ARTIFICIAL INTELLIGENCE: THE SCOPE OF PERSONHOOD AND THE EFFECT ON HUMAN RIGHTS AND LIABILITY

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Abstract: Artificial Intelligence (AI) is the concept of machine-learning, where a computer will continuously analyze its surroundings and look to find the highest percentage of success in what it is doing. It learns from the environment it perceives and attempts to portray the illusion of thought and consciousness in itself. However, with the development and advances in such technology, the effect it may or may not have upon the lives of natural persons are yet to be seen and understood. Autonomous devices such as vehicles and weaponry are on their way towards the market, if not already in the market, and the questions of liability and accountability arises. This paper, titled Artificial Intelligence: The Scope of Personhood and the Effect on Human Rights and Liability, is directed towards the understanding of what Artificial Intelligence is, not just in a general sense but also in a Legal Perspective.

Index Terms – Artificial Intelligence, Sophia, Personhood, Liability.

Introduction
Before we properly tackle the questions put forth, we must first properly introduce and understand the concept of Artificial Intelligence. Artificial Intelligence, having been put in my own way, is the human attempt to introduce a machine such as a computer to survey and understand it’s surroundings, and complete it’s tasks with the highest percentage of success. This can also be seen as an attempt to mimic intelligence in an artificial being. But what can be understood when a person asks about AI? Is it a software? A machine built to mimic a human being? Marvin Minsky wrote, “Artificial Intelligence is the science of making machines do things that would require intelligence if done by men.”

To guide this paper in a certain direction, I shall lay down the questions that shall be focused on:
- Whether an Artificially Intelligent robot should be given Legal Rights and Personhood?
- Whether Liability of an AI falls upon itself or upon the inventor?
- What would be the effect of AI on a person’s Human Rights?

II. WHERE DOES THE WORLD STAND ON THE RIGHTS PERTAINING TO ROBOTS?

The way a right develops is that for technical wrongs are to be oriented for rights to emerge from it. However, the existence of Human Rights are not in alignment with the problems originating from the existence of AI humanoids. The example of freedom of speech and assembly arises, where they have been sought in a way to go against the repression of the State, but they might not overlap with the technology in question. A conference held in 2017 called the Asilomar Conference laid down 23 principles which they developed in conjunction towards Artificial Intelligence, laying down principles regarding important topics such as Safety, a possibility to understand the reason of the failure if an AI causes harm, and so forth. A professor named Hussein Abbass, in his article, discussed the issues that arose regarding citizenship by granting an honorary citizenship to the Humanoid Sophia. He says that Citizenship, as a status, is at an existential risk. An open letter was written to the European Commission of Artificial Intelligence and Robotics, signed by many scientists, robotics and AI experts, legal and medical experts to request the establishment of rules for Robotics and Artificial Intelligence to guarantee safety while continuing the further development of the technology. The world recognizes this developing technology, and knows that there must be a stand on how this technology is implemented, whether it being in the societies of the world, the rights over our property, be it tangible or intangible, and the effect of AI upon our Human Rights. Elon Musk co-founded a non-profit organization called OpenAI, which aims at providing Artificial Intelligence which is inherently safe for the people of the World.

2Future of Life Institute, ASIOMAR AI PRINCIPLES (Sept. 20, 2018 8:00 PM) https://futureoflife.org/ai-principles/?cn-reloaded=1.
4Robotics Openletter, Open letter to the european commission artificial intelligence and robotics, (Sept. 20, 2018 8:30 PM) http://www.robotics-openletter.eu.
III. SHOULD AN ARTIFICIALLY INTELLIGENT BEING BE GIVEN PERSONHOOD?

To further clarify, Personhood has been defined as the quality or condition of being an individual person. It is granted to Natural Persons and Legal Persons, and is closely tied with citizenship, equality and liberty. What does it mean to possess personhood? Can we truly identify an AI as a person?

Sophia being granted a citizenship in Saudi Arabia brings into question the value of a citizenship in general. What good is it to grant a citizenship to a person that has to be built and programmed, while others still struggle to attain equal rights and opportunities? Sophia, a Robot designed to behave like a human, has been granted citizenship in a place where women have now recently been given the right to drive.

A person is defined and characterized by his representational constructs of the world. His thoughts, feelings and ideologies make up who he or she is; defines him, gives him will and consciousness and a general purpose. What gives an Artificially developed intelligence which has been instilled into a machine the same purposes as humans? In order to bring it to a close human-like level, it must possess an ideology by which it ‘lives’ by, but what forms this ideology? One man may have a particular opinion on abortion laws, and it may differ from another, but who decides the opinion of an Artificially constructed being? To answer this, the concept of machine-learning has been implemented.

Machine learning is an application of artificial intelligence (AI) that provides systems the ability to automatically learn and improve from experience without being explicitly programmed. Machine learning focuses on the development of computer programs that can access data and use it learn for themselves. It allows an AI to survey it’s surroundings and learn from the information it collects. A humanoid may be given literature to learn from, develop it’s own view of the world and portray it’s ideologies upon the world. For example, Sophia has now begun advocating for women’s rights.

The period of five years. The time series monthly data is collected on stock prices for sample firms and relative macroeconomic variables for the period of 5 years. The data collection period is ranging from January 2010 to Dec 2014. Monthly prices of KSE - 100 Index is taken from yahoo finance.

IV. CAN A NON-LIVING BEING BE A PERSON TOO

We have understood what it means to an extent on what it is to possess personhood, and be recognized as a person. However, can a non-living being such as a Humanoid be called a person too? In the 1950s, Professor Alan Turing laid down a test to determine the strength of an AI called the Turing Test. A person converses with a machine and another person by asking questions, without knowing which is which. If the machine can convince the man that it is in fact a human, the machine is said to have passed the test, proving it to be a Strong AI, capable of human-like interactions. If a person cannot spot the difference, then perhaps there is no difference at all?

William Lycan, in his paper titled, ‘Robots and Minds’ provides some thought experiments to propose questions as to what point does a person-like being become a person?

In Lycan’s thought experiment, he introduced a hypothetical person named Harry. Harry is just another everyday person who has his own whims and fancies, has preferences and desires and, for the sake of this argument, has been your neighbor for the past 5 years. You are well acquainted with Harry and you consider Harry as a person. However, one day, Harry is injured, and you realize he is in fact, not a human at all. Does this make Harry any less of a person upon the discovery as before it?

Imagine a person, named Sylvia. Sylvia has her limbs replaced for prosthetic limbs by surgical experts who ensure that she can live her life without hindrance. As more and more parts of her are replaced, arteries for synthetic fibers and so forth, she is composed fully of mechanical artefacts, yet retains her human qualities. At what point does she stop beckoning a person? Does her subconscious disappear beyond a point? When a person has lost a limb in an accident, it doesn’t make him less human. His humanity, his personality, his thoughts and consciousness are all preserved, just as how Sylvia’s has. Does that mean a humanoid such as Sylvia is still a person?

V. CAN LIABILITY FALL UPON AN ARTIFICIAL PERSON?

Actus non facit reum nisi mens sit rea. “The act itself does not constitute the guilt unless done with guilty merit.” This legal maxim means that a criminal act cannot occur without the existence of two important elements in the act itself: The guilty act (actus reus) and the guilty mind (mens rea).

The essentials for the occurrence of a crime are

- Actus Reus
- Mens Rea
- Human
- Actual Injury

For the purpose of this paper, we shall focus briefly on point 1, and more in-detail on point 2.

7 Alan Turing, The Turing Test (Sept 21, 2018 7:00 PM) http://www.psych.utoronto.ca/users/reingold/courses/ai/turing.html.
8 William Lycan, Robots and minds (Sept 21, 2018 9 PM) www.yorku.ca/blogan/lycan.
Actus Reus is the physical act of committing a crime. Any act that may go against the moral standards of the society it is acted upon is considered as a crime. The last three essentials are more complex when we have to talk about them in the context of our paper. Mens Rea is the mental element behind the committing of a crime. It is the motive that is formed inside the mind of a person in order to commit the crime. However, the ‘thoughts’ of an AI aren’t exactly thoughts but more along the lines of calculation. Mens Rea is essential for a crime to have taken place. The AI must be acting with the motive of causing harm for it to be held liable for a crime.

There are varying degrees of Mens Rea, as given:
- Intention
- Knowledge
- Negligence
- Recklessness

A man named Jim has committed the crime of murder. He possessed the intention to kill the other man and knew how to go about the act. The degree of Negligence may come about in a case of an accident, where Jim was speeding and hit a man crossing the street. Recklessness occurs when Jim knew that driving faster meant he was taking the risk of hitting another person and accepted that risk. Now, what if Jim was a Humanoid, that could be programmed to avoid all these degrees at any cost?

Jim-1 is a Humanoid that is programmed to never possess the intention to cause harm to another human being. It shall consider every possible course of action and choose only the courses which cause minimal amount of harm to another human. It shall not take risks that may put another human at risk of injury. Can it be said that Jim-1 is free from possessing the Mens Rea of committing a crime, and hence cannot commit one at all?

Gabriel Hallevy, in his book The Criminal Liability of Artificial Intelligence Entities, Hallevy proposes three models through which an AI system can be considered for liability:

- **Liable via another**: If a person commits an offence via the actions of another being who lacks the mentality or mental capacity, such as a child or an animal, then the person shall be held liable and the mentally deficient person shall be held to be innocent as they lack the mens rea. This shall also apply to the cases of strict liability. With the application of this model, the programmer/manufacturer of the AI causing harm may be held liable.

- **Natural Probable Consequence**: Should an AI, designed and programmed for peaceful purposes has been wrongly activated and performs a criminal action, as the example quoted by Hallevy, where a Japanese worker was killed by an Artificially Intelligent robot working near him. The robot identified the worker as a threat to its mission and calculated that the most efficient solution would be to push the worker into another machine. The general use for this model of liability is for cases of accomplices to a crime in US law. The programmer might be held legally liable if they had known that a criminal offence was possibly occurred through the use or application of their programs.

- **Direct Liability**: This model applies the attributes of Actus Reus as well as Mens Rea to an AI. Should an AI system commit the crime itself, the Actus Reus shall be fairly simple to apply to the system. However, Mens Rea is much harder to apply to the system. In cases of Strict Liability, Mens Rea need not be applied. Autonomous Cars which are driving beyond the speed limit shall be liable to strict liability under this model. Should this application of liability to an AI occur, who would be held liable?

The question of liability can be summarised with the conclusive answer that without Mens Rea in the AI itself, it proves to be very difficult to impose liability upon the being itself. However, if the model proposed by Gabriel Hallevy is applied, it may help provide an answer as to who is the one that must be held liable.

VI. **WHAT EFFECT DOES AN AI HAVE UPON OUR HUMAN RIGHTS?**

AI involves installing a machine with the ability to think along the lines of a human. However, under this heading, we shall be looking into the ethical limitations and concerns of AI. Some ethical concerns in are:
- The threat of autonomous technology on job losses
- Fair distribution of wealth generated by Autonomous Machinery
- The interaction of machines with humans and their behaviour towards us.

These are just some of the many examples that have been highlighted in an online business information article. The societies of the world do recognize that there may be a threat caused by the implementation of AI into our lives.

Let’s talk of a world where AI humanoids live among us. They have been programmed to have absolutely no part in any form of crimes and cannot harm humans in any way, even to defend themselves. Sam, a human, lives next door to an AI named Ralph, who interacts with him on a daily basis and shares pleasant conversations with him on sports and politics. Sam and Ralph also work together at the same IT firm. Sam, however, cannot perform his duties with the same efficiency as Ralph, as Ralph is not prone to the distractions of the human mind that hinder our efficiencies at the workplace. Ralph is well commended by his colleagues and his superiors but Sam isn’t as recognized as Ralph is, even though they work the same number of hours. The

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9 Hallevy, Gabriel *The Criminal Liability of Artificial Intelligence Entities - from Science Fiction to Legal Social Control*, (Vol. 4 : Iss. 2 , Article 1, 2010).


questions that arise are whether Sam and Ralph entitled to the same amount of compensation for their work, when Sam hasn’t achieved the same quality of work as Ralph but has worked just the same amount? Is Ralph entitled to a promotion over Sam? These questions are yet to be answered on the grounds of Human Rights. We can assume that should the implementation of AI ever occur in our near to far future, then the importance of Human Rights will outweigh the Rights of Artificial Beings. However, that does not mean that Artificial beings will not be granted some form of rights or regulations in order for them to exist independently, should the technology of the future allow for it.

On 16th May, 2018 Amnesty International published a Declaration known as the Toronto Declaration: Protecting the right to equality and non-discrimination in machine learning systems. This Declaration calls for the formation of regulations to prevent the violation of Human Rights that can be caused by Artificial Intelligence. The Declaration draws its influence from the International Human Rights Laws, and talks about providing people who have suffered discriminations by AI systems with a path through which they may seek legal action. It also talks about the development of safeguards against the possible violations of human rights by Artificial Beings.

VII. CONCLUSION

Artificial Intelligence is the ability of a machine to exhibit intelligence that is considered to be the closest to human intelligence. The development of such technology can prove to be very positive towards the development of humanity and the betterment of the quality of life. However, if this technology has been poorly implemented and regulated, then it may cause harm in the sense of Ethics, as well as our very Human Rights. Our social acceptance of the technology is crucial for it to be implemented efficiently. The questions raised in this paper cannot be answered completely and truly as it requires to be until the technology develops to a stage where the need for such legislation to protect us from violations of our rights.