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Legal status of artificial intelligence

Abstract: The technology is developing rapidly. As a consequence, artificial intelligence is being used in many spheres of life. This affects the functioning and future of society. The introduction of artificial intelligence to human society questions the current social structures and several regulatory challenges, which legal frameworks are not prepared to give a direct response to. Actions of artificial intelligence may cause both harm and benefit. Therefore, it is important to clarify legal status of the "thing" which has that much influence in the lives of humans. Here the issue is that it is needed to analyse whether existing regulations may be applied in the case of artificial intelligence or, perhaps, whether they should be appropriately adjusted. In this article we will research the possibility of conferring upon artificial intelligence the legal personhood under the law. To this end, we will also highlight the various risks and problems present in this regard, also future challenges we might face.

Key words: legal; artificial intelligence; legal person; natural person; human; machine; digital; innovation; robotics.

Parlour game became popular in 1950. A man and a woman sit in a separate room and provide written answers to questions; the other participants have to guess who provided which answer. Alan Turing posited that a similar 'imitation game' could be played with a computer. When a machine could fool people into believing that it was human, we might properly say that it was intelligent [2]. Early successes along these lines came in the 1960s with programs like Eliza. Users were told that Eliza was a psychotherapist who communicated through words typed into a computer. In fact, 'she' was an algorithm using a simple list-processing language. If the user typed in a recognised phrase, it would be reframed as a question. So after entering 'I'm depressed,' Eliza might reply 'Why do you say that you are depressed?' If it didn't recognise the phrase, the program would offer something generic, like 'Can you elaborate on that?' Even when they were told how it worked, some users insisted that Eliza had 'understood' them [25].

As artificial intelligence (AI) systems become more sophisticated and play a larger role in society, there are at least two discrete reasons why they might be recognised as persons before the law. The first is so that there is someone to blame when things go wrong. This is presented as the answer to potential accountability gaps created by their speed, autonomy, and opacity [23, p. 213]. A second reason for recognising personality, however, is to ensure that there is someone to reward when things go right. A growing body of literature examines ownership of intellectual property created by AI systems, for example [24]. Until recently, such arguments were all speculative. Then in 2017 Saudi Arabia granted 'citizenship' to the humanoid robot Sophia [20] and an online system

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with the persona of a seven-year-old boy was granted 'residency' in Tokyo [1]. These were gim-micks - Sophia, for example, is essentially a chatbot with a face [7]. In the same year, however, the European Parliament adopted a resolution calling on its Commission to consider creating 'a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently. The first response to this controversial issue was an open letter by AI experts from various EU Member States to the European Commission, revealing their dissent both from a legal and ethical perspective. While the expression does not wish to equate artificial intelligence to humanity, it fulfills its task of drawing attention to the question of whether artificially intelligent agents should possess a legal status. In addition, the recent launch of the European Commission's future strategy on AI could be seen as a "blocking wall", at least for now, for further discussions of e-personhood at EU level [28].

Legal personality is fundamental to any system of laws. The question of who can act, who can be the subject of rights and duties, is a precursor to almost every other issue. Yet close examination of these foundations reveals surprising uncertainty and disagreement. Despite this, as John Dewey observed in 1926, 'courts and legislators do their work without such agreement, sometimes without any conception or theory at all' regarding the nature of personality. Indeed, he went on, recourse to theory has 'more than once operated to hinder rather than facilitate the adjudication of a special question of right or obligation' [12, p. 660]. In practice, the vast majority of legal systems recognise two forms of legal person: natural and juridical. Natural persons are recognised because of the simple fact of being human [17, p. 346]. Juridical persons, by contrast, are non-human entities that are granted certain rights and duties by law. Corporations and other forms of business associations are the most common examples, but many other forms are possible. Religious, governmental, and intergovernmental entities may also act as legal persons at the national and international level.

Civil law scholars and commentators often assumed that people are legal entities by their very nature [21, p. 1]. In comparison with other living organisms they are distinguished by biological properties, social skills and individual character. Therefore, a person is someone, not something. Thus, it is assumed that human legal capacity is an inherent feature, as is dignity. However, this view needs to be supplemented. It happened in history that certain people were denied legal capacity, e.g. slaves under Roman law.

It is telling that these are all aggregations of human actors, though there are examples of truly non-human entities being granted personhood. In India, courts have attributed legal personality to Hindu idols [22], considering them capable of having rights and duties (namely, owning property and paying taxes [27, p. 742] and, in New Zealand, the Whanganui River was granted legal personality in March 2017 because the Whanganui Māori tribe regard the river as their ancestor [9]. Ships are also considered separate legal entities under Maritime Law and animals have their own legal status under various national jurisdictions.

Technologic advancements are making it clear that 'in a not-so-distant future an increasing number of transactions, both commercial and non-commercial, will be conducted by bots [3, p. 74] and, as this practice becomes more and more usual in commerce, people might 'begin to treat bots as if they are actually engaging in the transaction themselves, rather than merely being an extension of another legal person [3, p. 74]. If society begins perceiving artificially intelligent agents as autonomous actors and counterparties to transactions, as it now perceives corporations as legal entities

distinct from their members, 'it puts pressure on the law to give legal effect to this social perception'[3, p. 75]. Third party perceptions are the centre of this argument and, while it seems to not yet be the case, it is not hardly conceivable that the proliferation of artificially intelligent agents through several sectors of society will eventually lead human beings to perceive artificially intelligent agents individually, as they now perceive corporations and other forms of business associations [26].

There is negative approaches in regard with the giving legal personhood to the artificial intelligence. The majority of these arguments falls under a category that certain authors dubbed as missing something [15] whether that something is related to consciousness, self-awareness or biological aspects. Some other literature goes further and proposes a potential undermining of the legal and moral position of humanity [14, p. 72].

Legal personhood generally comes with the capacities to own property and to sue and be sued [15, p. 70]. While we do not know whether this statement is valid and truthful in every jurisdiction of the planet it certainly draws an interesting starting point for the analysis of the eventual set of rights that would fit the legal status of artificially intelligent agents as separate legal entities. Should artificially intelligent agents be able to own property? The initial reaction of many to this question may be one of skepticism. Why does a machine need to own property for? While we easily understand the reasoning behind this reaction, deeper thought can be put into the question. With that said, is there ground for a legislative option in favour of attributing artificially intelligent agents the right to own property? Once again, finding an answer to that question may imply analysing whether artificially intelligent agents are morally entitled to it, whether allowing so would reflect a social reality or whether it would be convenient under the current legal construction [26].

In order to analyse the eventual moral entitlement of artificial intelligent agents to own property, it is necessary to consider that, in the case of artificially intelligent agents, the capacity to own property implies more than the classic example of being able to receive a donation of a house. It implies being capable of owning their own creations. As an example, on 26th February 2016, the Gray Area Foundation for the Arts auctioned a group of 29 paintings made by Google's Deep Dream. The priciest artwork reached an $8.000 winning bid [10]. The question of whether non-human beings are morally entitled to property rights has been dissected before – precisely in regard of intellectual property rights – when, in 2011, a monkey called Naruto became famous for activating the remote trigger of a camera that was set on a tripod and, in this way, taking several photographs of itself. The photographer who engineered the shot, David Slater, argued that he had a copyright claim [11]. Other parties, such as the United States Copyright Office [6] claimed that works created by non-humans are not subject to copyright. PETA, on the other hand, filed a lawsuit in the District Court of California, requesting Naruto to be assigned copyrights and that the proceeds from the photos would be used in its benefit [18].

There is, in fact, a long history of questioning whether machine-assisted creation is protectable through copyright [13, p. 403]. Early photographs, for example, were not protected because the mere capturing of light through the lens of a camera obscura was not regarded as true authorship [16, p. 524]. It took an iconic picture of Oscar Wilde going all the way to the US Supreme Court before copyright was recognised in mechanically produced creations [4]. The challenge today is distinct: not whether a photographer can 'own' the image passively captured by a machine, but who might own new works actively created by one. A computer program like a word processor does not own the text typed on it, any more than a pen owns the words that it writes. But AI systems now

write news reports, compose songs, paint pictures - these activities generate value, but can and should they attract the protections of copyright law? In most jurisdictions, the answer is no. The US Copyright Office, for example, has stated that legislative protection of 'original works of authorship'106 is limited to works 'created by a human being'. It will not register works 'produced by a machine or mere mechanical process that operates randomly or automatically without any creative input or intervention from a human author' [6]. The word 'any' is key and begs the question of what level of human involvement is required to assert authorship [8].

It is now our task to question whether artificially intelligent agents should, at any point, benefit from a set of rights similar to what we refer to as the fundamental human rights. 'At first consideration, it might seem counter-intuitive to be speaking of human rights for subjects who are, unequivocally, not human. The task of allocating liability only becomes a complex issue when autonomy comes into play. With that said, a distinction should be made between cases where there is a deficiency in the code and ones where there is not. In the first, the artificially intelligent agent was not programmed to take the action that gave rise to liability, but was actually capable of making the autonomous decision that led to it because of a defect in its programming. In the second, we are dealing with 'accountability for actions that autonomous robots take, not related to coding deficiencies but to their evolving conduct' [19]. This distinction is relevant not only for better allocating liability, but also because it makes a case against legally equating artificially intelligent agents to animals. If John's dog bites Jane, even if against his commands, John will be held liable for that action. Applying the same treatment to the case where John's robot attacks Jane against his commands ignores any previous coding flaws that the robot might have had due to designer malpractice [26]. Concerning a hypothetical moral entitlement to fundamental rights, some researchers think if humanity ever comes to a point where it is able to build self-aware artificially intelligent agents, those agents should, from a moral point of view, be granted the same fundamental rights as humans. After all, even though their feelings and perception do not have a biological, but artificial, origin, the fact is that they exist and, to those agents, they are as real as ours are to us. For the remaining types of artificial intelligence, however, the same rationale does not apply. They are not conscious nor sentient. They have no subjective experiences. Everything they think they feel is what they were programmed to think they feel. As an example, consider the fundamental right to freedom: should all machines be set free from a moral point of view? It does not make sense to us. Unless, of course, such machines had their own will, based on conscience, sentience and self-awareness [26].

Artificial intelligence is an element of an IT system that is created by humans to perform specific tasks. Therefore, it cannot be said that it has inherent biological properties or social skills (as is the case of legal personhood of natural persons). Even if these features can be attributed to it, they are programmed by its creator. Of course, artificial intelligence may then be subject to certain social processes, but this occurs as a consequence of human activities. By the very nature of artificial intelligence, it is neither possible to speak of its birth. Currently, it is also difficult to imagine the possibility of robots creating social structures. Possible behaviours aimed at this goal can therefore beas it seems only a consequence of human programming. Artificial intelligence can perfectly imitate human beings. However, it cannot be assumed that it is human. The legal capacity of artificial intelligence is not natural. Hence it can only be normative, i.e. deriving from and established by the provisions of the law. Therefore, artificial intelligence is certainly not a natural person [5].

The concept of granting legal personality to artificial intelligence is widely discussed in legal and philosophical literature. At the European Union forum initiatives are being taken to consider the

possibility of applying the current legal regulations of the member states in relation to artificial intelligence and to formulate conclusions as to the need for legislative changes (inter alia European Commission, 2019). These initiatives expressed the view that granting legal personality to artificial intelligence is unnecessary, since the responsibility for its actions should be borne by existing persons (European Commission, 2019, p. 4).

Conclusion

From the analysis that we have carried out, we conclude that currently there is no strong reason to acknowledge legal personhood to artificial intelligence. The fact is that these types of artificial intelligence are not able to have subjective experiences, hence, their perception of whatever rights, freedoms, obligations or wills they have is merely a result of their programming.

When a machine with artificial intelligence is used or programmed to take a certain action and it does so, there is no doubt that it is a mere means to that end. So, regardless of the matter being of civil or criminal liability, the usage or programming of an artificially intelligent agent to perform a certain action should hold the user or designer (respectively) directly liable for such action.

However we should also mention the impossibility to predict how artificial intelligence will function in the future. Since it is not easy to predict how far the technology could go, for now we are not able to clearly see a future legal status of artificial intelligence as well. It might seem like the speed of development of artificial technology necessitates careful analysis of the possibility of granting legal capacity to artificial intelligence in the future. This is because it may turn out that in the future, artificial intelligence will be completely independent of humans, and thus no one alive today will be naturally liable for its actions. If humanity is ever able to build self-aware machines, these machines are entitled to the legal acknowledgement of rights, whether we are talking about the right to own property or some sort of fundamental rights similar to those of humans, yet, with the due adaptations (e.g.: voting rights could arguably be restricted). While it may not be convenient to do so from a legal perspective, the fact that self-aware machines would have a conscience, be sentient and able to have subjective experiences would place them much closer to humans than to machines and, perhaps, closer to humans than any other reality.

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Правовой статус искусственного интеллекта

Аннотация: Технологии быстро развиваются. Как следствие, искусственный интеллект используется во многих сферах жизни. Это влияет на функционирование и будущее общества. Внедрение искусственного интеллекта в человеческое общество ставит под сомнение нынешние социальные структуры и ряд регуляторных проблем, на которые правовая база не готова дать прямой ответ. Действия искусственного интеллекта могут принести как вред, так и пользу. Поэтому важно уточнить правовой статус «вещи», которая имеет такое большое влияние на жизнь людей. Здесь вопрос в том, что нужно проанализировать, применимы ли существующие правила в случае с искусственным

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интеллектом или, может быть, их следует соответствующим образом скорректировать. В данной статье мы исследуем возможность наделения искусственного интеллекта правосубъектностью в соответствии с законом. С этой целью мы также выделим различные риски и проблемы, существующие в этом отношении, а также будущие вызовы, с которыми мы можем столкнуться.

Ключевые слова: юридический; искусственный интеллект; юридическое лицо; физическое лицо; человек; машина; цифровое; инновации; робототехника.

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