

LEGAL ISSUES ON ARTIFICIAL INTELLIGENCE AND BLOCKCHAIN

*2018 Global Program
Fellowship Final Report
Diego Solana Gimenez*

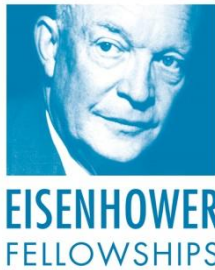
1. INTRODUCTION AND BACKGROUND

I remember when George De Lama, President of the Eisenhower Fellowship, during the opening seminar in Philadelphia said: “expect the unexpected”. I certainly could not imagine so many unexpected events and the wide variety of inputs and approaches experienced during these 7 weeks. It didn’t take much longer until I understood that those enlightening moments would not only come from the meetings scheduled by my Program Officer, but also from my Global Program Fellows peers and from the US Fellows I met in each city I visited. All of them have made a great impact on my Eisenhower Fellowship project.

I am a **Spanish attorney** at the international full-service law firm Cremades & Calvo-Sotelo, whose main headquarter is based in Madrid. My partners and colleagues recently honored me deciding to entrust me the joint responsibility of CoManaging our law firm alongside a Senior Partner.

I have always believed that being a lawyer does not only consist in preparing contracts or attending hearings. Our technical knowledge, our continuous “field” experience serving both companies and individuals and our in-depth understanding of the constitutional and civil roots of the societies we live in, places us on a great position to **successfully participate in the most cutting-edge debates**, and even lead them, by providing solutions and drafting a future that will enable our society to maximize improvement, and from which the community can benefit the most.

As a young lawyer, I actively participated in the debates arising from the enormous growth of what was known as the world wide web. Today, there are two increasingly appealing issues that, somehow, remind me of my early years as a professional attorney. These two technologies have only just started to change the way we work, the shape of our cities, our transportation policies, our banking system... I am, of course, referring to **Artificial Intelligence and Blockchain**.



2. MY EISENHOWER FELLOWSHIP PROJECT

My main objective during my Eisenhower Fellowship has been to **engage US leaders, lawyers, politicians, professors and companies in a debate with their European counterparts that will help identify common solutions to the complex challenges arising from the development of these technologies.** The implementation of blockchain, artificial intelligence and robots generates both interesting and controversial legal and ethical issues worldwide. That is why I strongly believe Europeans and Americans should tackle these challenges jointly, and with a cooperative approach.

In order to be able to provide compelling ideas to this debate, one must firstly acquire a better understanding of how far those two technologies have gotten, by identifying the problems they may cause and exchanging views on the best solutions to tackle them.

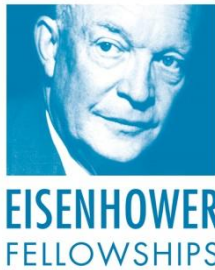
3. OVERVIEW AND FELLOWSHIP EXPERIENCES

3.1 *Blockchain and digital currencies*

Distributed Ledger Technology (DLT), commonly known as Blockchain, is **the underneath technology Bitcoin and other digital currencies such as Ethereum.** Due to the emerging of the Internet, it has been a while since we can send a copy of an email in seconds to any server in the world, that is why scholars would name the Internet “democratization of information”. But, in regard to assets (money, art, a car, a house...) it doesn't quite work the same way, and, sadly, sending a copy in seconds does not work. Since, if I send you an asset it is important that I no longer have it, and it is for that purpose that we generally rely on third-parties, intermediaries we trust to authenticate the transaction (banks, government, big social media companies). However, these intermediaries have certain drawbacks: they are centralized, they can be hacked, they exclude people who cannot have a bank account and they slow down any transaction.

Blockchain can transform the Internet of information into the Internet of value by using a global ledger run of billions of computers that will allow us to store and exchanged assets without the intervention of intermediaries.

In this scenario, the role of attorneys is key to ensure that the technology provides enough security and certainty to all players concerned. During my fellowship I engaged with several attorneys from well-known international law firms (**DLA Piper, Goodwin Procter or Holland & Knigh**t) involved in this disruptive technology. After paying close attention all the inputs and insights, I would highlight the following as the main points to be dealt with by lawyers:



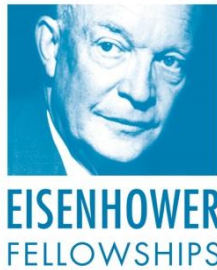
- Liability: the risk for customers regarding properly settled trades, security and confidentiality.
- Money laundering: despite the countless benefits arising from digital currencies and the Blockchain, there is a risk of bitcoins being used for money laundering.
- Smart contracts: since smart contracts are prewritten computer codes, their use present enforceability questions.

During my Fellowship I had the opportunity to meet with members of the **Uniform Law Commission (ULC)** whose main project is to provide states with nonpartisan, well-drafted legislation that brings clarity and stability to critical areas of state statutory law. It happens to be that ULC has approved a Regulation of Virtual Currency Businesses Act¹, the prior study of the text along with ULC insights about how digital currencies should be regulated will be extremely helpful in my future projects. This Regulation relates with a very controversial discussion about the legality of **Initial Coin Offers (ICOs)**. Companies and individuals are increasingly considering ICOs as a way to raise capital. While these digital assets, and the technology behind them, may present new and efficient means for carrying out financial transactions, they also bring increased risk of fraud and manipulation. I discussed these issues with Legislative Director for Representative Jared Polis, **Hilary Gawrilow** or attorneys from Securities Exchange Commission the Cyber Unit, **Philip Moustakis** and **Pamela Sawhney**. Although a unanimous consensus has not been reached on these issues between attorneys, the blockchain community and the regulators, my conclusions after several interviews is that ICOs – whether they represent offerings of securities or not – can be an effective way for entrepreneurs and others to raise capital, even for innovative projects. However, any such activity involving an offering of securities must be accompanied by the important disclosures, processes and other investor protection standards that our securities laws require. The right balance between investor protection and new funding opportunities using blockchain is a topic I will definitely tackle in the near future.

3.2 Artificial Intelligence

My interest in Artificial Intelligence and Robotics started with The Economist issue from May 2015, that took this subject directly to its cover. Soon I started to understand the potential of this technology and exchange views with a variety of

¹<http://www.uniformlaws.org/Committee.aspx?title=Regulation%20of%20Virtual%20Currency%20Businesses%20Act>



professionals belonging to different industries, such as health care, automobiles or customer services.

Many legal and ethical issues are an ongoing debate within the European Union². These discussions and paper inspired some colleagues and I to incorporate a formal association named “Lawbotics” with the purpose of promoting the debate and discussions on the legal issues arising from the development of artificial intelligence and robotics.

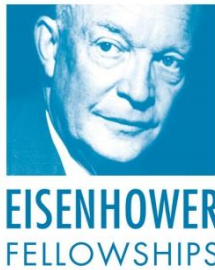
Happily, a few days before starting my Fellowship I learnt about the **We Robot Conference** in Stanford. Thanks to the flexibility and hard work of my Program Officer, **Jack Schneider**, I was able to attend that major event on law and artificial intelligence. For two days I had the chance to discuss and exchange inputs about a wide variety of issues regarding ethics and law on Robots and AI with several Stanford and Yale Law professors.

A few weeks later, and thanks to my friend and Chicago Eisenhower Fellow, **Jeffrey Singer**, I had a meeting with legal counsel at **Hyundai** and **Kia**. We spent over four hours on an ultimately enlightening debate that really connected with what I had discussed several weeks before in Stanford. Somehow, the pieces of my puzzle started to fit together since artificial intelligence discussions with ethics and law professors had a great resemblance with the issues that concerned major autonomous car manufacturers.

Data protection in the Artificial Intelligence is certainly an important question that I want to tackle. In Spain, and most countries of the European area, data protection is considered an essential right linked to the right of intimacy³. Consequently, whenever there is a situation that has not a clear answer, the right to privacy should prevail. Provided that mainly in China, but in the US also, data protection is not so overprotected, European Union industry has a great disadvantage for obtaining and processing data, since one of the goals of artificial intelligence is to establish patterns based on billions of data. Finding the **right balance between technological development and the protection of our privacy will definitively determine the future AI**. As a lawyer, I will work together with other European and American colleagues in order to try to find such balance.

² For instance, please refer to European Parliament Report with recommendations of the Commission on Civil Law Rules on Robotics (2015/2013 (INL), 27.01.2017.

³ Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016. OJEU 04.05.2016. L119/1.



By coincidence, I happened to be in Washington DC when Mark Zuckerberg testify before US Congress about Facebook data protection policy. The city was completely focused on this issue, and as a prominent Spanish journalist told me during those days, **“if Facebook were a Spanish company, our Data Protection Agency would have ordered its closing on 2007”**. A couple of days later, I was discussing these issues with others Eisenhower Fellows from my Global Program, when one of them said **“data protection is a luxury for developed countries”** and that Facebook had had such a positive impact on his country, that what they do with our data is not really an issue. I particularly recall those two conversations because they are a great example of the importance of globally engaging in these discussions and enrich from different approaches to data protection and AI.

4. Implementation plan and timeline

Below is a timeline of the project deliverables over the next 18 months.

Theme	Milestone	Timeline
Artificial Intelligence	Meet with Spanish Eisenhower Fellows involved in AI	June / July 2018
Artificial Intelligence	Proposal to the association of Lawbotics with the themes and authors for a book about legal and ethical issues of AI	June / July 2018
Blockchain	Engage with Spanish leaders in ICO through Spanish Association (AETOK)	June / July 2018
Artificial Intelligence / Blockchain	Roundtables about these issues in the IV Euro Latam Lex (ELLEX) Congress. Speakers met during my EF are already engaged	October 2018
Blockchain	Publication a paper about legal issues about Initial Coin Offers	Q4 2018
Artificial Intelligence	Organization of an International Congress about legal and ethical issues of AI	To be held in Madrid on Q4 2019

5. Summary and conclusion

My Eisenhower Fellowship certainly exceeded by far my expectations. I believe that the experiences obtained during this amazing program provide me with the knowledge and self-confidence to make an impact, not only in Spain but also in the European Union, on blockchain and AI related issues. The network developed



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during this seven weeks also **allows me to engage with US leaders in these fields, and to continue onwards the debate on these thrilling issues.**

Finally, I would not like to end this report without expressly thanking **all the Eisenhower Fellowships family** for this outstanding once in a lifetime opportunity. Without hesitation, this is probably among the most appealing professional and personal experiences of my life. Last, but not least, I would like to thank my little daughter Martina for her phone calls, her videos and voice notes, charming me with her tender smiles and questions like, who is that guy called Eisenhower or how come I am having breakfast when she is getting ready to go to bed.

Diego Solana Giménez
Philadelphia. May 15, 2018