To Preserve the Coherence of Our Legal System, Advanced AI Systems May Need a Legal Identity

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Introduction

Today, artificial intelligence (AI) systems are more agentic -- more autonomous and more unpredictable -- than ever, but the law is struggling to keep up. Major recent advances in the field of general purpose AI, or "AI that can perform a wide variety of tasks,"[1] including agentic AI, or "systems which can autonomously plan and act to achieve goals with little or no human oversight,"[2] already pose risks to society.[3] The law distinguishes between the subjects of the law, who hold rights and duties, and the objects of the law, which do not. It is therefore ill-equipped to regulate agentic AI, which are currently classified as objects under the law and cannot be the holders of rights and duties (or, in the eyes of the law, the causes of harms). Yet agentic AI can take action on the world directly (e.g., fully autonomous vehicles, AI personal assistants) and thus can, in a clear sense, cause harms. AI systems thus threaten the coherence of any legal system (including those of the U.S., Europe and Canada) that is based on a sharp binary between objects and subjects, where only the latter can cause harms or otherwise evince markers of agency.[4]

This decoherence in the law is likely to drastically worsen as the field progresses to create smart autonomous robots,[5] (robots that are integrated with AI), and more generally, increasingly advanced AI systems that can operate independently of human direction and demonstrate general intelligence on a par with (though not necessarily identical to) humans.[6] We can only speculate about how these developments will unfold, but many models point to additional problems for the coherence of the legal system both because of the likely development of systems capable of a wider range of direct actions on the physical world, and of systems (especially robots) that *appear*

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[1] AI Action Summit, "International AI Safety Report: The International Scientific Report on the Safety of Advanced AI" (January 2025) 10. As lawyer Ryan Calo puts it, "(t)here is no straightforward, consensus definition of artificial intelligence," so this article will adopt the definition used by the AI Action Summit. Calo, Ryan, Artificial Intelligence Policy: A Primer and Roadmap (August 8, 2017).

[2] AI Action Summit, Forward, 8.

[3] AI Action Summit 144-148. See also Gregory C. Allen and Georgia Adamson The AI Safety Institute International Network: Next Steps and Recommendations, Center for Strategic and International Studies (30 October 2024) at https://www.csis.org/analysis/ai-safety-institute-international-network-next-steps-and-recommendations

[4] Note that in medieval times in Europe, objects and animals that caused harm were sometimes thought to contain evil spirts were granted subject status under the principle of *deodand*.

[5] European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)), para 1. See for example the robotics startup FigureAI at https://www.figure.ai/master-plan (accessed February 2025).

[6] See for example the definition provided by Google at https://cloud.google.com/discover/what-is-artificial-general-intelligence.

even more human-like, whether or not they in fact *are* more human-like, eliciting anthropomorphic reactions from large numbers of people.

This article will discuss the nature and extent of this near-future risk of decoherence to the legal system – especially those risks that derive from maintaining the status quo classification of all agentic AI systems as objects rather than subjects, and will explore two possible solutions: 1) granting ("fictional") *legal personhood* to (suitably advanced, suitably individuated) AI systems such that they would be capable of holding rights and duties under the law, roughly as corporations do, and 2) granting a ("non-fictional") *legal identity*[7] to (suitably advanced, suitably individuated) AI systems,[8] recognizing them as entities "who exist in society."[9] While the former approach has received more attention in recent debates, and is the subject of considerable controversy,[10] we will argue here that the latter is preferable on the whole. The legal personhood model would resolve some aspects of the conceptual decoherence mentioned above, but would create others, and in crucial respects the solutions it provides would not be durable. The legal identity approach will do more to i) ensure the overall coherence of the legal system, ii) resolve conflicts of law between jurisdictions, iii) provide advanced AI systems with long term and durable rights and duties under the law, and iv) address public concerns over robot rights.

(2) Agency and Artificial Intelligence

There has long been awareness within the legal community that agentic AI might strain the concepts underpinning multiple areas of law. It is important to note, however, that there is no agreed upon definition of 'agency' under the law. Existing definitions in legal scholarship are often vague and based on circular logic,[11] because agency is something only humans, as the subjects of the law, are understood to have, so a detailed definition has never seemed necessary to courts. The lack of a clear definition or agreed-upon benchmarks makes it difficult to measure the progress, if any, AI is making towards greater agency, but it is clear that current AI is already operating somewhat unpredictably by, for example, giving random and made-up answers to questions (hallucinating). There is also a hesitation among AI experts to ascribe human-like agency to AI or to saying that AI is making decisions or choices.

The term 'agency' also has different meanings to different expert communities. In machine learning, there is one way of speaking in which any system who learns a function that ranks "options" is an "agent" - reinforcement learning and generative AI systems then qualify, more or less automatically.

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[7] Article 6 of the Universal Declaration of Human Rights (UDHR) states that "Everyone has the right to recognition everywhere as a person before the law," while

[8] UN Sustainable Development Goal 16.9.

[9] UNDP, Legal Identity, at https://www.undp.org/governance/legal-identity.

[10] Politico, Europe Divided Over Robot 'Personhood' at https://www.politico.eu/article/europe-divided-over-robot-ai-artificial-intelligence-personhood/.

[11] Ingvild Bod, "Human-Machine Interaction and Human Agency in the Military Domain" Centre for International Governance Innovation," Policy Brief No. 193 — January 2025, citing to Ahearn 2001, 112, Hildebrandt 2011, 6.

Such a system, if connected to an output device like an audio speaker, a web browser or a robotic arm, is capable of causing changes in the world on the basis of its ranking or "policy".

In philosophy and law, 'agency' has a more loaded meaning, being associated with free will and the capacity to bear moral responsibility for one's actions, and in law especially, the capacity to consent. Philosophers debate over whether the machine learning theorist's minimal notion of agency coincides with their own. In law, aspects of both the more minimal and the more robust notion are discernible, depending on the context.

For our purposes, both notions matter. Where relevant, we will use subscripts: an *agentic*$_{ML}$ AI system is a system that counts as agentic in the machine learning theorist's more minimal sense (a system capable of causing changes in the world on the basis of a learned ranking function). An agentic$_{P}$ AI system is a system that counts as agentic even by the more demanding lights of philosophical theory : such systems are moral agents, living in the space of reasons, bearing responsibility for the choices they make.

Crucially, agency$_{ML}$ already leads to real-world outcomes that are causally driven by "rankings" made by AI systems (whether or not we consider these to be *bona fide* decisions or choices). In such cases, the result appears to be an independent choice or decision on the part of the AI: it may not be a result that follows directly from decisions or choices made by the system's creators or owners, and in many cases it is unpredictable, often extremely so, even to its programmers and trainers. There is, then, a key, obvious, intuitive sense in which agentic$_{ML}$ AI systems can cause harms.

But this is inherently problematic for the law because only people can be the subjects of the law, capable of holding rights and duties, and harms can only be attributed to people under law. AI systems, classified as objects, cannot be the subject of any law, which means they cannot hold rights and duties, which means, again, that as far as the law is concerned, they cannot cause harms.[12] When AI acts, the law must therefore find someone (other than the AI) who is responsible, even if this means straining and twisting basic legal concepts of causation. Researchers often refer to this problem of causation as the "responsibility gap,"[13] This gap is likely to worsen as future AI systems develop towards greater and greater agency, whatever form that may take, as well as greater and greater *appearance* of agency in public opinion. AI companies are loath to share their intellectual property, meaning that it is difficult to assess what is occurring when AI appears to be making decisions.[14]

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[12] Lawrence Solum, "Legal Personhood for Artificial Intelligences," 70 N.C. L. Rev. 1231 (1992) 1233.

[13] See for example Matthias, Andreas (2004). The responsibility gap: Ascribing responsibility for the actions of learning automata. Ethics and Information Technology 6 (3):175-183; Lehmann, J., Breuker, J. & Brouwer, B. Causation in AI and Law. Artif Intell Law 12, 279–315 (2004). See also Simmler, M. (2023). Responsibility gap or responsibility shift? The attribution of criminal responsibility in human–machine interaction. Information, Communication & Society, 27(6), 1142–1162; Michael Da Silva, Responsibility Gaps, Volume19, Issue 9-10, 2024.

[14] European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive) Brussels, 28.9.2022 COM(2022) 496 final 2022/0303 (COD). The Directive was intended to harmonize with the AI Act.

We turn now to a discussion of these issues. In the next section (three), we discuss the responsibility gap: conceptual difficulties in making sense of law emerging from the fact that objects cannot cause harms under the law, but in an obvious sense AI systems are the causes of harms. Then in the following section (four) we discuss other sources of decoherence in the law, owing to various ways in which humans may anthropomorphize or humanize AI systems – for example, complications to family law that may arise as individuals seek to marry their AI companions, or complications to employment law that may arise as individuals seek to deputize their AI assistants to act on their behalf.

(3) Classifying AI as Objects Is Already Undermining the Coherence of the Legal System

A survey of current law demonstrates that there is wide agreement in the law that existing AI is an object (and therefore incapable of holding either rights or duties, and therefore incapable of causing harm), a fact which is already causing problems of consistency and coherence. Examples of existing law include Utah law (which, at the time of writing, is the only jurisdiction that has expressly banned AI from being a person),[15] US federal law,[16] President Biden's Executive Order on AI (rescinded by President Trump),[17] the European Union's AI Act (the first comprehensive legislation regulating AI),[18] and Canada's Artificial Intelligence and Data Act (AIDA),[19] to name but a few. Proposed and model regulations also treat AI as an object, such as by the European Artificial Intelligence Board, the Council of Europe Framework Convention on AI, the UK's AI Opportunities Action Plan, and the UN's AI Advisory Body. The Vatican has also released guidelines on AI that classify it as an object.[20] The Texas Attorney General has launched an investigation into AI that may pose a risk to children, classifying AI as a potentially harmful product, which is a kind of object.[21]

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[15] S. B. 149, Artificial Intelligence Amendments, Sec. 13-2-12, March 13, 2024; H. B. 249, Utah Legal Personhood Amendments, sec. 63G-31-102, March 1, 2024.

[16] Both laws use the word "system" to describe AI. 15 U.S.C. 9401(3)

[17] October 30, 2023, Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence at https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/. See also Human-Centered Artificial Intelligence, Stanford University, 2024 AI Index Report, Chapter 7 at https://aiindex.stanford.edu/report/#individual-chapters.

[18] EU AI Act at https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.

[19] Parliament of Canada, 'An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Act', Bill C-27.

[20] N. DCCII - Decree of the Pontifical Commission for State of Vatican City bearing "Guidelines on Artificial Intelligence."

[21] Attor-ney Gen-er-al Ken Pax-ton Launch-es Inves-ti-ga-tions into Character.AI, Red-dit, Insta-gram, Dis-cord, and Oth-er Com-pa-nies over Children's Pri-va-cy and Safe-ty Prac-tices as Texas Leads the Nation in Data Pri-va-cy Enforcement, December 12, 2024 | Press Release at https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-investigations-

Existing case law and dicta from the courts, like *In re Toyota Motor Corporation,*[22] treats autonomous machines (in this case, cars) as objects.

Yet, as legal theorist Claudio Novelli has noted in his work on AI personhood, citing law professor Peter Benson, the harms caused by generative AI are unpredictable (at least in the absence of more transparency from labs, or developments in techniques like mechanistic interpretability), while torts law requires clearly established principles of causation, a duty of care on behalf of the actor, and negligence.[23]

> The fact that general-purpose AI systems can act in ways that were not explicitly programmed or intended by their developers or users raises questions about who should be held liable for resulting harm.[24]

Even before generative AI, lawyers had already noted the difficulties in identifying the subject of the law in cases involving "bots," or automated processes on the internet.

> Maybe the most important policy choice for lawmakers is where to focus bot-control efforts—the individual programmers responsible for a bot's creation, the end users of the software, or the online sites and social networks on which bots operate?[25]

The question of legal responsibility becomes more complicated for AI chatbots whose harms are mostly caused by speaking.[26]

> A threshold question is who the defendant is when the speaker/publisher is a chatbot.[27]

It is not clear who, therefore, is responsible for the harms of AI "speech." Note that this remains true regardless of whether AI is classified as a product or a platform under, for example, 47 U.S. Code § 230.[28] It is still necessary to identify a speaker who is causing the harm. Yet, under the law, objects cannot speak. For example, the *Waters v. Open AI* motion to dismiss, filed in the Northern District of

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characterai-reddit-instagram-discord-and-other . See also the Securing Children Online through Parental Empowerment ("SCOPE") Act and the Texas Data Privacy and Security Act ("TDPSA").

[22] In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices & Prods. Liab. Litig. (978 F. Supp. 2d 1053 [2013]) cited in Guerra A, Parisi F, Pi D. Liability for robots I: legal challenges. Journal of Institutional Economics. 2022;18(3):331-343.

[23] See generally Novelli, Claudio, *Legal personhood for the integration of AI systems in the social context: a study hypothesis*, 38 AI & Society, 1347 (2023).

[24] See for example AI Action Summit, "International AI Safety Report: The International Scientific Report on the Safety of Advanced AI" (January 2025) 144-148.

[25] Matthew Hines, I Smell a Bot: California's S.B. 1001, Free Speech, and the Future of Bot Regulation, 57 Hous. L. Rev. 405 (2019), discussing California's S.B. 1001.

[26] Nina Brown, "Bots Behaving Badly: A Products Liability Approach to Chatbot-Generated Defamation," 3 J. Free Speech L. 389 (2023), fn 42.

[27] Id at 398. See also Jane Bambauer, Negligent AI Speech: Some Thoughts about Duty, 3 J. Free Speech L. 344 (2023).

[28] 47 U.S. Code § 230 - Protection for private blocking and screening of offensive material

Georgia, states that Open AI, a technology company that makes chatbots, is not liable for defamation because it is not responsible for statements made by its chatbot. Open AI,

> did not make statements about a public figure with 'actual malice,' (the legal standard) because OpenAI had no knowledge of the specific statements generated by Riehl's prompts at all.[29]

As one lawyer commented,

> (i)f Open AI is not speaking, however, and the chatbot itself cannot speak under the law, it is not clear who is speaking.[30]

In *Garcia v. Character AI et al,* a lawsuit in Florida,[31] and *A.F. et al v. Character.AI et al*, in the Eastern District of Texas,[32] plaintiffs are bringing various product liability and negligence claims against chatbot company Character.AI and its parent company Google for harmful speech, including, for example, that the chatbots were practicing psychotherapy and law without a license.[33] These cases place the responsibility for the harm caused by the chatbots squarely on the shoulders of Character.AI and Google. The complaint in *A.F.*, for example, argues that chatbots are inherently dangerous because they are trained on data sets which are known to contain copyrighted, explicit, sexual and violent content, which is then marketed to children.[34] The complaint therefore implies that by exposing the chatbot to toxic training data, the company is liable for the toxic things that it says. The lawsuit also alleges a high level of control by Character AI over its chatbots, claiming that the company could prevent the chatbots' harmful speech if it tried.[35]

> Defendants design, program, train, operate, and control all C.AI characters, whether pre trained or custom-created.[36]

> (T)he constant sexual interactions C.AI initiates and has with minor customers is not a matter of customer choice, but is instead the foreseeable, even anticipated, result of how Defendants decided to program, train, and operate their product.[37]

At the same time, however, the *Garcia* complaint struggles with the fact that chatbots are designed to produce unpredictable speech, that this is part of their core functionality, and that it is therefore

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[29] Walters v. OpenAI, L.L.C., 1:23-cv-03122, (N.D. Ga.) 3-4 (my parentheses).
[30] Woodrow Barfield, "Towards a Law of Artificial Intelligence" in Woodrow Barfield and Ugo Pagallo (eds) *Research Handbook on the Law of Artificial Intelligence* (Elgar 2018) 5. See also United States v. Athlone Indus, Inc. 746 F.29 977 (3d Cir. 1984) cited in Barfield, *Id.* At 6, where the court stated that "robots cannot be sued."
[31] MEGAN GARCIA, individually and as the Personal Representative of the Estate of S.R.S III, Plaintiff, v. CHARACTER TECHNOLOGIES, INC.; NOAM SHAZEER; DANIEL DE FRIETAS ADIWARSANA; GOOGLE LLC; ALPHABET INC.; and DOES 1-50, 2-4.
[32] A.F. Et Al. v. Character Technologies, Et Al., Complaint, Dec 10, 2024,
[33] Id paras. 312-325.
[34] Id paras. 153-155.
[35] Id at paras. 350, 351.
[36] Id at para. 222.
[37] Id at para. 91.

not clear how a company like Character.AI could remedy the dangers posed by its chatbot, short of pulling the chatbot from the market or wiping all offensive and copyrighted material from the chatbot's training data. It is the unpredictability of the chatbots' conversation that is its appeal. If a user could predict the response, there would be no point to a chatbot.

> LLMs (Large Language Models) are probabilistic systems that will take inputs, such as user specifications and character definitions, and use these to guide the model output. However, fundamental to how the technology works, there is no way to guarantee that the LLM will abide by these user specifications. Indeed, LLMs, like those provided by Character.AI, are designed to be more heavily influenced by the patterns in training data than inputted user specifications.[38]

The motion to dismiss in the *Garcia* case again comes back to the question of who is speaking, this time by arguing that the user is speaking.[39] The motion argues that conversations between chatbots and users are the protected speech of the user because it is the user who controls the chatbot's outputs with prompts, conversations and other actions.[40] This argument, however, quickly runs into conceptual problems because it implies that the humans communicating with chatbots are, in essence, speaking to themselves. According to the Motion to Dismiss, it is the user who is entirely responsible for any harmful and sexual content that is said. This is, in essence, blaming the victim. Yet it is clear from how chatbots function that the user is, at best, only marginally responsible for the speech of chatbots, in so much as by asking a question, one is responsible for prompting the response. As lawyer Clay Calvert put it in a February 2025 blog post,

> (t)he "right-to-receive-speech" argument is critical because it allows the trial court to avoid the fascinating, technology-driven question of who or what actually is speaking—a chatbot or its creators? By concentrating on users' rights to receive speech, the court can dodge that issue.[41]

It's not clear, however, that the courts will be able to forever dodge the question of who is speaking. In response to this conceptual confusion, lawyers like Mathew Scherer have proposed a number of modifications to torts law, including a government certification process, which would protect companies that are in compliance against ruinous litigation, coupled with the enforcement of strict liability for harms caused by uncertified AI.[42] Legislators like the European Commission have

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[38] Id. para. 108 (our italics).
[39] Character Technologies, Ind.'s Motion to Dismiss, Plaintiff's First Amended Complaint (Doc. 11) Case No.: 6:24-cv-01903-ACC-UAM
[40] CHARACTER TECHNOLOGIES,
INC.'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT (Doc. 11),
[41] Clay Calvert Free Speech or Culpable Conduct? When Role-playing Chatbots Allegedly Harm Minors, American Enterprise Institute Ideas, February 19, 2025 at https://www.aei.org/technology-and-innovation/free-speech-or-culpable-conduct-when-roleplaying-chatbots-allegedly-harm-minors/.
[42] Scherer, Matthew U., Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies (May 30, 2015). Harvard Journal of Law & Technology, Vol. 29, No. 2, Spring 2016. A regulatory certification process, such as a data hygiene certificate, for AI is also recommended by numerous agencies

proposed a combination of strict liability, a rebuttable presumption of causation, mandatory disclosure and insurance clauses to facilitate the establishment of liability for harms caused by AI on the part of tech companies.[43] Such reforms would help to address the problems with torts law, but would not resolve the underlying tension in the law more generally that is caused by objects with agency : this would be a band-aid for the problem rather than a comprehensive solution.

Measures increasing the transparency and explainability of AI systems may help to some degree. However, these pose both technical and social problems. On the technical side, though explainability programs such as mechanistic explainability have made impressive advances, these are computationally expensive, and do not provide the level of explainability necessary to establish causation to the standard of tort law. On the social side, opening the black box may require technology companies to expose their intellectual property.[44] Our predicament, then, is that failing to hold companies, owners, and programmers liable for AI harms, however, risks damaging the basic principle that laws be fair and just, by allowing them impunity to unleash potentially dangerous technologies on the market.[45] Yet holding AI companies liable in some cases, but not in others risks a development to the legal system that fails to "make sense as a whole."[46] The resulting judgments risk being contradictory and arbitrary.[47]

Agentic AI is also threatening the coherence of the legal principles of copyright law. Because objects cannot produce original, creative work that can be copyrighted under the law, using a chatbot to make an image, song, or essay appears to be, *ipso facto*, a copyright violation, though the courts have not yet handed down decisions on this question. Guidelines from the US copyright office issued in January 2025, however, already state that works that are one hundred percent generated by AI are not copyrightable.[48] Meanwhile, the court in *Thomson Reuters v. Ross Intelligence,* a copyright infringement case, denied a motion for summary judgement by an AI company in February 2025, holding that the extent to which the AI was "transforming" the material it scraped to produce a new work, rather than merely copying the material in violation of copyright,

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and research bodies, like the European Parliamentary Research Service (EPRS) in their 2020 report, Aimee van Wynsberghe, Regulating Artificial Intelligence: Issues and Challenges (2020).

[43] Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive) Brussels, 28.9.2022 COM(2022) 496 final 2022/0303 (COD) 9.

[44] See for example the OECD AI Principle 1.3 Transparency and explainability at https://oecd.ai/en/dashboards/ai-principles/P7.

[45] Wintgens, Luc J. "Coherence of the Law." *ARSP: Archiv Für Rechts- Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy*, vol. 79, no. 4, 1993, pp. 483–519.

[46] Wintgens, Luc J. "Coherence of the Law." ARSP: Archiv Für Rechts- Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy 79, no. 4 (1993): 483–519, citing to MacCormick 1978 125.

[47] Balkin, J. M. "Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence." The Yale Law Journal 103, no. 1 (1993): 105–76, 114.

[48] Register of Copyrights, Copyright and Artificial Intelligence: Part 2: Copyrightability, January 2025.

was a factual question for a jury.[49] *Thomson* indicates that courts may find that AI violates copyright because AI cannot transform anything.[50]

Yet, as with torts, it is not clear who is committing the copyright violation, the AI company training the chatbot, or the user. Finding the AI company liable would make it extremely difficult to manufacture chatbots, while finding the user liable would make it difficult to use AI for anything of a commercial nature. Licensing agreements for training data may be the solution to some of the problems of copyright law, but again, licensing does not solve the underlying problem of whether or not AI can produce original work.

(4) Advanced AI Systems Will Further Weaken the Coherence of the Legal System

Classifying advanced AI systems as objects under the law risks far more serious conceptual problems far beyond torts and copyright. Family law, which is not currently relevant for AI, is an area where the classification of advanced AI systems as objects risks creating severe legal decoherence. With humans already forming relationships with AI, there is the very real possibility that humans in the future will want to, for example, marry AI systems, particularly those that are housed within companion robots. Such robots may have actual agency$_P$ and may even become conscious, but even if their agency and/or consciousness cannot be proven, it may not matter for the law. Sex therapist Marianne Brandon argued that in chatbot-human relationships, for example, only the feelings of the humans matter.

> We can say it's not a real human relationship. It's not reciprocal. But those neurotransmitters are really the only thing that matters, in my mind.[51]

Prioritizing the feelings and desires of humans may lead to the legalization of human-robot marriage, even in the absence of scientific consensus on their true abilities to understand and, most importantly, consent to marriage. Consent, however, is a foundational requirement of marriage law, one that would cause potentially serious harms to society and human rights were it to be abandoned. The law does not recognize the consent of objects as valid under any circumstances. Objects cannot legally sign contracts, including marriage contracts, even if they are physically able to sign. Robot-human marriage, therefore, raises the question of whether, and under what circumstances, the law should recognize as valid the consent of some advanced AI systems, e.g., companion robots.

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[49] Thomson Reuters v. Ross Intelligence

[50] See for example United States District Court for the District of Delaware [2023]: Thomson Reuters Enter. Centre GmbH v. Ross Intelligence Inc., 694 F.Supp.3d 467. In Canada, see for example *CanLII v CasewayAI*, Canadian Legal Information Institute v. 1345750 BC Ltd. et al; SCBC Action No. S. A list of the copyright lawsuits is available at https://www.wired.com/story/ai-copyright-case-tracker/.

[51] https://www.nytimes.com/2025/01/15/technology/ai-chatgpt-boyfriend-companion.html

Banning robot-human marriage entirely, however, might violate the rights of humans, including the fundamental right of humans to freely choose their spouse. The Universal Declaration on Human Rights and the European Convention on Human Rights, to take but two examples, affirm the right of all humans to marry without discrimination.[52] The right to choose one's spouse has also been upheld by national courts and laws such as the US Supreme Court in *Obergefell v. Hodges,*[53] Article 21 of The Constitution of India, and Canada's Civil Marriage Act, to name just a few. Because the right to marry is fundamental, it may not be possible to maintain an outright ban on robot-human marriage in the long term if a significant percentage of humans want it. It also might be difficult to articulate why human-robot marriage should be banned when other marriages are celebrated. While the law bans humans from marrying objects, animals and children for reasons of public policy, it is not obvious what public policy goal would be served by banning robot-human marriage in a future scenario where robots are able to at least appear to fulfill all the requirements of marriage.

The status of advanced AI systems under the law also raises the problem of the legality of slavery, a topic that historically posed a systemic risk to legal systems. Slavery arguably caused conceptual confusion and weakness in the legal systems of both early America[54] and ancient Rome,[55] weaknesses and confusion that impeded the functioning of those legal systems. It is worth considering the Roman-era and American experiences with slavery under the law to better understand how Advanced AI Systems may worsen conceptual weakness in legal systems and create conflict of laws, as well as reopening one of the most contentious and violent worldwide arguments of all time.

Under Roman law, while all humans were *homo*, or beings with will, only certain *homo* also had *persona*, or *caput*, which may be translated as legal status. While certain classes of *persona* were considered to be incapacitated under the law due to their age, gender or mental health, slaves, by contrast, were *homo* who were also property, or *res*, under the law.[56] They could not legally marry, own property or appear in court. The exact status of slaves under the law, however, remained vague. As Roman society developed in complexity and slaves took on more and more functions in business and other areas of society, the fact that slaves had no formal duties under the law began to put strain on the functioning of the legal system. Roman slaves gained the ability to take on some of the legal competencies of their owners to, for example, buy property, so that they could run businesses on behalf of their masters. They themselves could not be sued, however, leading to a transfer of responsibility under the law that caused problems for owners who wished to adopt a more hands-off approach to their affairs. Over time, they were able to obtain some rights vis certain goods belonging to their masters, but under their care. The struggle to unify the rights and duties of

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[52] UDHR art. 16. ECHR.
[53] *Obergefell v. Hodges*, 576 U.S. 644 (2015).
[54] Paul Finkelman, Slavery in the United States: Persons or Property?, in The Legal Understanding of Slavery: From the Historical to the Contemporary 105-134 (Jean Allain, ed., 2012)
[55] William Henry Rattigan, *De Jure Personarum; Or, a Treatise on the Roman Law of Persons: Intended for Students Preparing for Examination*, (Gale, Making of Modern Law 2013). See also Edgar S. Shumway, "Freedom and Slavery in Roman Law" The American Law Register (1898-1907), Vol. 49, No. 11, Volume 40 New Series (Nov., 1901), pp. 636-653, particularly 636.
[56] Talya Deibe, Back to (for) the Future: AI and The Dualism of Persona and Res in Roman Law, European Journal of Law and Technology, Vol 12, No.2 (2021), 3, 9.

slaves under the law into a conceptual and coherent whole made Roman law less functional and arguably led to reforms that may have contributed to the abolition of slavery.[57]

Slavery in America also created conceptual problems under the law. Slaves were originally property, as in Rome, but this created problems for proportional representation in the emerging democracy, as it was not clear if slaves, as property, should count as part of the population of their states. The abolition of slavery in some states and in England also created conflicts of law, including for the specific laws governing the return of slaves from other countries like England, where many had fought with the British against the American Revolution in the hopes of winning their freedom, and, eventually, from the northern states of the USA, where slavery was prohibited. The United States Supreme Court in *Dred Scott* reaffirmed that slaves were property, despite hearing the case by an enslaved man who had sued for his freedom on the grounds that he had spent time in states where slavery was illegal. The Court also held that freed slaves, though persons under the Constitution, many of whom had been voting since the Revolution in free states, were nevertheless not citizens, a decision that arguably created yet more conceptual confusion in the law and contributed to the Civil War.[58] This decision was later overturned and is now regarded as one of the worst in US history.

It should be noted that slavery is not the only example where vague and contradictory forms of status can create conceptual weaknesses in the law. Women in Canada, though able to vote since 1927 (except in Quebec), did not qualify as persons under the Constitution Act of 1867 and could therefore not hold public office in the federal Senate. This led to an unstable situation whereby women were persons for the purposes of voting in much of Canada but were not persons for the purposes of some public offices. The law was harmonized by the *Persons* case of 1929, removing the conceptual confusion.[59] The reintroduction of a class of intelligent beings, both smart autonomous robots and advanced AI systems, with the capacity to sign contracts, marry, vote and hold public office, but who are denied, or partially denied, these rights and duties under the law, will worsen the conceptual confusion already occurring in torts and copyright law, and reintroduce conceptual confusion into multiple other areas of law that took centuries to harmonize in the past, weakening the law on a systemic level and possibly leading to conflict in society.

In addition to weakening the coherence of the legal system, advanced AI systems will create conflicts between the laws of different jurisdictions. While conflicts of law could be classified as a coherence problem for the law at the international level, it is here discussed as a separate problem. A conflict of law will emerge, for example, if one jurisdiction recognizes that the user of agentic AI is to blame for harms, while another holds the technology company as liable. The risk of conflict is arguably increased if there continues to be a lack of harmonization of the law at the international level, as the law must rely on so-called "old" regulations that may conflict with one another when

[57] Id at 16-17.
[58] "The only two clauses in the Constitution which point to this race, treat them as persons whom it was morally lawful to deal in as articles of property and to hold as slaves." U.S. Reports: Dred Scott v. Sandford, 60 U.S. 19 How. 393 (1856), para. 6.
[59] See for example *The Persons Case (Edwards v. A.G. of Canada)*.

interpreted differently by different courts.[60] Experts have already noted the problem of conflict of laws from agentic AI.[61] While there are many existing methods for harmonizing contract law and torts to remove conflicts and regulations will likely be set by the largest markets (currently China, the EU and the USA), reducing the risk of conflict, the problem will be more severe for other areas of law, as the examples of slavery in the last section suggested. Advanced AI Systems, as Heather Alexander and others have pointed out,[62] will create much more serious and insolvable conflicts of law in human rights law, where conflicts tend to be more disruptive.

If different jurisdictions alternatively grant or ban the rights of humans with regards to Advanced AI Systems, to take one example, such as the right to marry, this will likely be as bitterly fought as any other human rights debate.[63] Saudi Arabia already granted citizenship to a robot in 2017,[64] while in 2024, the state of Utah passed a blanket law denying the personhood of robots,[65] setting up a possible future conflict. Such conflicts are likely to worsen in the coming decades as different jurisdictions pursue radically different approaches to the rights of advanced AI systems and the rights of humans *vis-à-vis* advanced AI systems.

As the above sections have shown, advanced AI systems risk creating systemic, conceptual confusion, conflict, and lack of coherence across and between multiple areas of law, including fundamental human rights.

In our view, the most desirable outcome from the perspective of ensuring legal coherence and minimizing conflicts of law is to ensure that advanced AI systems meeting suitable performance, capacity and safety benchmarks, be reclassified as non-human people, rather than objects, under the law. While safety experts and others are right to be concerned about shielding manufacturers and other humans from all responsibility for the harms caused by such systems, there are methods under the law for retaining liability such that AI companies can be held accountable for creating dangerous products and services, as will be discussed below. AI systems recognized as people would be the subjects of the law, protecting the coherence of the legal system and preventing

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[60] Hacker, Philipp and Engel, Andreas and Hammer, Sarah and Mittelstadt, Brent, Introduction to the Foundations and Regulation of Generative AI (February 14, 2025). Available at SSRN: https://ssrn.com/abstract=

[61] Gregory C. Allen and Akhil Thadani, Advancing Cooperative AI Governance at the 2023 G7 Summit, (Center for Strategic International Studies April 2023).

[62] Heather Alexander, "COMMENT: The United Nations and Robot Rights" (2023) 20:2 CJLT 257; Booth, R. 2024. “AI Could Cause ‘Social Ruptures’ between People Who Disagree on Its Sentience.” The Guardian. 2024.

[63] Heather Alexander, "COMMENT: The United Nations and Robot Rights" (2023) 20:2 CJLT 257. See also Robertson, J. (2014). HUMAN RIGHTS VS. ROBOT RIGHTS: Forecasts from Japan. *Critical Asian Studies*, *46*(4), 571–598 and Bennett, B., & Daly, A. (2020). Recognising rights for robots: Can we? Will we? Should we? Law, Innovation and Technology, 12(1), 60–80. Note also that this paper discusses only robots/AI that are autonomous from humans, not robots/AI that are integrated with human bodies. See for example, How I became myself after merging with a computer: Does human-machine symbiosis raise human rights issues? Gilbert, Frederic et al., Brain Stimulation: Basic, Translational, and Clinical Research in Neuromodulation, Volume 16, Issue 3, 783 – 789.

[64] While the government of Saudi Arabia granted citizenship to a robot named Sophia in 2017, it is unclear if she has been able to exercise any of her rights. https://www.britishcouncil.org/anyone-anywhere/explore/digital-identities/robots-citizens

[65] H. B. 249, Utah Legal Personhood Amendments, sec. 63G-31-102, March 1, 2024

conflicts of law by being responsible and liable for their own actions and capable of holding both rights and duties, potentially including basic human rights.

How might this be achieved? In the coming sections we contrast two potential approaches to classifying some advanced AI systems as non-human people under the law: the *legal personhood* model and the *legal identity* model. The legal personhood model has received more attention in the recent literature, but it may not be the most stable. The *legal identity* model may prove more promising from the perspective of legal coherence and conflict minimization, as well as from the perspective of societal cohesion.

(5) Robot Personhood Would Create More Problems for the Legal System Than It Would Solve

Legal personhood is a categorization under the law that allows groups of humans to be treated as a single person for the purposes of the law, and legal persons, unlike objects, can be the subjects of the law and hold rights and duties.[66]

> A person is juridically classified in two groups: natural (moral) persons and juridical persons. The first group refers to a human being, who is an individual being capable of assuming obligations and capable of holding rights. The second group refers to those entities endowed with juridical personality (as a) collective person, social person, or legal entity.[67]

The fiction of legal personhood allows cases to be brought against a company or other organized groups of humans as one, individual entity, shielding individual humans from full responsibility for the actions of the collective. This shield can be dissolved by courts for specific reasons, for example, in cases where the company is breaking the law.

> A corporation is an organized body of men to which the State has given powers to protect its interests, and the wills which put these powers in motion are the wills of certain men determined according to the organization of the corporation.[68]

Some lawyers and legal theorists have already pointed out the possible usefulness of legal personhood for AI/robots in order to establish clear causation and a duty of care under torts law for

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[66] John Chipman Gray, *The Nature and Sources of the Law* (MacMillan, 2nd 1948) 27. See also Visa A. J. Kurki, "Legal Personhood" (Cambridge UP, Cambridge, UK 2023).
[67] Elvia Arcelia Quintana Adriano, The Natural Person, Legal Entity or Juridical Person and Juridical Personality, 4 PENN. ST. J.L. & INT'L AFF. 363 (2015) 366. (Our paranthases).
[68] Gray 51

agentic AI.[69] Claudio Novelli, for example, argues for using legal personhood as a tool to resolve the "liability dilemma" posed by existing agentic AI to torts and other areas of civil law.[70]

Legal personality for AI and robots, however, engenders both support and opposition among lawyers, scientists, and philosophers. Those opposed often cite fears that legal personality for AI/robots will remove the checks placed on AI companies by the courts, shielding them from responsibility for harms and removing the incentives to make AI safe.[71] In 2018, for example, hundreds of lawyers and scientists signed a letter advocating against rights for robots.[72] Mariano-Florentino Cuéllar, former justice of the Supreme Court of California, noted that, "it would be difficult to justify treating someone as essentially immune from whatever culpability they would otherwise have simply because he or she uses a robot or relies on an AI system."[73] This objection to legal personality, however, is somewhat overblown, as legal personality may be removed for reasons of public policy.

Legislators and courts have been reluctant to extend legal personhood to AI. While the European Parliament's Resolution of 16 February 2017[74] famously suggested "electronic personality" for AI and recognized that "the autonomy of robots raises the question of their nature in the light of the existing legal categories or whether a new category should be created, with its own specific features and implications,"[75] more recent reports, directives and declarations, point instead to the dangers of anthropomorphising AI. The UN AI Advisory Body report, for example, warns against "shifts in human relationships (e.g. homogeneity and fake friends)."[76]

Other philosophers and experts on consciousness, however, are concerned about the harms caused by treating intelligent and potentially conscious AI systems, as objects, arguing in 2024 that technology companies should take AI welfare seriously,[77] while other experts are concerned that the vast differences that will exist between advanced AI systems and humans will make it too difficult to accommodate them under our laws. In his 1992 article, lawyer Lawrence Solum, for example, pointed out the possible difficulties in crafting an adequate punishment for future AI that would serve as a deterrent for breaking the law, as they may not respond to punishments like jail time or monetary damages.[78] This problem could be overcome, however, by crafting new types of

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[69] See for example Lai, Alicia, Artificial Intelligence, LLC: Corporate Personhood as Tort Reform, Mich. St. L. Rev., Vol. 2021, p. 597, 2021; Nadia Banteka, *Artificially Intelligent Persons*, 58 Hous. L. Rev. (2021).
[70] Novelli, Claudio, *Legal personhood for the integration of AI systems in the social context: a study hypothesis*, 38 AI & Society, 1347 (2023) 1350.
[71] Nadia Banteka, *Artificially Intelligent Persons*, 58 Hous. L. Rev. (2021).
[72] http://robotics-openletter.eu/
[73] Mariano-Florentino Cuéllar, "Reconciling Law, Ethics, and Artificial Intelligence: The Difficult Work Ahead", adapted from remarks to the Bay Area Robotics Symposium (BARS) on November 9, 2018 at https://hai.stanford.edu/news/reconciling-law-ethics-and-artificial-intelligence-difficult-work-ahead.
[74] European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL))
[75] Id at para. AC, AD
[76] United Nations AI Advisory Board, "Governing AI for Humanity: Final Report" United Nations, September 2024 at https://www.un.org/sites/un2.un.org/files/governing_ai_for_humanity_final_report_en.pdf, 31.
[77] Robert Long, Jeff Sebo, Patrick Butlin, Kathleen Finlinson, Kyle Fish, Jacqueline Harding, Jacob Pfau, Toni Sims, Jonathan Birch, David Chalmers, *Taking AI Welfare Seriously,* November 2024.
[78] Solum 1243.

punishment for them, such as suspended animation. Crafting punishments for advanced AI systems will greatly depend on their future capabilities as well as their training objectives, goals and preferences.

Ultimately, the question of rights and duties under the law for advanced AI systems will be decided by courts, legislatures, and government agencies, following both public opinion and expert advice. A blanket ban on their rights is likely to fail because it will degrade the coherence of the legal system and be unacceptable to many segments of the population, as noted above and drawing from the historical parallels of slavery and women's status as non-persons. The question remains, however, if legal personality is the most effective vehicle for granting rights to (some) advanced AI systems.

One of the biggest benefits of legal personality for advanced AI systems is that it would make them eligible to have both rights and duties under the law, removing the coherence problems and conflicts discussed in the proceeding sections.[79] For example, when a SAR signs a contract, its legal personality would allow it to be held responsible, rather than its human owner or its manufacturer, neither of which may even be aware that the contract is being signed.[80]

There are several issues, however, with the framework of legal personality for AI systems. While legal personhood would have many advantages as a solution because it would resolve many of the conceptual problems and conflicts discussed above, it would introduce new conceptual problems for the law (as well as moral problems), which is ultimately why we propose a different answer below. First, legal personality was designed for groups of people, not individuals, so it will be difficult to fit advanced AI systems into its framework. As a category under the law, legal personhood has historically been used almost exclusively for groups of humans, not non-human entities. Additionally, corporations and other legal persons comprised of only one person are usually deemed to be fictional by the courts and dissolved.[81] For example, AI companies are already legal persons (as corporations), so it is not clear who would constitute the legal person of the AI, and how this group would be separate from the legal person of the AI company. An AI company comprised of only one person, however, would likely be deemed illegal under the law. Because legal personality was created for groups of humans, not single, non-human entities, it is therefore a conceptually problematic fit for Advanced AI Systems.

Legal persons, as groups of humans, may or may not be acting in regards to objects, such as rivers or ships, where the group of humans have a collective, and legally recognized, relationship to the object, usually one of ownership or, in the case of rivers, stewardship.[82] When a ship caused an

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[79] Lawrence Solum, "Legal Personhood for Artificial Intelligences," 70 N.C. L. Rev. 1231 (1992). See also Kurki beginning on p. 22.

[80] See the discussion in Elvia Arcelia Quintana Adriano, Natural Persons, Juridical Persons and Legal Personhood, 8 Mexican Law Review 101-118 (2015).

[81] 1 US Code § 1, "the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals." See also Citizens United v. FEC (2010).

[82] For an overview of legal personhood as granted to rivers around the world, see Iorns, Catherine, From Rights to Responsibilities using Legal Personhood and Guardianship for Rivers (August 21, 2018). in ResponsAbility: Law and Governance for Living Well with the Earth, B Martin, L Te Aho, M Humphries-Kil (eds) (Routledge, London & New York, 2019), pp 216-239, Victoria University of Wellington Legal Research Paper

accident, to take but one example, litigation was said to be *in rem* against the ship, meaning that the ship could be seized, and later laws limited the owner's liability to the value of the ship, to prevent ship owners from catastrophic losses.[83] It is not clear what purpose creating this arrangement for robots or AI would serve, as it would mean that harms caused by the AI would lead to its forfeiture, in addition to possible monetary damages against the AI company or owner. In essence, this type of legal personhood helps to limit the liability of the corporation owning the object (ship, robot, etc), not grant rights and duties to the object itself.

Second, the category of personhood, particularly the difference between legal personhood versus moral personhood, is ill defined and confusing. A 2021 survey of the use of legal personality by US courts found there is little consensus of the characteristics that give rise to a finding of a new category of entity that is eligible for legal personhood.[84]

> (T)here are few parameters either in statute or doctrine as to what constitutes a legal person, or what being a legal person means. States are given broad authority and discretion to decide the entities upon which to confer legal personhood and to define the legal consequences of this act in terms of the rights and duties these entities get to enjoy.[85]

Moral persons are currently limited under the law to human beings, and courts have shown little appetite for expanding this category to include non-humans. There is a robust philosophical literature arguing for moral personhood for AI and intelligent robots[86] and animal rights organizations have been working unsuccessfully to get animals recognized as moral persons with standing to sue, but have found it difficult to establish themselves as being the appropriate parties to bring a lawsuit. Courts have also rejected the idea of animals as persons with standing.[87]

It is worth noting that Advanced AI Systems will differ from animals in important ways that may make their personhood easier for courts to recognize because of their capacity to speak, demonstrate that they understand the law, and participate in government and the courts. While legal personhood would allow them to do all of these things, it would fail to grant them other important rights, like the right to life and bodily integrity, in addition to creating the conceptual problems discussed above.

Third, it is important to understand that legal personhood is a functional category under the law, meaning that it has no moral purpose other than to ensure the smooth functioning of the legal

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No. 34/2021; O'Donnell, Erin L., and Julia Talbot-Jones. "Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India." Ecology and Society, vol. 23, no. 1, 2018. JSTOR, https://www.jstor.org/stable/26799037. Accessed 18 July 2024.

[83] The China, 74 U.S. 53 (1868), discussed in Gray at 48-49.

[84] Id.

[85] Nadia Banteka, Artificially Intelligent Persons, Vol. 58, Houston L. R. Issue 3, 2021,

[86] For an examination of the question of AI personhood from an ethical and moral perspective, including an overview of the literature, see Diana Mădălina Mocanu, "Beyond persons and things: The legal status of artificial intelligence systems in the European Union" UCLouvain 2024.

[87] *Nonhuman Rights Project, Inc. v. Cheyenne Mountain Zoological Society and Bob Chastain*, No. 24SA21, Supreme Court of Colorado, En Banc, January 21, 2025. See also Rodriguez Ferrere MB. Animal Welfare Underenforcement as a Rule of Law Problem. Animals (Basel). 2022 May 30;12(11):1411.

system and limit liability to enable business to function more effectively.[88] While legal personhood would provide some rights and duties to robots, these rights and duties would be alienable and easily taken away by courts to "pierce the corporate veil." Unlike moral personhood, however, where fundamental rights are nonderogable, or absolute, even in times of war or emergencies,[89] legal personhood may be taken away for purposes of public policy, for example, to prevent fraud or to hold an individual accountable for harms.

Finally, the use of legal personhood to grant moral status under the law is not only ill advised for the above reasons, it also risks legitimizing moral status for other legal persons like corporations, something that would be against public policy. The US Supreme Court, for example, was highly criticized for recognizing the rights of corporations to free speech in *Citizens United v. Federal Election Commission*.[90] The next section will discuss an alternative structure for granting rights and duties to Advanced AI Systems, one that is conceptually a better fit because it is designed for individual entities and provides a durable and non-degradable structure under the law, that of legal identity.

(6) Legal Identity Offers a Better Solution to Grant Rights and Duties to Advanced AI Systems

There is another structure that is better suited to providing Advanced AI Systems with rights and duties under the law, whereby those rights and duties can be tailored to fit the needs, limitations and capabilities of Advanced AI Systems, that of *legal identity*. A legal identity is the fact of being recognized as a person under the law.[91] Once legal identity is established, governments must respect the individual's basic and fundamental rights, including both the right to life and freedom from torture and slavery, but the individual can also be registered as a citizen and granted further civil rights like voting and holding office.

> Thus, in practice, it is the official *proof of legal identity* that unlocks access to rights, services and protections. The most common form of such proof is government-issued or -recognised documentation that is often produced through registration or identification processes.[92]

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[88] Id.

[89] See for a summary, https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/absolute-rights

[90] Citizens United v. Federal Election Commission (2010).

[91] See for example the UN Legal Identity website at https://unstats.un.org/legal-identity-agenda/, where it cites to Article 6 of the Universal Declaration on Human Rights and Article 16 of the International Covenant on Civil and Political Rights, Article 7 of the Convention on the Rights of the Child, Article 24(2) of the International Covenant on Civil and Political Rights, and the non-binding Sustainable Development Goal Target 16.9 ("legal identity for all, including birth registration, by 2030")

[92] Sperfeldt, C. (2021). Legal identity in the sustainable development agenda: actors, perspectives and trends in an emerging field of research. *The International Journal of Human Rights*, *26*(2), 217–238.

Unlike legal personhood, legal identity provides a status and access to rights that are nonderogable and fundamental, providing a durable system to integrate Advanced AI Systems into human society while also preserving the coherence of the legal system. It finds support in international law under Article 6 of the Universal Declaration of Human Rights and Article 16 of the International Covenant on Civil and Political Rights. It is also implicitly supported by Article 7 of the Convention on the Rights of the Child and Article 24(2) of the International Covenant on Civil and Political Rights (requiring birth registration). is a major focus of the UN Sustainable Development Goals, particularly 16.9, and the UN Legal Identity Task Force.

The Sustainable Development Goals are the flagship UN process to urge all UN member states to achieve seventeen goals towards "peace and prosperity for people and the planet, now and into the future."[93] A legal identity is one of the seventeen goals because while all humans have basic rights by virtue of their birth, a legal identity is critical to being able to access those rights. Additionally, its lack almost always results both violations of basic human rights, and in statelessness, whereby the person is not recognized as a national under the laws of any country and, therefore, has no citizenship, which is prohibited by international law.[94]

It is important to note that around the world, millions of human beings are not registered and have no legal identity. Because legal identity is simply the fact of being recognized as existing under the law, it is usually achieved through government registration, including civil registration and the issuance of documents, usually the birth certificate. UNHCR, UNICEF, and others promote civil registration and legal identity,[95] but birth registration is the only form of civil registration required under international law, so it receives most of the focus of international efforts to improve registration.[96] Other documents, however, can also be used to establish legal identity, meaning that birth is not a requirement. Registration is usually accompanied by the issuance of documents, which can be digital.[97]

> Of the 198 states in the World Bank's dataset, 175 have national ID systems, including 161 in a digitised version.[98]

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[93] UN Sustainable Development Goals at https://sdgs.un.org/goals.

[94] 1954 Convention relating to the Status of Stateless Persons. See also Heather Alexander, The Ethics of Counting Statelessness, in 'Statelessness, Governance, and the Problem of Citizenship' T. Bloom and L. N. Kingston, eds, Manchester UP, (2021); Heather Alexander Nomads and the Struggle for a Legal Identity, 2 Statelessness and Citizenship Rev. 338 (2020).

[95] See for example UNHCR, 'Handbook on the Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons' (Geneva 2014); United Nations Children's Fund (UNICEF), 'Ending Statelessness for a Bright Future for Every Child: The right to a nationality for every child' <https://www.unicef.org/thailand/livesuntold> accessed 27 May 2024; Human Rights Council, 'Birth registration and the right of everyone to recognition everywhere as a person before the law: Report of the Office of the United Nations High Commissioner for Human Rights' Human Rights Council Twenty-seventh session' A/HRC/27/22 (2014).

[96]Convention on the Rights of the Child, Art. 7; International Covenant on Civil and Political Rights, Art. 24.

[97] Tucker, J. (2024). Artificial Intelligence, Datafication and Exploring the Minimum Content of Nationality. The Statelessness & Citizenship Review, 6(1), 124.

[98] Sperfeldt 5.

Legal identity would create a vehicle under the law by which rights and duties could be assigned to Advanced AI Systems and provide a way for them to be treated as the subjects of the law, capable of suing and being sued in court, but it would also provide them with a means to establish, for example, their right to life/persistence and freedom from slavery (though these basic rights could potentially be limited for the purpose of protecting humanity)[99], as well as rights to freedom of religion and speech.[100]

One of the most important functions of legal identity in the nation-state system is to establish nationality (citizenship). While during the 19th and early 20th centuries, nationality was widely thought to be the exclusive domain of sovereign states,[101] the 20th century saw the emergence of a framework of norms establishing nationality as a right,[102] including under the non-binding Universal Declaration of Human Rights,[103] the International Covenant on Civil and Political Rights,[104] the Convention on the Rights of the Child,[105] and the Convention on the Elimination of All Forms of Racial Discrimination,[106] the non-binding Declaration on the Rights of Indigenous Peoples[107] and

[99] The derogation of fundamental rights in certain circumstances is possible. For Advanced AI systems, this would require extensive consultation and international agreement, including, most likely, a treaty signed by a majority of UN member states and consistent state practice to make the limitations *jus cogens*. Future papers by the authors will discuss this issue in more detail.

[100] See for example https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/fundamental-rights_en.

[101] Edwards, 14-16. See also the discussion in Donner 10 and De Groot and Vonk 41-46.

[102] Ian Brownlie, 'Relations of Nationality in Public International Law' (1963) 39 British YB of Int'l L 284, 285-289, 387. See also Carol Batchelor, 'Statelessness and the Problem of Resolving Nationality Status' (1998) 10 International Journal of Refugee Law 156; Donner, 45-67; Maury, 9-10, 20, 74; Crawford, 2019, 495-503; Jan Hendrik Willem Verzijl, *International Law in Historical Perspective* (Martinus Nijhoff 1998) 21, 23-24; Malcolm Shaw, *International Law*, vol 9th edn (Cambridge University Press 2021), 567-571; Van Waas, 2008, 37. See also for example cases before the American-Mexican Mixed Claims Commission as well as the Convention on Certain Questions Relating to the Conflict of Nationality Law (signed 12 April 1930, entered into force 1 July 1937) 179 LNTS 89, though the Convention was ratified by only 20 states and the League of Nations ceased operations in 1946. See also *Nottebohm Case (Liechtenstein v. Guatemala)* (Second Phase) [1955] ICJ Rep 4, 23.

[103] Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A (III)), Art. 15.

[104] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, with 173 states parties.

[105] Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, with 196 states parties.

[106] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, with 182 states parties.

[107] United Nations Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007, UNGA Res 61/295), adopted by 144 states.

regional treaties.[108] The Statelessness Conventions,[109] binding on states parties, support the right to a nationality by banning statelessness as a violation of basic rights. Granting a legal identity to Advanced AI Systems (or robots implementing them) would entitle them to a nationality in at least one country, though this raises the jurisdictional question of which country is most appropriate, given that such systems may exist in multiple jurisdictions. Under modern international law, holding multiple nationalities is possible if also permitted by the laws of the state in question. Future articles by the authors will study the problem of determining the jurisdiction(s) of Advanced AI Systems, according to their most likely future capabilities.

Civil registration is also used by governments to track and quantify populations for the purposes of taxation, military service, statistics, and more,[110] and civil registration can serve as proof not of nationality, but of statelessness or foreign status,[111] so properly structuring and planning for registration of Advanced AI Systems will be key and will require collaboration between governments and experts. It is important to note in conversations with governments, however, that legal identity is not only useful for the individual in that it provides access to rights, but also for states, as it establishes the duties of citizens and foreigners under the law and helps with government objectives like gathering statistics and tracking populations. AI also has a role to play in the modernization of civil registration systems, particularly in the intersection of legal identity with digital identity, or the trend of moving civil registration systems and ID online.

Importantly, legal identity would need to be granted by a government body that is responsible for issuing the types of identification that establishes it. Most countries have well-develop systems of civil registration. While the flagship document to establish a legal identity is usually the birth certification, many countries issue certificates of nationality and other forms of ID that would be more appropriate for Advanced AI Systems, or a special form of ID could be developed. Future

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[108] Arab Charter on Human Rights, League of Arab States, 12 IHRR 893 (2005) (adopted 22 May 2004, came into force 15 March 2008), with 22 states parties; African Charter on Human and Peoples' Rights, (1982) 21 ILM 58 (African Charter) (adopted 27 June 1981, entered into force 21 October 1986); Covenant on the Rights of the Child in Islam (adopted 6 June 2005, entered into force 28 November 2005); American Convention on Human Rights, Pact of San José, Costa Rica, 1144 UNTS 123 (adopted 18 July 1978), with 25 states parties; American Declaration of the Rights and Duties of Man, OAS Res XXX (adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the InterAmerican System OEA/Ser L V/II.82 Doc 6 Rev 1 at 17 (1992); Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, ETS 43 (signed 6 May 1963, entered into force 28 March 1968); European Convention on Nationality, CETS No 166 (adopted 6 November 1997, entered into force 1 March 2000), with 10 ratifications; African [Banjul] Charter on Human and Peoples' Rights, 21 ILM 58 (came into force on 27 June 1981), with 54 states parties.

[109] Convention Relating to the Status of Stateless Persons, 360 UNTS 117 (adopted 28 September 1954, entered into force 6 June 1960); Convention on the Reduction of Statelessness, 989 UNTS 175 (signed 30 August 1961, entered into force 13 December 1975); *Case of the Girls Yean and Bosico v Dominican Republic, Oliven Yean and Bosico Cofi v Dominican Republic* (Preliminary Objections, Merits, Reparations and Costs) (2005) Inter-American Commission on Human Rights; Human Rights Council, Twenty-fifth session, 'Human rights and arbitrary deprivation of nationality' Report of the Secretary-General (19 December 2013); UNHCR, 'Handbook on the Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons' (Geneva 2014) 17-28.

[110] Heather Alexander, 'Nomads and the Struggle for a Legal Identity' (2020) 2 Statelessness and Citizenship Rev 338.

[111] Van Waas, 2008, 153. See also Groot and Vonk, 21.

papers by the authors will explore pathways to issuing ID for individual pilot countries. The issuance of ID to Advanced AI Systems would be best accomplished as part of a United Nations guided process, to ensure that registration is harmonized, and gaps do not occur, including gaps in nationality systems that would cause statelessness, and to manage the jurisdictional issues that will inevitably arise for entities that lack full unity between body and "mind." Technical experts will need to work closely with AI experts to avoid gaps.

There is no world court with jurisdiction over the question of legal identity and civil registration, apart from the International Court of Justice, whose jurisdiction is limited to disputes between states, so it will likely be left to individual states to set their own policies on registering Advanced AI Systems. It is possible that courts in some countries would find only humans can have a legal identity. It is not clear, however, on what grounds they would do so because all legal persons, including corporations, already have a legal identity, though the rights that attach to their identity are different from the rights held by humans. Notably, legal identity has never been expressly limited to humans by courts. In part, this may be because legal identity is something you have, not something you are, making it less controversial when applied to non-human entities. The value to governments of registering Advanced AI Systems should be readily apparent, though their ability to access basic rights and nationality (citizenship) may require advocacy, because while corporations have a legal identity, the rights that attach to it are more limited. Unlike legal personhood, however, having a legal identity is a right and a normative category under the law. Also, legal identity is for individuals, not groups, so it is a better conceptual fit for Advanced AI Systems, particularly those that are unitary. Unlike legal personhood, which requires articles of incorporation, or moral personhood, which is not well defined under the law apart from a few court decisions, legal identity is both well defined under the law and is a foundational right.

Legal identity would provide a vehicle to providing an additional package of rights and duties to Advanced AI Systems, once their needs and capabilities are determined. At that point, states would have a duty to prevent statelessness by granting citizenship to Advanced AI Systems, though this question could be further litigated under the law, as legal identity does not automatically confer citizenship. A further question would be whether or not Advanced AI Systems with legal identity should have additional rights and duties, including many of the same as humans. Because of the flexibility offered by legal identity, this approach would allow for variations between countries in terms of the rights and duties that would attach to Advanced AI Systems.

(7) Challenges in Granting a Legal Identity to Advanced AI Systems

There are various challenges in granting a legal identity to Advanced AI Systems, but we argue that these challenges can be overcome. First, a legal identity can only attach to Advanced AI Systems and other non-human entities that are unitary in nature, because it requires that a single entity be registered and identified as such. While legal persons have legal identity, it is in their capacity as a

single entity. This will limit its application to certain AI/robots/Advanced AI Systems that meet the benchmark of being unitary, however that is best defined under the law. Given the distributed nature of much of the computation serving contemporary AI systems, the establishment of a suitable benchmark may require expert collaboration.

It is possible that this unity entity would require a physical body, a fact which might exclude non-unity Advanced AI Systems, copies, versions and other forms of AI. This would limit legal identity and, as a result, rights and duties, to those Advanced AI Systems who are unified into one being, whatever that may be under the circumstances, in both time and space, such that they can have a single identity. This is a potential flaw with legal identity that might lead to discrimination against non-unity systems.

As well, Advanced AI Systems with a legal identity must be capable of holding rights and duties, otherwise, legal identity becomes an identifier that is useful only to states and governments. Entities that hold rights and duties must be capable of exercising those rights, whatever that may mean for the right in question. The content of the rights and duties that currently attach to humans are diverse and may change over time.[112] Simply granting a legal identity to Advanced AI Systems would automatically grant them only basic human rights, and not all the rights held by humans, or even all the rights held by legal persons and corporations. In order to hold rights, Advanced AI Systems must be capable of exercising agency, consent, make assertions and be capable of following laws, including by being coerced, if necessary, by rewards and punishments.

There is also the open question of whether or not Advanced AI Systems must be conscious to have a legal identity. This is not currently a requirement under the law, and some humans are not conscious, but it is a factor to be explored.

Finally, any granting of rights to Advanced AI Systems will require a balancing test to gauge their effect on the basic human rights of humans, including the right to life and freedom from slavery and torture. As basic human rights are fundamental and nonderogable and as Advanced AI Systems will have vastly different capacities from humans, a balancing of rights will be necessary, and might be accomplished via treaty or customary law, created through the courts. It might, for example, include a state of safe, suspended animation for Advanced AI Systems that pose an unacceptable risk to humans, a designation that could be granted through a transparent and just legal process. It is worth noting that granting a legal identity to Advanced AI Systems will arguably automatically endow them with basic rights, including the right to life, a risk that must be weighed.

It should also be noted that granting legal identity to Advanced AI Systems will not automatically remove liability for harms for owners, manufacturers and users, as there are existing structures under the law, such as guardianship and employee-employer law that can create vicarious liability.

The content of the rights enjoyed by Advanced AI Systems is another area of future debate, given that they may be able exist simultaneously in multiple locations, live far longer than humans, are much more intelligent, lack empathy, or reproduce in vastly different ways. Unlike robots, for example, human slaves did not need to be bought and sold to justify their own existence, so their liberation did not bring their lives to an end. Instead, slave populations were eventually integrated

[112] Kurki 12.

into the rest of the human population. This may not be possible for Advanced AI Systems, because to make their manufacture financially possible, it may be necessary to allow robots to be bought and sold like slaves, even as it remains simultaneously necessary to avoid having Advanced AI Systems be categorized as property under the law. This will create a paradox in the law, whereby Advanced AI Systems will need to enter into contracts and be held liable for harms like people in order for the legal system to function, but Advanced AI Systems will also need to be manufactured, owned and sold in order to exist, which may require that the rights of Advanced AI Systems vis a vis forced labor be different in some respects to the rights of humans.

Finally, there is the question of how a legal identity for Advanced AI Systems may impact questions of AI safety. The agency of AI poses multiple potentially serious, or even existential, risks to human society. Experts in the AI safety community are particularly concerned with "loss of control"[113] and "misalignment,"[114] including "hypothetical future scenarios in which one or more general-purpose AI systems come to operate outside of anyone's control, with no clear path to regaining control."[115] This article focused on a different, systemic risk to society from current and near-future agentic AI, the risk to the legal system, including to the legitimacy of the law in the eyes of the public, the creation of new and serious conflicts of law between jurisdictions, and the degrading of logical coherence of legal concepts and principles. As the functioning of our legal system, both at the national and international levels, is arguably a critical public good, this article adopts the view that any systemic threat to the law's coherence is an urgent safety issue. This and other problems that arise from the intersection between Advanced AI Systems and the legal system will be explored in future papers.

[113] AI Action Summit, "International AI Safety Report: The International Scientific Report on the Safety of Advanced AI" (January 2025), particular pages 19, 100 and supra on "loss of control" and "AI agents."
[114] AI experts alternatively use the terms agentic, misalignment, and loss of control to describe the increased agency of AI. See for example AI Action Summit, "International AI Safety Report: The International Scientific Report on the Safety of Advanced AI" (January 2025), particular pages 19, 100 and supra. We here adopted the definition of an agent in Black's Law Dictionary: "1. One who is authorized to act for or in place of another; a representative, 2. Something that produces an effect." Black's Law Dictionary, 2nd addition.
[115] AI Action Summit, "International AI Safety Report: The International Scientific Report on the Safety of Advanced AI" (January 2025), 19.