

Artificial Intelligence

With the development of artificial intelligence, the current legal sphere is being shaken to its core to facilitate the potential coming of a new type of legal entity, artificial intelligence (hereinafter AI). My opinion on this subject is that rights and liabilities should not be expanded to cover AIs in the same manner as another human being. I view that acknowledging AI's as a distinct legal entity as the more logical approach. It is important to state that I write this paper in light of the present developments of AI, not in the near or distant future.

AIs are not to be treated in the same fashion as another human being. They are fundamentally detached from values which makes it a living creature, be it spiritual or biological values. My primary argument for rejecting this notion is because AIs lack the most important quality - a conscious. Although AIs are able to make independent decisions based on the given facts, however, AI self-awareness is not on the horizon.¹ Thus, an AI can think, but it is not 'aware'. The purpose of rights is to enable the subject of rights to the lawful enjoyment thereof, and AIs are incapable of doing so.

The relationship between the AI and its creator is akin to a pet-owner relationship, the pet - the AI - is dependent on the will of its creator. The AI acts according to the interests of its creator(s), not for its own. Consequently, the creators should be the party empowered with rights or burdened with liabilities. Even if the abilities of the AI proves to be beyond the capacity of its creator. It is redundant to award the AI as it is STILL acting within the boundaries of its programming. The values or usefulness of an AI is not the determinant factor in the granting of rights. What liberates the AI from the constraints of being a mere 'asset' is the ability to answer "what, why, and how" independently and without human intervention. If the AI successfully answers such questions, especially 'why', it reveals that the AI is sentient and is, therefore, worthy of rights.

Naruto V. David Slater (Monkey Selfie case) will be used as an example to demonstrate the lack of moral justification to give rights to AI. The case concerns the entitlement of copyright to a non-human, a monkey. The case was viewed as absurd because it attempts to bestow rights to an entity that is not self-aware. In my opinion, an entity that is able to exploit rights is one that has the potential to understand how and why it was entitled to such rights. We should only protect an agent with the ability to comprehend the efforts and creativity of its creation. We protect the copyright owner because they understand the value of their endeavours and desires to be protected from abuse. Why then do animals have the right not to be abused? Animals can perceive pleasure or pain. Many are compelled by this reason to extend legal protection to

¹ A report of the White House of the U.S.A. on artificial intelligence, October 2016, https://obamawhitehouse.archives.gov/sites/default/files/whitehouse_files/microsites/ostp/NSTC/preparing_for_the_future_of_ai.pdf (accessed 28 June 2018).

animals. Although, in the case of AIs, AIs resemble commodities. It may exhibit traits of intelligence. Nevertheless, there is no defining quality to differentiate between AIs and regular items. Therefore, there is no moral force to justify giving rights to AIs.

Let us challenge ourselves and assume that liability was created not by a defect of the programming, but the AI performed precisely as it was programmed and the AI injured another person by the will of the AI itself. Even in this case, I argue that the liability should still fall on to those responsible for the creation of the AI. The problem stems not from the AI's development of its intuition, but from the limitations of the coding provided by its creators. As long as AIs are but a manifestation of the programmer's coding, they should not be able to assume liability. In a sense, what I am contending for is the preservation and application of the strict-liability model, one parallel to the laws applied to pets or animals.

I have constructed the basis of my arguments on the premise of negative justification; that AIs lacks the qualities of a living creature. Accordingly, I ask whether it is right to treat AIs in the same vein as a living creature? History has but demonstrated that human qualities are not absolute justification for granting rights. In the dark ages of human history, certain Individuals with the status of a slave enjoys rights at the same level as mere objects, despite being fellow humans.² Therefore, I then turn to the argument of expansion of AI rights based on the justification of legal convenience.

As a juristic person, the AI would have a legal standing to sue and be sued. Present-day practises have already revealed that legal personality has been bestowed to non-sentient entities such as maritime vessels or corporate entities, for the sake of legal uniformity.³ However, we have never associated or expected such entities to have human qualities or morality. Therefore, giving AIs legal entity bypasses all the moral implications encompassing the expansion of AIs rights. Creating a legal identity for AIs would facilitate the proper allocation of rights, tailoring to the rights that are suited to the AI rather than to project human based rights on to the AI. This method also acknowledges an AI's autonomy, as every act conducted by the AI will be in the name of the AI, and not its creators. Additionally, We are able to overcome the hassle of identifying the various owners of the parts of the AI; as the creators will collectively be regarded as the agents of the AI. Lastly, civil liability issues are also resolved because the presence of human beings; the agents (the AI's creators) must act on behalf of the AI and compensate the injured person.

² Filipe Alexandre, 'The Legal Status of Artificially Intelligent Robots ' [2017] Tilburg University 18

³ Ibid 19

Topic: “Living among machines - AI technology may eventually be integrated into society as one of us. What is your opinion on expanding legal rights and liability coverage to include AI and bots?”

There is no doubt that Artificial Intelligence is becoming increasingly involved in our everyday lives. AI is not limited to a specific form, it ranges from the use of Siri to make a simple phone call, to the use of security cameras with facial recognition technology in China as a way to track individuals. AI was initially created with the goal of carrying out tasks that would be tedious for human beings to do, such as seen in the case of working at manufacturing lines in factories. AI is said to be very efficient as it can essentially carry out the same work that one single person could do, but at twice the speed. The result is that higher productivity levels can be achieved at lower labour costs and within a shorter period of time. Over time, the designers of AI became more creative and decided to develop AI's abilities to include more complex activities such as speech recognition, learning, planning, and problem solving.

The concept of AI outperforming humans in every kind of task is impressive to some but also worrying to others. The current consensus regarding the future of AI is split between two schools of thought. The first school is of the opinion that as the potential of AI to surpass human intelligence grows higher, AI should be granted its own legal rights and be subject to its own personal liabilities. This school believes that AI should be treated as a legal person in relation to the concept of “corporate personhood”, similar to how a company is granted status as a juristic person with its own rights and duties. The second school is of the opinion that legal rights and liabilities should not be extended to cover AI as AI is simply the result of programming by human beings thus all of its actions can be traced back to either a human being or a corporation. In other words, this school argues that AI does not have total autonomy as everything they do is only because they were programmed to do so initially, and not because they are acting upon their own free will. Even though they proceed to act independently of human instructions after they are programmed, this fact is irrelevant because as mentioned before, their actions stem from initial human instructions.

In my opinion, I am inclined to agree with the second school of thought (AI should not have its own legal rights and liabilities) for the following reasons. The first school of thought argued that companies exist on paper as a separate legal entity from its directors and shareholders. Despite the fact that companies do not exist in the physical world (because it lacks a physical body), they are subject to their own legal rights and duties, and can be held liable for its own actions. AI on the other hand, may or may not have a physical body but it does indeed exist in the physical world and thus should be given the status of legal persons under the law.

I would like to point out that while a company exists as a separate legal entity and can be liable for its own actions, the action that a company takes has to be carried out by a representative of the company. Thus, there is no doubt that there is indeed someone else (a person) acting on its behalf. The same cannot be said for AI, which has no representative acting on its behalf, but it is instead, acting based on the commands which are programmed into it. If we were to give rights to AI, this would lead to the question of whether the rights given should be the same as those given to natural persons or to juristic persons, but as mentioned earlier, it

should not be given the same rights as a juristic person because it is not acting in the same way. Juristic persons can be held liable instead of its directors but the same concept should not apply to AI and its creators because it would provide incentive for people (such as the individuals or corporations responsible for the creation of AI) to escape both contractual and tort liability.

For example, in the case of using robotic surgeons to operate on patients, if something was to go wrong, the concept of AI having sole liability for the accident seems absurd because AI cannot be physically held in a jail cell or forced to pay a fine. In addition, AI and other bots cannot be sued nor can they be subject to more serious forms of criminal punishments such as facing death penalties. By granting AI with its own rights and liabilities, this would allow for the individual or corporation who made the robotic surgeon to escape liability by using AI as a shield to protect them from the law. Thus, since civil and criminal liabilities have no effect on AI, the people behind them should be held liable instead. By holding both natural persons and juristic persons liable for the actions of AI that they have created, this would allow for the fulfilment of the purpose of the law, meaning that the injured party will be able to exercise the right of recourse and the right to receive compensation. Thus, if the liabilities and penalties under the law have no effect on AI, the law would essentially be useless, and it would not be doing its job of enforcing rights and obligations of parties.

In conclusion, although it may seem unfair to place the fault on the creator of AI, it should be noted that at the end of the day, someone should be held accountable for any errors made. In addition, by putting limitations on the recognition of AI as legal persons, this serves to bring us a level of security. Whenever a company does a particular act, we know for sure that there is a person behind the scenes who is pulling the strings even if the company is its own "person" in the eyes of the law. However, the same reassurance cannot be said for AI if we were to recognize it as a person.

Living among machines – AI Technology may eventually be fully integrated into society as one of us. What is your opinion on expanding legal rights and liability coverage to include AI and bots?

In the 1950s, the term AI was used to describe a concept of “thinking machines.” Nowadays, the definition of AI has progressed more into the capability of machines to imitate intelligent human behavior, according to Merriam-Webster. With these terms in mind, what we should focus on is that AI is a relatively new technology for the human society, and as a result, we need a way to control it if we were to integrate them into the society. The best way that we, humans, used to control ourselves, and the tools and technology that we used, is by law.

With that said, establishing law to regulate AI Technology comes with a daunting question. Is AI technology just an advance computer program, or a different identity paralleled to person and juristic person? If we recognize it as a mere computer program, then we already have tons of law regulating the use of computer programs and the liability of the user and this essay will end here. On the other hand, if we were to recognize it as a unique entity, then there are many things to discuss.

From my perspective, an AI that can independently think on their own without the need of imitating human inputs or pre-programmed data should be considered as an entity and not a computer program. This is because they are independent in its own nature and in need of its own legal entity since the laws that we have now is not sufficient to support the AI capability to think and perform by itself as a unique identity. Thus, a unique legal entity with rights and liability are necessary for the implementation of AI. However, they cannot possess the same rights or liability as a natural person or a juristic person can since each of them are unique to each other. Before we sought out to expand legal rights to AI, we should take a step back and look at another legal entity that is not entirely human, juristic person. A juristic person is a legal entity collection of person in order to be able to perform legal actions as a different identity for different purposes. Juristic person is entitled to legal protection of its rights and duties, with the exception of some that may only be enjoyed or incurred by a natural person. This concept can suited the implementation of AI, which is also a legal entity. An example of this is ownership of properties. Even though a juristic person cannot physically acquire its own property, this can be done by its representative. The legal mechanism regarding juristic person can be implemented on AI since both of them do not have physical existence, but both of them exist in the legal realm. All the limitations on the rights and capabilities of juristic person regarding legal actions that only a real person can perform can also be implemented for AI. These actions are physically and legally reserved for a natural person, such as

voting in elections, marriage and inheritance. Noting that juristic person can receive inheritance as it can own property, this mechanic should be applied to AI too.

We can still distinguish juristic person from AI because of its nature since juristic person is dependent on its representatives while AI has its own identity. A good example of this is by means of declaring intention. A juristic person's ability to declare intention is limited by its purpose and the decision of its representatives, whereas AI can declare its own intent without these limitations.

Regarding AI's legal liability, there are two fields that should be considered, criminal liability and civil liability. Criminal law's liability aims to govern acts that are deemed unacceptable by the society, whether done by intention or negligence recklessness, by punishing the wrongdoer. As stated above, an AI should be capable to declare its intent, these intents and its consequence might fall into one of the crimes. However, it would be impossible to prove the recklessness or negligence of an AI. Furthermore, proving *actus reus* and *mens rea* of an AI might be impractical as we cannot use the same standards or methods that we use with humans on AI. Furthermore, punishing AI via criminal law is unworkable as it cannot be punishable by capital punishment nor imprisonment. Therefore, liability in criminal law should not be accounted on AI. Alternatively, if the creator or developer of AI manifested with the programming and falls into the category of a crime, they can still be accounted for on the basis of using an AI as a tool to commit a crime. Civil law's liability, on the other hand, aims to recover the loss as damages which can be converted into legal source of obligation in form of payment. As mentioned before, AI should be able to own properties, which included money, and these properties can be used to compensate any damages that might have been caused by AI.

To summarize, if the technology of artificial intelligence develops to the point where it can be clearly distinguished from a super advanced computer program, then it should be considered as a unique legal entity. And if it is recognized as a legal entity, then we must set a limit of its capabilities. A good place to start is to look at a legal entity that we already have, then implement its rights and liability and make necessary change to comply with its nature. Before that time comes, we must prepare ourselves, and our law, for the full implementation of the technology.

Phocharaphol Yingamphol

Chulalongkorn University, 2nd year

Pipe