. (2016). Principles of Financial Regulation. Oxford University Press.

Claessens, S. (2012). Shadow Banking: Economics and Policy. International Monetary Fund.

Gaviria, P. Universo Fintech. Armatuvaca. https://universofintech.armatuvaca.com/

Igual Molina, D. (2023). Fintech. Editorial Profit.

Monroy, D. et al. (2024). Análisis económico del derecho (Vol. XIV, Colección Enrique Low Murtra de Derecho Económico). Universidad Externado de Colombia.

Nesvetailova, A. (2019). Shadow Banking: Scope, Origins and Theories. Routledge.

Noya, E. (2021). Fintech. Editorial Almuzara.

Padilla Sánchez, J. A. (2019). Crowdfunding. Análisis del marco regulatorio de la financiación colaborativa en Colombia. Universidad Externado de Colombia.

Rincón, E. (2021). El desarrollo jurídico de Fintech (2.ª ed.). Tirant lo Blanch.

Thiemann, M. (2018). The Growth of Shadow Banking: A Comparative Institutional Analysis. Cambridge University Press.

Structural Challenges of Argentine Labor Justice: Efficiency, Litigation, and the Impact of Artificial Intelligence from a Law and Economics Perspective

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Abstract

This article analyzes the structural challenges facing Argentine labor justice from the perspective of Law and Economics. It argues that the labor system, built on twentieth-century industrial economy paradigms, struggles to adapt to labor mobility, technological changes, and new employment arrangements. Among the main problems identified are regulatory rigidity, legal uncertainty, high transaction costs, and increasing litigation. Likewise, it highlights that prolonged vacancies in the judiciary generate work overload and procedural delays, undermining effective judicial protection and legal certainty. The article also examines the integration of artificial intelligence into labor management, pointing out risks such as algorithmic discrimination, automated evaluations, and employment decisions lacking sufficient human oversight. In response, it proposes strengthening a preventive culture, improving the design of regulatory incentives, promoting alternative dispute resolution mechanisms, and establishing effective human oversight of algorithmic systems. Finally, it argues that labor modernization requires combining the protection of workers' rights with regulatory flexibility, business sustainability, and technological adaptation.

Keywords: Labor justice, Law and economics, litigation, artificial intelligence, regulatory flexibility.

Introduction

The industrial relations system of the Argentine Republic is undergoing a deep crisis of structural adaptation. Configured on regulatory paradigms that emerged in the middle of the last century, the current institutional framework displays growing friction with technological transformations, the diversification of hiring arrangements, and the emergence of automated management systems. From the perspective of Law and Economics (L&E), legal institutions do not operate in a cognitive or social vacuum; on the contrary, they directly shape the systems of incentives that determine the behavior of agents in the labor market. In this setting, the persistence of dogmatic and formalist approaches in the judiciary and in academia only deepens the inefficiencies of the prevailing model, raising transaction costs and affecting both business competitiveness and the genuine protection of the labor fabric.

This article examines the critical variables that shape the current situation of labor justice in Argentina. Drawing on an interdisciplinary perspective that integrates experience on the bench and in private practice, it analyzes the determining factors of excessive litigation, the impact of judicial vacancies on procedural times, the urgency of moving toward a scheme of adaptive flexibility, and the ethical and regulatory challenge posed by artificial intelligence. The central hypothesis is that a genuine modernization of labor law cannot be achieved through merely cosmetic reforms of legal texts, but only through a profound reconfiguration of regulatory incentives, the promotion of a culture of conflict prevention, and the overcoming of traditional dogmatisms.

1. Theoretical Framework and Epistemological Foundations

An analytical understanding of labor law requires moving beyond the strictly exegetical approaches that have characterized the teaching and application of this discipline. The study of the labor market requires a conceptual anchoring capable of assessing the real and indirect effects of legal rules on individual and collective behavior.

1.1. The Industrial Relations Model in the Face of Technological Change and Mobility

The founding paradigm of Argentine labor legislation presupposed a linear and static employment relationship: a worker who joined a production unit at an early age and remained there without interruption until retirement. This conceptual scheme, designed for a Fordist industrial economy, collides head-on with the dynamics of the twenty-first century, characterized by high interoccupational mobility, decentralized production arrangements, and the accelerated obsolescence of technical skills. The insistence on applying rigid categories to dynamic environments generates severe asymmetries that the legal system fails to internalize efficiently.

1.2. Incentives and Spontaneous Compliance with the Rule

In accordance with the fundamental postulates of Law and Economics, a legal rule should be conceived as a vector of incentives intended to align private conduct with objectives of social welfare. Nevertheless, traditional legal culture tends to design legislation by assuming the pathological scenario of litigation as the central axis of the regulatory structure. An efficient regulatory architecture should prioritize spontaneous compliance with obligations. When the consequences of an infraction or the parameters for calculating labor contingencies become unpredictable owing to flaws in legal design or erratic shifts in case law, the systematic judicialization of disputes is perversely encouraged, turning the judicial process into a mechanism of economic speculation rather than one for restoring rights.

1.3. Institutional Flexibility and Dogmatic Rigidity

Flexibility is frequently misinterpreted in traditional academic debates as a synonym for lack of protection or precariousness. From a systemic perspective, however, flexibility is an indispensable property for ensuring the resilience and survival of any institutional structure in the face of external disturbances. An excessively rigid system drastically reduces its capacity for adaptation and channels market tensions toward labor informality or the net destruction of jobs. Properly understood, flexibility makes it possible to articulate intermediate and adaptive solutions in response to the diversity of sectoral realities, promoting a healthier and more predictable functioning of the labor market without distorting the protective purpose of the law.

2. The Human Dimension and Structural Bottlenecks

Labor justice in Argentina bears a profound human stamp derived from the very nature of the legal interests at stake, in which the empathy and sensitivity of the adjudicator are indispensable for weighing conflicts related to job loss, physical integrity, or the worker's subsistence. Nevertheless, this ethical strength coexists with infrastructure and management deficiencies that severely constrain the effectiveness of effective judicial protection. The main structural bottleneck lies in the persistence of prolonged vacancies in the judiciary. Keeping a substantial portion of the courts without permanent judges produces an unsustainable workload for the remaining operators, which alarmingly prolongs procedural times and prevents a response contemporaneous with the conflict. Prolonged delay weakens the quality of the judicial response, diluting the empathetic component of the system and impairing legal certainty.

3. Labor Litigation as a Failure of Regulatory and Cultural Design

The high rate of labor litigation in Argentina is a complex problem that cannot be explained solely by attributing reluctant conduct to the employer sector. Deficient regulatory designs and certain judicial interpretations exert a decisive influence on the proliferation of judicialized conflict. The lack of clarity in legal texts and the presence of procedural provisions inserted dysfunctionally within substantive statutes, such as the Labor Contract Law, open the way to scenarios of profound uncertainty. This ambiguity encourages the filing of claims that are weakly grounded but economically far-reaching.

To this institutional component is added a cultural distortion of educational origin: university legal education remains strongly oriented toward adversarial litigation at the expense of alternative mechanisms for the settlement and self-settlement of disputes. Lawyers are trained to structure conflict around a judicial proceeding, omitting any analysis of the opportunity cost and the benefits of a negotiated solution ex ante.

4. Artificial Intelligence in Employment Relations: From the Algorithm to Human Oversight

The accelerated incorporation of artificial intelligence, algorithmic automation, and digital platforms into human resource management introduces regulatory challenges for which the current legal order is inadequately prepared. The fundamental risk lies in the tendency to assess the operations of computer systems by uncritically employing dogmatic categories designed exclusively for interpersonal human relations. Phenomena such as algorithmic discrimination in automated selection processes, performance evaluation through purely quantitative indicators, or dismissals carried out on automated instructions demand an urgent epistemic review.

Algorithms operate on statistical optimization parameters that are incapable of interpreting essential human dimensions of the work environment, such as a worker's qualitative contribution to the institutional climate or his or her intangible value in holding the work team together. An absolute delegation of corporate decision-making to these systems may lead to the unjustified separation of valuable human capital. It is therefore imperative to establish regulatory and internal governance frameworks that guarantee effective human oversight of algorithmic decisions, acting as an ethical and quality-control filter indispensable for mitigating conflict and avoiding automation bias.

5. Toward Prevention and the Transformation of Legal Learning

Overcoming the inefficiencies of the current system requires the articulation of a genuine culture of prevention in the corporate sphere and a substantial reform of the professional training schemes for legal practitioners. At present, economic units tend to seek legal advice reactively, that is, once the conflict has already reached a state of irreversible judicialization whose economic and reputational costs are high.

Effective preventive management, based on the early audit of internal procedures and the design of contracts aligned with legal incentives, would make it possible to mitigate litigation drastically at a considerably lower marginal cost.

In parallel, institutions of higher education must transform the legal curriculum, abandoning blind and rigid dogmatism in order to promote critical and interdisciplinary thinking. The contemporary lawyer needs to integrate solid knowledge of microeconomics, institutional analysis, quantitative methods, and technology, which will enable him or her to assess with scientific rigor the practical consequences of legal rules and to move away from abstract discussions disconnected from the real needs of the productive environment.

6. Conclusions

The future of labor law in Argentina is caught between the inertia of an outdated conceptual model and the pressing need for deep modernization. Isolated legislative reforms will prove sterile unless they are accompanied by a comprehensive resolution of the structural problems of the administration of justice, such as the filling of vacancies and the digitalization of proceedings, and by a paradigm shift toward regulatory flexibility. Preserving the protective principle does not require the mummification of regulatory rigidity, but rather the design of intelligent tools that realistically balance the protection of individual rights with the sustainability of enterprises and the dynamism of employment. Only by overcoming closed dogmas will it be possible to build a modern, predictable labor system adapted to the challenges of contemporary society.

Bibliography

Coase, R. H. (1960). The problem of social cost. Journal of Law and Economics, 3, 1-44. https://www.jstor.org/stable/10.1086/674872

Morando, J. M. (2023). A través del espejo. Otra mirada al Derecho del Trabajo. Editorial Ad-Hoc. https://revista-ideides.com/libro-a-traves-del-espejo-otra-mirada-al-derecho-del-trabajo-2/

Nonaka, I., y Takeuchi, H. (1995). The knowledge-creating company: How Japanese companies create the dynamics of innovation. Oxford University Press. https://academic.oup.com/book/52097