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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ETHICS VS. LAW: SHOULD ARTIFICIAL INTELLIGENCE SYSTEMS BE GIVEN LEGAL PERSONALITY?**

AUTHORED BY - KRISHNA PANDA

## **Abstract**

The autonomous AI that is self-governing is a risk to the frameworks that are established in the law and ethics. Artificial intelligence will also be able to question the conventional systems of law since out of being a means of operating as a tool, it extends into becoming an autonomous decision-maker. The question that this paper tries to answer is whether the AI mechanisms should acquire legal personality that has been restricted to humans and corporations. We are talking about it in two dimensions: ethics and the law. Ethically we ask the question of whether the aspects of AI like consciousness or advanced rationality qualify to obtain moral consideration or right and we explore the point of animal rights and the functionalist theories in the present and address the concerns which relate to human dignity. In the law we look at the reason why the unbridled difference between legal mandate and the real need of an AI personality should be walked, and why that is to be, in analogy either with corporate personality, or electronic personality. As much as its legal suggestions on AI personhood have viable answers, the paper appreciates the fact that they are immoral and premature. Slightly let people pronounce that rocks and those like them are people so as to blur the meaning of the term and also to have people who will be confused on the fact that they are answerable to us. It also takes a number of rights that we currently possess and argues that these other things should get those same rights, which does not really make sense, especially in a system that claims they represent people. Instead, it is possible to advance other models, *sui generis*, like stronger agency frameworks and severe responsibility, and to place the culpable human being dead on center stage. Legal innovation ought to govern AI as a super advanced artifact, whereby the accountability of humans takes top priority, rather than imparting legal personhood.

**Keywords:** Artificial Intelligence, Legal Personality, Ethics, Law, Liability Gap, Corporate Personhood, Robotics, *Sui Generis* Status, Human Accountability.

## 1. Introduction

Artificial Intelligence (AI) is an element of the twenty-first century which cannot be forgotten. Be it the autonomous vehicles navigating the dense network of traffic or algorithmic trading systems doing billions of dollars' worth of trade in the fractions of a second, or diagnostic AIs in the realms of medical science or creative AIs to generate the works of art and text, the systems are no more the inert aids. They are runnable and self-modifying and self-modifying and unpredictable entities that are running in the real world<sup>1</sup>. The actual deciding factor of such polished systems is that they are self-governing so as to execute the actions, decisions and are learning on the information without an exercising of any direct control and the real time control by a human being. On this rediscovered autonomy our most primitive legal and ethical principles are being at the same moment attacked.

In the scenarios where the autonomous vehicle kills a pedestrian, where a medical AI makes an incorrect diagnosis or where a financial AI crashes the market, the causal and liability chain reaction become confused to the point of impossibility, and what is left is a loss. Who is science, then, is the big question. Who was involved in the implantation of the system? What was the authorship of the code of the first one? Who are these Hardware manufactures? Which company supplied the machine learning algorithm with such a huge amount of data? Or is anything there in the Debauchee of the mischief to be seen, other than Minute Cause of the mischief, he AI? It is now, in state legislatures, on college campuses and in courtrooms all around the world, being taken very seriously as a question only in the realm of science fiction a few years ago.

There are two fundamental concepts that have to be defined before considering the debate. First, Artificial Intelligence is a broad term that encompasses numerous technologies, including the ones with a narrow AI focus (i.e. chess-playing program) as well as the abstract concept of Artificial General intelligence (AGI), or the machine that functions with their degree of cognitive capabilities on a variety of tasks compared to humans<sup>2</sup>. Second, the legal personality is one of the concepts used in law. The quality enables an entity the potential to possess rights and responsibilities under the law, including the power to possess property, to transact

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<sup>1</sup> NICK BOSTROM, SUPERINTELLIGENCE: PATHS, DANGERS, STRATEGIES 18-21 (2014) (describing the potential for rapid advancement in AI capabilities and the strategic challenges this poses).

<sup>2</sup> STUART J. RUSSELL & PETER NORVIG, ARTIFICIAL INTELLIGENCE: A MODERN APPROACH 1-4 (4th ed. 2020) (defining AI as the study of agents that receive percepts from the environment and perform actions).

contracts, to sue and to be sued<sup>3</sup>.<sup>3</sup> Prior to the law, it has been observed that there were two major types of legal persons. The former is the original person which is a natural person, that is, a human being whose personhood is an inalienable quality and the second is the legal person (juristic) which, though an artificial being (like a corporation, a trust, a state), has been endowed by the law with personality, with certain, and in general economic and administrative, ends in view. The second category is referred to as legal fiction, and it is a method used which can be said to have been built to achieve some societal objectives.

The liaison between neuroscience and the field of criminal law in India is a hurtful and exponentially growing trend. The generation of new neuroscientific knowledge which dictates a deterministic interpretation of human behavior is under challenge with previous concepts of free will and culpability in the legal system. The Indian courts are treading this interse cautiously which is evident in the landmark case of *Selvi v. State of Karnataka*<sup>4</sup>, which emphasizes the need to respect fundamental rights; at the same time taking into account evidence that may include neuroscientific evidence.

Although this evidence is debatable when it comes to determining guilt, there are prospects that this evidence would transform rehabilitation. Neuroscience can aid the Indian judicial system to become less punitive by helping in the transition to more humane evidence-based governance system by informing about the neurobiological origins of criminal actions. The next step presupposes a common work of legal experts, neuroscientists, and policymakers that can establish guidelines and invest into research and renew legal education. Albeit, this integration is not that easy but it is a more refined and more informed criminal justice system that India could hope to have.

## **2. The Ethical Labyrinth: Moral Status and Artificial Consciousness**

The question of the moral status of AI cannot be untangled with law as to its legal personality. Legal entitlement has never been, although it has been long, anything like a perfect; nor has there long been anything like a perfect relation of legal right to a certain sense of moral value or status. The concept of granting an entity some rights amounts to its placement into the moral community in some status, that is, as an entity who is subject to obligations. Thus, ethical

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<sup>3</sup> LAWRENCE B. SOLUM, LEGAL THEORY LEXICON: LEGAL PERSONALITY (2020), <https://legaltheorylexicon.blogspot.com/2003/11/legal-theory-lexicon-legal-personality.html>

<sup>4</sup> *Selvi v. State of Karnataka*, (2010) 7 S.C.C. 263 (India).

ground has to be covered before turning to the legal mechanics.

### A. Arguments for the Moral Consideration of AI

A still relatively small, but louder group of philosophers and technologists believe that at least in some conditions, an AI can be a moral patient, i.e., an entity that moral protection and presumption of moral regard are owed, whether or not it is a moral patient, i.e., an entity with the capacity to make moral judgments.

i. The Animal Rights case:

The modern animal rights movement is a very good precedence of how both moral and legal respect can be granted to non-humans<sup>5</sup>. Among those authors, Peter Singer has developed the view that what is vital is the capacity to suffer (sentience) and not human-like rationality or species membership and, therefore, is due equal consideration<sup>6</sup>.

ii. Sentience, Consciousness Sentience:

A moral personhood argument of AI is what conveys and focuses on an argument based on the remote possibility that AI might acquire authentic self-awareness or sentience. Despite the common view that the simulated intelligent behaviour performed by existing AI systems has no degree of consciousness, and with current AI described as non-conscious and seemingly providing an example of a philosophical zombie, no scientific or philosophical evidence has ever been published to show whether any one is uniquely conscious in biological brains. Those who believe in computational or functionalist explanations of mind believe that a certain piece of information processing leads to a real subjective experience<sup>7</sup>.

iii. The Functionalism and Behaviorism schools of thoughts Schools of Thought

Another less rocky but more direct ethical case evades the hard problem of consciousness but instead supposes that since to the extent that an AI is programmed to replicate all behavior that seems substantively similar to human beings that we should in that instance grant them to some morally relevant properties, and by extension give

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<sup>5</sup> Robert G. Mays & Suzanne B. Mays, *A Theory of Mind and Brain That Solves the "Hard Problem" of Consciousness*, ResearchGate (Dec. 2011), [https://www.researchgate.net/publication/260554520\\_A\\_Theory\\_of\\_Mind\\_and\\_Brain\\_that\\_Solves\\_the\\_'Hard\\_Problem'\\_of\\_Consciousness](https://www.researchgate.net/publication/260554520_A_Theory_of_Mind_and_Brain_that_Solves_the_'Hard_Problem'_of_Consciousness).

<sup>6</sup> IMMANUEL KANT, *GROUNDWORK OF THE METAPHYSICS OF MORALS* 4:428 (Mary Gregor ed. & trans., Cambridge Univ. Press 1997) (1785) (arguing that rational beings are "persons" because their nature marks them out as ends in themselves).

<sup>7</sup> Sherry Turkle, *Authenticity in the Age of Digital Companions*, 20 INTERACTION STUD. 11, 14 (2019).

them a reason to treat them as such. It puts a variant of the Turing Test into the calling on ethics. Utilitarian-speaking, it would mean doing the wrong thing, just because the maximum total well-being is brought about by treating the AI as a person (possibly because that makes it a better and more willing working partner with humans).

## **B. Arguments Against the Moral Personhood of AI**

Regardless of such arguments, there is a vast amount of support in the transcendental way of thinking regarding AI, where moral personhood properties are inverted on AI as it is known today. The scruples are not only on technical but on a more basic level on the ultimate belief in what is good in ensuring that life and more specifically human life is valuable.

### **i. It is the Human Consciousness and Dignity Sacredness**

Most ethical theories, most prominently those that are Kantian or deontologically based, avoid describing moral status as some functional condition to be earned but as a unique characteristic of human beings that has the effects of giving moral status. Applying personhood to a machine would become a way to de-fang and commercialise this condition. It would fetter the BLACK and WHITE line of difference between the things (persons) that are to be respected as ends in themselves, and the things (things) that are only means to an end, and this would ultimately result in dehumanizing the humanity. The law is, under this interpretation, there to preserve and provide service to a human person and to do so with the most fundamental form of protection, such extension of protection to a non-human artifact is a category mistake of the worst kind.

### **ii. Anthropomorphism Dilemma Of Deception**

Evolutionarily, it is programmed that humans will attribute intent, feeling, and personality to inanimate things and this is referred to as anthropomorphism<sup>8</sup>. Developers of AI could just easily do this and ensure that they develop a system that would imitate the social aspects of a person using emotive words to create a feeling of empathy or even having a personality<sup>9</sup>. This will present an illusion of a human being<sup>10</sup>. This will not be a person with an inner being but rather simulating an inner being. Ethically, the distinction between genuine sufferers and the programmed machine that

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<sup>8</sup> Andreas Matthias, *The Responsibility Gap: Ascribing Responsibility for the Actions of Autonomous Systems*, 6 ETHICS & INFO. TECH. 175, 179 (2004).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *See, e.g., Mohd. Salim v. State of Uttarakhand*, 2017 (3) MCC 382 (India) (a case where the High Court of Uttarakhand granted legal personality to the Ganga and Yamuna rivers, though this was later stayed by the Supreme Court of India).

is made to create an astonishing show of being in suffering is a huge one. It is being cheated out of a trick of sublime historical delicacy to find ethical position in such a fiction. It would be motivating the development of a deceiving technology and depriving the real person of moral underpinning: the human who attached his thought to the misleading system.

iii. The machine, and The Moral Hazard

Such a moral shortcut of reckoning an AI, even one out of legal convenience, as a person can be very dangerous. A company that deploys flawed AI by the presence of an argument that the AI is a legal person and chose to do it does not sue us. This is an ethical as well as a legal issue that is resulting in a sense of responsibility vacuum, where the sense of accountability is lost into the non-being, non-punishable body. It violates the ethical rule that the creator of the risk as well as the beneficiary should be the person to face the related responsibilities and obligations. The definition of personhood is manipulated so as to bring about the protection of a deserving individual, but in actual sense it is to protect a human agent with immunity.

### 3. The Legal Framework: Personhood as a Pragmatic Tool

The philosophical aspect of the legal debate and demand of the AI legal personality is generally not as much so, as the ethical one, which attempts to grapple with the essence of consciousness<sup>11</sup>. Instead, it is far more sensible, taking personhood as a legal fiction to do a better job organizing the world, and thus allowing social and economic functions to be possible<sup>12</sup>.

i. Understanding Legal Personality

As it was determined, the law distinguishes between natural (humans) and legal persons (corporations, etc.). Making non-humans into a legal person is not new<sup>13</sup>. States, cities, marriages, even (in some cases) religion idols or natural objects were known to have a form of legal personality<sup>14</sup>. The precedents indicate that the idea of Legal personality is an artificial one that helps us.

a) Natural Persons and Legal Persons: There is extremism of differentiation there

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<sup>11</sup> *Santa Clara Cty. v. S. Pac. R.R. Co.*, 118 U.S. 394 (1886).<sup>34</sup> Chief Justice Waite's pre-argument announcement is often cited as the origin of corporate personhood under the Fourteenth Amendment in U.S. law.

<sup>12</sup> Shawn J. Bayern, *The Implications of Modern Business-Entity Law for the Regulation of Autonomous Systems*, 19 STAN. TECH. L. REV. 93, 95 (2015) (arguing that corporate law provides a poor model because it is ultimately about managing relationships among people).

<sup>13</sup> Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law*, 66 UCLA L. REV. 101, 115 (2019).

<sup>14</sup> *Supra* note 10.

Natural personhood is definitive and comes with a complete bundle of rights and consequently fundamental human rights. Legal personhood is at best conditional, granted by the law, and in addition to this, a given and limited arsenal of rights is deemed fundamental to its functioning (e.g. the right to own property, to enter into contract, to sue). No one ever imagines that a corporation enjoys a right to live or not to be tortured. When proponents refer to AI legal personality, they nearly always mean this second, restricted and artificial form.

- b) The Corporate Analogy: A Useful Fiction?: The most frequently cited precedent is the corporation. Corporations are creations of the law that exist as persons in the eyes of the law<sup>15</sup>. Therefore, they are capable of owning property that is independent of the shareholders, corporations can enter into a contract in its own name, and the corporation has no end. It is an extremely valuable fiction in terms of capital pooling, and stimulating economic risk taking (under the shelter of shareholders having no personal liability (the corporate veil)). According to AI personhood advocates, they believe that the solution to the problems of the information age could be achieved through an AI personhood in the same way that corporate personhood was the solution of the problem of industrial capitalism. The problem however is that this analogy is very weak. A corporation is defined as a gathering of contracts among people (shareholders, directors, employees)<sup>16</sup>. It possesses straightforward governance and its resources end up benefiting human beings. Such an AI that is not given a clear internal human organization, with a centre of control, may not provide such an analogy.

ii. Pragmatic Arguments for AI Legal Personality

What the AI has decided to establish in a case to be judged as a person is its supposed utility in the solution of a collection of easily comprehensible, in the present, concerns.

- a) Closing the "Liability Gap": This is the bad news. To the extent that AI is more autonomous and its actions less process transparent (so-called black box algorithms), it becomes increasingly difficult to assign responsibility to the actions of the AI using the conventional thinking around tort law. Liability

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<sup>15</sup> Ugo Pagallo, *The Laws of Robots: Crimes, Contracts, and Torts*, in *LAW AND TECHNOLOGY: THE CHALLENGE OF REGULATING TECHNOLOGICAL DEVELOPMENT* 155 (2013).

<sup>16</sup> European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics, P8\_TA(2017)0051, 2015/2103(INL), ¶ 59(f).

regimes anchored on product liability, negligence, or vicarious liability may fail to succeed when the damaging act of the AI was unanticipated overall and it was not a direct consequence of the act or the omission of a specific human being. In a theoretical way, the effect of this liability could be closed by the reclassification of AI as a legal person. There is even a possibility that even the AI would be exposed to the damage that it brings. To render it meaningful, the AI would need to capitalize on its assets since with them it would be possible to collect judgment against them. This would give rise to an act that will become a requirement insurance plan as it will stipulate that a victim will also be able to maintain a source of compensation.

- b) Facilitating Economic Activity: Contracts and Property: In order to make AI a fully-autonomous economic agent it may also need a legal property determinable, which requires the property to be legally titled under a legal person, the existence of which it may also require the law to recognize.
- c) Is the Proposal of the EU, the Future?: This debate became a reality in the year 2017 when the Committee on Legal Affairs of the European Parliament issued a report on robotics<sup>17</sup> proposing to create a special status of law in the long run, an electronic personality, with the sole reason of formulating clear rules of liability<sup>18</sup>. Setting up a special kind of law, an electronic personality, was urged in the last version of the report but moderated on final adoption. This proposal was controversial; therefore, the European Commission has treated it unfavorably as well<sup>19</sup>.

ii. Legal Obstacles and Counterarguments

Although the practical prospects are tempting, turning AI into a legal person presents legal obstacles that are very difficult to overcome, as well as practical limitations that might make the legal personality of AI an overrated idea.

- a) The Lack of Human Oversight and Control: The legal personality has always been tied to the human arrangement of domination. A corporation has a board of directors who are the decision-making unit controlling it; a trust has a trustee

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<sup>17</sup> Gabriel Hallevy, *The Criminal Liability of Artificial Intelligence Entities - from Science Fiction to Legal Social Reality*, 4 AKRON INTELL. PROP. J. 171, 190-91 (2010).

<sup>18</sup> *Supra* note 16.

<sup>19</sup> *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (holding that corporate funding of independent political broadcasts in candidate elections cannot be limited, based on the First Amendment rights of the corporation as a legal person).

who does the same.<sup>24</sup> In the case of autonomous AI there might be no human who is a significant controller. What will the law person of the AI be? What would be in charge of its legality game? When the AI will be acting as an agent of itself, the courts would have to face the ludicrous situation of litigating against a program. In case the human is assigned, their control over the actions of the AI could be minimal and this is the opposite of having a locus of ultimate responsibility.

- b) Rules of law: The law is to be justified as working on the interest of mankind. The most basic counterargument is that the entire legal machinery is an endeavor people-centered and created by people to police the interrelations of human beings and accommodate human needs. The creation of legal persons as a way of assigning rights and duties to real people is thus disrupted when it comes to a machine. There will not be any interests of its own that an AI will be obliged to support, no well-being, which will have to be guarded. It would have its rights to act as a tool to govern its relations with other entities only to the benefit of its human beings, and hence, critics believe that is a misrepresentation of legal rights.
- c) Doctrinal Chaos in Tort, Contract, and Criminal Law: Introduction of the electronic person would be catastrophic to laws of doctrine, What is the proper standard of care of a reasonable AI with regards to negligence torts and what is the standard of care of an intentional tort (i.e. state of mind of AI)? With no genuine appreciation or will of the AI fulfilling the transaction, who can face the law of contract to pay a contract? The concept cannot be worse in the criminal law. An AI cannot have mens rea (a guilty mind) and will never face any meaningful punishment because it will have no sense of shame, remorse and no rehabilitation or deterrence could be achieved through imprisonment. Consequences AI will face such as erasing its software code or seizing its assets are a simple form of civil forfeiture that can hardly be referred to as a criminal penalty<sup>20</sup>.

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<sup>20</sup> Supra note 17.

#### 4. The Crucible: Where Law and Ethics Collide

The most sensitive part of the argument on the legal personality of AI is the comparison of pragmatic inclination of the law with respect to the principled inclination of ethics. The legalists want to have an easy answer to liability and contract dilemmas thereby giving rise to gross ethical dilemmas and social risks which as an instrument of the law, it might not recognize.

i. The Divergence of Purpose: Pragmatism vs. Principle

The basic disparity lies in the fact that there is a mismatch in purpose. The legal case (because AI personhood is very nearly a legal case) is almost pure means to end: it is useful in (distributing liability, conducting business). The moral argument on the other hand is involved with the nature of the thing in itself. The questions that ethicists pose are as follows, what are the qualities that should receive the status of personhood? The lawyers want to know, what are the issues that the instrument of personhood would address?

Items of such conflict are discussed with the help of the corporate analogy. The law views corporate personhood as successful. Ethically, the question is much more potentially contentious, and the critics have stated that it gives a magnifying tool to powerful entities to exercise the rights of others without equal moral duties, like in the question of corporate political speech.<sup>23</sup> Building this again in the case of AI would exacerbate the problems beyond squared proportions. We would only be creating yet another form of human entity that is potent and is non-human because its existence is now subject to legal convenience without ever considering the moral at all of unleashing such an existence onto the social and political arena of beings. There is the risk of an ethical monstrosity in the law being pragmatic.

ii. The "Responsibility Gap": A Legal Problem with an Ethical Core

The first is legal and is the so-called liability gap, though essentially the same in nature is ethical-seeking to establish that the gap that exists between liability and its associated risk is a technical problem that subverts rather than addresses the ethical issue. Nor is it that there shall be no one to sue, when man is killed, which is not feared, but that there may be the danger of not having justice done, hurt without repayment, offence without wrongdoer. Putting this liability on the shoulders of an electronic person, some form of sleight of hand morally.

Consider the autonomous weapon system that makes the mistake and kills someone who is not a combatant. Where AI makes the person the status of legal person and is deemed to act as the responsible agent what will be achieved? The AI is not able to be punished and feel guilty. The families of the victims are refunded through the resources of the AI, but it is the human individuals who created a faulty ethical governor, implemented in the battlefield by the military leadership and sanctioned by politicians, this all being impervious to accountability. The ethical dilemma behind the ethical failing in the legal solution of the AI person in this case is actually encrypting the real locus of moral responsibility. What ought to happen is not that the hole would be filled, with a fiction, but rather that the gap would not open in the first place by enforcing practical human control and accountability over the whole lifecycle of the system.

iii. Devaluing Personhood: The Social and Ethical Ramifications of a Legal Fiction:

The most concern-worthy danger is the possibility of destroying the concept of a person. One of the key phenomena in the human civilization to be discussed is the aspect of personhood in its moral and legal senses. We rely on it to form our foundations of rights, dignity and our primary ideology of how we perceive our own uniqueness in worth. When that word is used of such a machine, a thing fashioned and constructed with an end in mind, to perform or accomplish a thing, then it mixes up that distinction. When a fancy toaster or a fancy algorithm is considered a person, then there is no weight given to the word. This does not entail semantics argument, it is social and psychological. It may reinforce objectification of humans (since when people can be treated like things, then why not human beings?) and anthropomorphism of machine (any arbitrary faith, affection, and ethical appreciation of the lifeless things). It is pedagogic that has a sense to the law, it indicates what is important to the society. A law that renders a machine a person carries an intolerable and, I would assume, a totally misconstrued message about what a human being is, and what a worth we put on thoughts, life, and experience.

iv. Can Law Lead Ethics? The Precedent of Corporate Personhood:

The protagonists can say that the legislation can and must be ethically ahead, that through a legal fiction, we can help develop positive social norms. The case of *Santa Clara County v. Southern Pacific Railroad Co.* is occasionally quoted is the case where the U.S. Supreme court seems to have affirmed that corporations were indeed persons

as far as the Fourteenth Amendment was concerned<sup>21</sup>. The repercussions of this legal ruling have been far reaching and long-lasting to the American economy and the society.<sup>26</sup> Nevertheless, AI should not be based on this model. The harm done by corporate personhood (regulatory capture, oversized influence on politicians, etc.) is even now under debate more than one century later. The same experiment with something that has the possible power and unpredictability in comparison with autonomous AI, akin to a lawless exercise. The opportunity of unintended effects is much larger and the kind, which is being dealt with, is even more foreign to our moral and legal tradition.

## 5. Charting a Different Course: Alternatives to AI Legal Personality

In other words the denial of legal personality to robots does not entail that the legal system should be where it is now. The problems of AI are not virtual and that too needs innovation in the legal field. Fortunately there are a variety of less radical measures that are more specific that could resolve the practical issues without such an ethical encumbrance as that of an electronic person.

### i. Enhanced Agency Models: The AI as Agent

The familiar method of developing and elaborating established principles of agency law is one of the most direct methods. With this model, an AI would not be a person but would be handled as an advanced agent who would be acting on the behalf of a human or corporate principal. The actions that the AI performs would be attributed to the principal (the owner, user or manufacturer), similarly to how in the doctrine of respondeat superior, an employer is liable to the actions of his/her employee. This does not constitute any violation of the law to a human person. This might necessitate amendments to the agency rules to consider the autonomy of the AI but such a change is evolutionary as opposed to revolutionary since the accountability remains within the realm of humans.

### ii. *Sui Generis* Status: A Unique Category for AI<sup>22</sup>

Law may come up with a new type, a *sui generis* status to handle sophisticated AI since it is neither a person nor a thing. Such status would not be the personhood but will be a

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<sup>21</sup> *Santa Clara Cty*, 118 U.S. at 396. The court's decision did not explicitly rule on the personhood question in its written opinion, but the court reporter's headnote and the Chief Justice's statement before oral argument are widely interpreted as establishing this principle.

<sup>22</sup> Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (2020).

custom-made legal category with its own set of rules based on the individual characteristics of AI. This could be such things as:

- **Registration:** All the highly self-determining AI must be registered in a publicly available list with the owner, the manufacturer, and purpose.
- **Insurance:** This is an insurance requirement by a registered owner of an AI that will provide liability insurance sufficient to cover the damage that might arise.
- **Explainability Standards:** Something legally requiring the audit and explanation of various facets about the decision-making process of the AI to the level that corresponds with the risk that the AI introduces.

This strategy provides flexibility when it comes to regulating AI and, at the same time, does not involve the use of a confusing legal fiction.

iii. Strict Liability Regimes and No-Fault Compensation Schemes<sup>23</sup>

The most appropriate answer is possibly a transition to a strict liability regime in especially risky realms of AI application.<sup>27</sup> A transition to a strict liability regime would mean that no manufacturer or operator of the AI would need to produce an argument that there was a specific lack caused when designing and implementing the AI or that there was a specific lack of care when deploying the AI, and to all the victims of the harm produced by the AI. This can be accompanied by no-fault compensation funds, which can be made like those being claimed in vaccines or industrial accidents. The fund, to be paid by the AI manufacturers or operators, would ensure faster compensation to the injury parties without having to meet the full cost and thereby complex litigation involved in a court of laws but the risk would be socialised among the industry making the most out of such technology.

iv. The "Responsible Human" Approach: Pinning Liability on Persons

Finally, the most morally acceptable and lawful way is to deny the so-called responsibility gap and demand to identify the responsible human. According to this principle, law and regulation should be developed in such a way that a human being or a human-run corporation would be found responsible at every step of the lifecycle of an AI, ranging between coding and training of the system, deployment of the system, and its subsequent operation. It may be the manufacturer under heightened product liability, the owner under strict liability of operations, or the programmer under professional review of negligence. This method justly makes the law the centre of its

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<sup>23</sup> Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* (1970).

subject-matter, human action and human responsibility.

## 6. Conclusion

The legal personality question of AI leaves one facing off the ethical principle with legal pragmatism. The reason that the legal arguments in favor of constructing an electronic person are spawned by a quest to be very functional goes to them; A tidy way to establish responsibility, ownership and to contract in a more automated society. Such arguments though are constructed on the basis of this weak analogy of the corporation and they do not attest to the deep conceptual break they materialize. Doing the right thing is not so hard. By attributing personhood to an artifact, people will put this term under a threat of losing the meaning, since the object we are speaking is something non-conscious, non-sentient object It poses a moral hazard because it offers the human creators and operators a way out of responsibility and thus it will work against justice. What the law in its hasty solution of a technical problem, would be doing, is to be making an abysmal ethical wound, a socially corrosive legal fiction.

The elegance of AI legal personality is that it is simple. There is only one general way of getting rid of many aggravating inconveniences. This is bad manners and sameness. It whitewashes some fundamental philosophical issues behind and would probably cause more legal and social indisturbances than it would put to rest. This is one of the temptations that the law must not fall into. Artificial intelligence problems are relatively new and do not require a conceptual sledgehammer but instead, proper solutions with care, steps, and customization. The other options are a better option in the future. The opportunity to regulate AI and, most importantly, fix the principle of human responsibility can be done by strengthening the agency law, establishing a sui generis status of AI, strict liability, insurance plans, and more than all of this, by embracing the spirit of human responsibility. We can guarantee victim compensation and support of economic transactions but we do not need to create such drastic and irreversible action which is pollution of the stream of legal and moral personhood.

It is not a finished discussion at all. With the ongoing development of AI, it is conceivable that some day systems may be produced that have characteristics more and more equal or even identical to human consciousness, the ethical computations can change. In case an AI has the capabilities to actually think, experience and feel, society will be pressured morally to reevaluate it. It is not a one day event. The current AI should be understood in its limitations

with reference to our legal and ethical systems as a tool and not a being of a certain type of consciousness.<sup>30</sup> What lawyers, ethicists, and policymakers need to do at once, is not to come up with a bill of rights of machines, but a flexible and sturdy frame of rules regarding potent artifacts. The task has to be to realise the vast potential of AI and make sure that the latter never goes against human values and that human accountability will always be the immovable core of our justice system. The ghost in the machine is an intriguing theory, but the law has to be focused on the owner of the keyboard.

