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THE CHALLENGE OF LAW AFTER POST-HUMANITY: ROBOTICS LAW

Abstract: The present article focus on the term “legal entity”, seeking to investigate the necessary elements for a being to be granted with such attribute. Accordingly, it is noticed that several legal system in the world, including Brazilian, Portuguese and Spanish, open their doors to the comprehension that not only humans may be considered legal persons, but also other juridical and natural entities. This way, the concept of person does not blend with that of a human being, for instance, the unborn, which are not yet considered to be a person, but, otherwise, a potential virtual man, bearer of certain personality rights. In this scenario, it is necessary to examine what are the legal elements required for a man to be considered a subject, and not an object, of rights. This will imply in a natural consequence, in the future, with the upcoming of technological singularity, when machines will probably reach a level of intelligence unattainable by a human being. This event will enable the rise of machines much more capable than the entire human race, probably causing the outcast of the anthropocentric paradigm. When this event occurs, there will be an open space for a post-human era, which will dissolve cultural concepts that have been long rooted within the present society. Thus, redefining notions such as human life, the legal system that governs it, and which kind of persons will it be directed to rule.

Key words: *Legal Entity, Post-Humanity; Technologic Singularity; Computing; Robotics Rights; Legal Person; Artificial Intelligence*

Thirteen years ago was the first time I published about robotics law and everything on the theme seemed to be a forecast from a distant reality. When I made my first speeches on the subject, people watching used to laugh, whisper around, and even leave the auditoriums. However, as the years went by I have seen a notable change in this behavior. It does not matter if I am in Brazil or Hong Kong, people now pays attention.

One may ask why such a radical change of minds happened in such a short amount of time. What I have been saying did not change. My thesis, that, in some years notice, there may exist a new person in the legal scenario, is the same.

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The proposal presented by robotics law, in its current stage, is an attempt to invert common legal logic and discuss solutions to a problem before it presents itself, most certainly because there may be no opportunity to open a debate when it finally arise.

Robotics have attracted increasing attention of global press over the last decade. People are accepting the incremental presence of robots in our lives, which opens room for reception of my argument: the number and importance of robots will reach a point that a legal change will be essential for society's own benefit.

The law of accelerating returns represents the core of robotics law theory, which states that technological and biological evolution happens in geometrical progression. Therefore, not only the amount of newsworthy facts, but also the change on of their nature, endows with increasing speed and are pointing towards the approach of machine and men.

Reality today stretches beyond fiction could ever imagine. Remember that it took less than seventy years between the first airplane flight and the arrival of a man on the Moon, and that is merely an average human lifespan!

To reach the current stage of development some seeds were sown centuries ago. The three narcissistic injuries suffered by humankind led the way in the scientific field.

Nicolaus Copernicus and Galileo Galilei imposed the first of them with their heliocentric theory, which displaced Earth from the center of the Universe and, thus, relegated men to an insignificant role in cosmic perspective.

Then came Darwin, who revealed that the origin of humankind was not divine, but the result of a long evolutionary process. Men lost their position as the sons of God and approached the primates, consequently leveling down to the same degree as any other living creature.

Sigmund Freud caused the third narcissistic injury. Until him, humankind still considered itself as being superior as other species because people still thought they were always acting through reason. The fatal blow came with the awareness that what really governs men is our unconscious. Even though this does not transform men in simple-minded and irrational beings, it serves to expose the exact length and limits of human rationality.

Therefore, in reality, robotics law stands on ancient premises; after all, nothing comes from nothing.

However, there will not be a smooth transition, a last chance to discuss technological singularity or a close moment before the self-aware robot finally emerge. Thus, it will be impossible to establish, at that point, the rights that these robots will deserve and demand, especially when our only model is the law created by and for *Homo sapiens*.

If predictions materialize, in a second it will be the "before technological singularity", and without warning it will happen, and we will start living the "post humanity", which implies in the overcoming of human being and all of its culture and history by a non-human protagonist. After that, humankind will be buried in

the past and the new beings ruling, probably the self-conscious robots will represent the present and the future.

Therefore, if laws and rights are products of human culture, with the end of its supremacy, the future trend is their suppression by another. Moreover, when this new culture arises, it may not relate or hold any consideration with ours. Hence, that is the reason why law should anticipate the facts as far as possible, while there is still the possibility of prior discussion. Nevertheless, time is short.

The complexity of the theme does not allow dealing with it without approaching other branches of human knowledge.

Overseeing philosophical concepts, one may inquire what being human really means, which traits build the notion of what a person is, and how does law grasp these notions to build the concept of legal personality.

In addition, it is necessary to pay a visit to Freudian and Lacanian psychoanalytic concepts of consciousness, id, ego, superego and mostly unconscious, relating them, by analogy, when treating with computers, software and operational systems. That way, consciousness can be seen as the application software and unconscious as the operational system.

Darwin's evolutionary theory exposes elements that relate with the law of accelerating returns, applicable to both biological and technological evolution. This law strives to unite order and chaos knowledge with Moore's Law.

Now, after all, what is Robotics law? Not venturing to define it in a definitive way, we can say that it is the branch of law that threatens specifically with robots rights and obligations. However, why should a branch of law proper to robots exist?

The first point worth mentioning is the suitability of conceding rights to non-humans. Scholars who study animal rights defend this possibility, but remain attached to a bio centric paradigm.

How to proceed with this reflection? My argument lies on the following statement: to understand if post-technological singularity robots may be subject of rights, we have first to understand what valued to place humans in this category.

It is clear that law, as widely considered, adopts an anthropocentric paradigm.

The first distinction separates inanimate and animated beings, which establishes the bio centric paradigm. Within this category, animals are distinguished from vegetables, creating the animal paradigm. Among animals, men occupy a unique and central position, thus, creating a man-centered paradigm. What makes humans so unique? Would it be intelligence, language, consciousness, unconscious, the capacity to feel or to think, or would it be some other characteristic? I do not believe that there is only one way to answer this question.

It seems to me that human intelligence and rationality was what allowed law to develop. Once humans recognized themselves as being different from other animals, they made use of their intelligence and language, building their own culture, which embodies law.

Standardly, in the Western world, law works with two basic categories: those who are subjects and those who are objects of rights. Persons, both natural and ju-

ridical, compose the first fist category, as all other things and beings make part of the second.

The concept of person was born tied to the idea of *persona*, a mask used in ancient Rome, and object, and searching what is the essence of a person was a matter of inquiry from the pre-Socratics to contemporary philosophers, and none of them ever reached a final response to this particular question. Nor me, of course.

Thus, I comprehend that the legal concept of being a person – subject of legal rights – has not always been necessary tied to the human condition. Historically, there have been humans with larger, smaller or even no legal personality. This reflected in the laws created in different times and places: slaves, women, Jews in Nazi Germany, etc. Being human has never been a guarantee that someone will have a legal personality. That is because a person does not randomly become a subject of rights by force of a natural event, this condition is only granted by a legal event. Proof lays in Brazil and Portugal's former civil codes, that both referred to the legal personality of the **human** person. In Spain, until 2011, a baby was born as a human, but only acquired legal personality 24 hours after birth.

Some questions may now arise, such as: what percentage of *Homo sapiens* one must have to be currently considered as a person? For example, a human / chimp hybrid, if possible, given the similarities held between species, would be considered a person? What about a semi cyborg?

It is clear that the concepts of person and legal personality are granted, in continental European system, by force of positive laws, which determines the characteristics that one need to have to be as such considered.

From these considerations, one may say that – inversely – it seems reasonable to understand that a being, ensured with humane characteristics, will also need to have similar legal treatment. Add this to the fact that Brazilian, Portuguese and Spanish, Civil Codes, between others, withdrew the word “human” from their definition of what a person is, introducing legal entities, and certainly incorporating robots after technological singularity, in their concept of person. In addition, similar reasoning may also be reached under Common Law legal tradition.

After technological singularity, we will have machines provided with awareness, feelings, and even the ability to use language, and that maybe will outsmart humans.

If it is true that the accelerated returns law applies both to technological and biological systems, there remains a possibility for humankind to maintain its supremacy. In reality, the speed of technological development is thousands of times faster than biological development, but, in its own turn, evolution did not stop for humankind.

We are cyborgs since we used the first tomahawk. Augmented reality has always been part of our lives and today we use tools and resources, starting from a simple pair of glasses, until cybernetic prostheses, to enhance our capabilities.

Human cyborgization tends to increase, expanding human capacity and longevity.

If these developments are applied, maybe in the future the speed gap between technological and biological developments may reduce, at least maintaining the cur-

rent discrepancy between human and robotic intellectual capacities. Thus, technological singularity will not happen. Humans will hit it first, or even humans and robots may reach it at a same time, in a way, that post-humanity will never occur.

As for intelligence, the concept used in my book relates to speed in problem solving. That said, we could not consider the evolutionary biological process as clever, bearing in mind that it took billions of years to spring nowadays species. It may be wise, but definitely not smart. Therefore, from a non-intelligent process may arise something intelligent and, thus, intelligent machines may rise from non-intelligent robots.

Anyway, being smart is not an attribute, because one may only comprehend intelligence from the results of its manifestation in the world. It is impossible to know if someone is smart just by looking at them.

For Robots be considered intelligent, they need to model and emulate intelligence. They will have feelings and consciousness if they emulate feelings and consciousness, and so on.

Will this robot, stronger and smarter than us, agree subordination to our legal system? Will it accept being a mere object of rights? Or will it want the leading part? Our laws will be able to contemplate this new reality? Will it be necessary to create rights and laws specifically designed for robots? Will they create their own laws and rights? Will they submit us to their legal system?

These and other questions are yet to be answered. Ruala.

