

PERSONHOOD AND PRIVACY RIGHT IN THE AGE OF ARTIFICIAL INTELLIGENCE

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ABSTRACT

The concept of personhood is perhaps one of the most divisive issues in philosophy and science today, the reason being that man is the subject and object of enquiry. He is the narrator and the narrative, the interrogator and the interrogative. The perennial question has been ‘whether it will be possible for man to detach himself from himself in order to objectively study himself?’ This enquiry into understanding the nature of the person became even more complicated with the invention and introduction of artificial intelligence. Artificial intelligence has a direct assault on personhood and has nearly eroded the private sphere; it has placed the person in the public purview thereby making it virtually impossible for man not to be accessible at every point in time. Privacy right of the human person is under serious attack by artificial intelligence. Around the world, too many citizens are exposed to identity theft, businesses are struggling to deal with cyberespionage and theft of intellectual property, banks are increasingly fighting regular cyberdisruptions, and the list of malware and breaches continue to mount against socialmedia networks and Internet platforms. Big data and analytics have revolutionized the way we live and work. The paper using analytic method interrogates from several vantage points the question of “personhood” and “privacy right” in the light of contemporary and near-future forms of ethical AI. It will also consider the incredible benefits we get from AI and also compare the impending risks if we do not address the issues of personal security and privacy right. The best way to achieve this is to be better informed, strike the right balance and ethically examine the impact of artificial intelligence on personhood and privacy right as it develops constantly and consistently.

INTRODUCTION

Most applications of artificial intelligence (AI) require huge volumes of data in order to learn and make intelligent decisions. Artificial intelligence is high on the agenda in most sectors due to its potential for radically improved services, commercial breakthroughs and financial gains. In the future if not now, we will face a range of legal and ethical dilemmas in the search for a balance between considerable social advances in the name of AI and fundamental privacy right. “Artificial is something which is not created i.e., nor naturally created. Intelligence is related to the ability to understand, in the sense the skill and practice; in other way the functionality, capacity to store and recall.”¹

Attending to metaphysical, moral, social, and legal understandings of personhood and privacy right, we ask about the position of apparently personal artificial intelligences in our society and individual lives. In order to answer this, we will consider; three overlapping examinations which this study is persuaded to present. The first involves the validity of personhood as the principle by which to explain and articulate the privacy doctrine; the second, the relations among privacy doctrine, artificial intelligence, and the limits of state power; and the third, the question of whether some principle other than personhood might underlie the constitutional right to privacy.

1. A GENEALOGY OF PERSONHOOD

The concept of 'Personhood' is perhaps one of the most contentious topics in science and philosophy that exist today. This is so because personhood is fraught with ambiguity. It not only has a long history within the philosophy, but personhood as a more general concept is important outside of philosophy as well just like in law. Furthermore, the notions of being a person and a subject are interconnected, and the two terms are in certain cases used in closely related ways or interchangeably.

The first philosophical definition of person came from Boethius, a Roman philosopher and politician. He defines person in Latin language as "*persona est naturae rationalis individua substantia*" translated as "an individual substance possessing a rational (spiritual) nature."² In another vein, for Aquinas, the "person is subsistence in itself, undivided in itself, but divided/separated from every other being"³. From the two definitions, we can unarguably deduce that, that which lacks rationality is excluded a priori from the concept of a person; second, that a person is subsistence in itself; in other words, the person must be in existence; and third, that the person is undivided in itself. By implication a person is unique by its very nature.

The late Judge Craven attributed the term's usage in privacy jurisprudence to Professor Freund, who in 1975 made the following observation "the theme 'of personhood is ... emerging. It has been groping, I think, for a rubric. Sometimes it is called privacy, inaptly it would seem to me; autonomy perhaps, though that seems too dangerously broad. But the idea is that of personhood in the sense of those attributes of an individual which are irreducible in his selfhood."⁴ Despite its ubiquity, "personhood" remains rather ill-defined. The word is meant, it seems, to capture some essence of our being – "those attributes ... irreducible in [one's] selfhood" - with which the state must not be allowed to tamper. Yet the concept has a certain opacity, greater perhaps than that of analogous but no less abstract terms such as "dignity" or "liberty."⁵ We imagine that we know what it means for someone to be without dignity or liberty; what is it to be deprived of one's personhood?

1.1 PERSONHOOD IN PRESOCRATIC ERA

Philosophy and philosophers alike at the inception of the enterprise bordered themselves more by querying the kind of stuff that goes into the composition of things. The natural world, in spite of disruptions, displays a conspicuous degree of order and regularity. Thales 624-546 BC

opened up this new era of contemplation which earned him the honor as the first recorded philosopher. He argued that one single element, a stuff which contained its own principle of action or change, rest at the foundation of all corporeal reality. To Thales, this “One” or “stuff” was water. Others like Anaximander and Pythagoras followed to state though differently the stuff they believed the world was made of. Anaximander believed that the prime substance out of which all things came is an indefinite or boundless realm, but Pythagoras advanced the principles of mathematics (Numbers) as the principle of all things. All these ancient philosophers were struck by wonder or the degree of order displayed by the world and this wonder prompted the search for the origin and stuff the world was made. This order as it were controls the natural behavior of both organic and inorganic substances, of which they are believed to be the rules and laws of the universe or cosmos. For this, they made such assertion as “since man is a part of the cosmos, he is subjected to these laws which he claims to be right or just by nature in which human laws and morals took root.”⁶ To the Greeks, the state cohered by the laws which are eternal and devoid of any human interference. The Greek’s political philosophy did not, for the most part, use the term “natural law”. Personhood did not receive the much needed attention in the pre-socratic era because their major preoccupation was to answer the question, ‘what was the stuff the world was made of? So their interest was cosmological rather than ontological.

1.2 PERSONHOOD IN SOCRATIC TIME

The philosophical anthropology or the philosophy of man of the ancient Greece was dominated by two trends which lingered until advent of modern philosophy. One trend was spiritualistic and was attached to the name of Plato; the other trend was more empirically entrenched and had Aristotle as its founder. Plato taught that man was essentially his soul, the body being a kind of a prison of the soul. The relationship between body and soul is forced and extrinsic according to Plato; like, for example, a skipper (soul) commanding his boat (body) or a horse rider (soul) guiding his horse (body). The spiritualist trend was adopted by the Neo-Platonists (e.g. Plotinus), and then used with considerable modifications by the great thinker of the Patristic Age- St. Augustine of Hippo.

But the issue of ‘person’ is even more complicated than interpretation since the word from which our word “person” is derived, the Greek *prosōpon* ⁷ is not used in any of our senses of “person” not until the Stoics. A person in another notion may be thought of as a role or a part played, and this is associated with the possible origins of the word “person” in the Latin *persona*, meaning “an actor’s mask”. The equivalent of the word *persona*⁸ in Latin is the Greek *prosōpon*. These words both refer to the mask that actors wear on stage. This in another vein borders on the function or role one plays in the stages of life according to the Romans.

1.3 AFRICAN CONCEPT OF PERSONHOOD

The Africans are not left out in the quest to understand the human person. The idea of personhood in African philosophy is characterized by ambiguity, and often confusion. “Indeed, when it comes to personhood, the Western tradition has for long periods of time barely accorded Africans the status of persons at all. Immanuel Kant has been implicated in that failure.”⁹ Modern African thinking on personhood according to Appiah “in turn developed in

conscientious opposition to the perceived individualism of Western thought, often emphasizing the communal orientation of traditional African conceptions of personhood.”¹⁰ In the relational basis of self or personhood, the starting-point of African thinking on personhood is social relations—selfhood is seen and accounted for from this relational perspective. Kuckertz puts it like this that “African thought and philosophy on personhood and selfhood is that the ‘I’ belongs to the I-You-correspondence as a stream of lived experience without which it could not be thought and would not exist.”¹¹

Archbishop Desmond Tutu in another vein presented the relational foundation of African personhood by reiterating the Nguni (isiZulu) aphorism: *Umntu Ngumuntu Ngabantu*, which can be translated as “a person is a person because of or through others”. He went further by saying that “A person is a person through other persons. None of us comes into the world fully formed. We would not know how to think, or walk, or speak, or behave as human beings unless we learned it from other human beings. We need other human beings in order to be human.”¹²

Another important aspect of the African conception of a person is destiny, whose ‘choice’ or ‘imposition’ pre-determines for the person what he/she will be in life. A person’s destiny determines his/her success or failure, his/her personality, luck or ill-luck. Gbadegesin discusses all these problems in connection with, and also the possible interpretations of the idea of destiny. He concludes that destiny has two aspects, the individual’s character and the influence of society, but in the end it is the influence and the demands of society that are really at stake:

Persons are what they are in virtue of what they are destined to be, their character and the communal influence on them.... A person whose existence and personality is dependent on the community is expected in turn to contribute to the continued existence of the community.... The meaning of one’s life is therefore measured by one’s commitment to social ideals and communal existence.¹³

The possibility that destiny could be an outcome of a person’s own choice raises essential problem. To be able to make a choice, one must have sufficient information as well as a predilection for the rational.

Self as an individual in the African thought, as in many idealistic systems, is a psychophysical being, an incarnate spirit, made up of two principal elements, namely, ‘body’ and ‘soul’, in familiar categories. Thus, in his thorough research of the concept of a person in Akan (Ghana) tradition, Gyekye is certain that “the Akans hold a dualistic conception of a person. A person is constituted by two principal substances, one spiritual (immaterial) and the other physical (material)”.¹⁴ Also, among the Igbos of Nigeria, belief in the two principal constituents of the human being, ‘body’ and ‘soul’, is well established in the people’s concept of death. Thus Arize (1970:17) writes, “When a person dies, his soul or spirit (*Mkpulu-obi*, *mmuo*) wanders till it is received into the blessed company of his forebears on condition that the relations on earth celebrate the full ceremonies. In some places this belief requires also that the person must have been a good man on earth or at least that a cleansing rite be performed over the corpse before burial.”¹⁵

1.4 PERSONHOOD IN THE PERIOD OF ARTIFICIAL INTELLIGENCE

In the era of artificial intelligence, so many perspectives of personhood are in contention with each other. Before this time, personhood was viewed by many to be either metaphysical or ethical. Scholars of African philosophy also made this distinction between ontological and normative concepts of personhood, but with the invention and introduction of artificially intelligent computers personhood has taken a new turn to add but not limited to even legal personhood.

1.5 LEGAL PERSONHOOD AND ARTIFICIAL INTELLIGENCE

The notion of legal personality is a dynamic one. In the course of the diverse political epochs, legal systems have had to review many times the boundary of the entities considered as proper persons in law, as well as the set of prerogatives attached to this status. The recognition of the bearers of rights and duties has long been, and will be, an instrument of legal policy through which law identifies its own community. Legal personification may have important social effects, by empowering and protecting the entities personified especially its right of privacy and by working to the benefit of the general interest. As argued by Kurki and Pietrzykowski, “there is much debate about the boundaries of legal personality: about whether not only humans and their organizations, but also nonhuman animals, environmental entities, idols, unborn children, and software agents should be granted personality status”.¹⁶

In most legal systems of the world, the entities just mentioned are not seen as responsible agents. Some of them are seen as incapable of purposeful action, and others (e.g., animals), while endowed with a limited agency, are seen as incapable of reasoning or deliberating and devoid of moral standing. Conversely Curran stated that, “there have been contexts, e.g., Roman law, in which the status of a full-fledged person was only granted to certain human individuals, to the exclusion of others (e.g., slaves)”.¹⁷ Modern legal systems, on the other hand, include all human beings in the community of legal persons because only humans are deemed to be morally and mentally worthy of holding legal positions. Personality is also extended to various types of human organizations — operating in the economic, social, or religious sphere —, since such organization advance human interests, to this end relying on the cognitive skills of their human representatives and agents. With the latest launch of Meta Llama 3 by Meta founder and CEO Mark Zuckerberg, this narrative is now changing as the pervasive effects of artificial intelligence is felt in almost every facets of human life.

1.6 ETHICAL AND METAPHYSICAL PERSONHOOD

In ethics, moral persons are entities that have a central status in morality bothering on autonomy. Often, the phrase “moral person” is taken to be more or less synonymous with “moral agent”, referring to an entity with the capacity to act in accordance with morality and respond to and deliberate upon moral reasons. However, some scholars also use the term to refer to (some) moral patients: beings that are not moral agents but that are regardless morally considerable, that is, that they matter morally in their own right.¹⁸ The term “subject” is

occasionally used in these contexts as well. Tom Regan has famously argued that being a “subject-of-a-life” – consisting of capacities such as memory, sense of the future, welfare interests, and so on – is a sufficient condition for moral status.¹⁹

Another philosophical context where the term “personhood” is often invoked is metaphysics. Here, the problem of defining personhood is connected to issues dealing with personal identity, such as whether – and under what conditions – we can say that a 10-year-old John Smith is the same person as a 70-year-old John Smith. Metaphysical accounts of personhood often define personhood more broadly, without necessarily trying to draw any moral conclusions, such as that all persons would be morally considerable. Metaphysical notion of personhood is ontological in nature. It bothers itself with the idea of existence.

2. WHAT IS ARTIFICIAL INTELLIGENCE?

The authentic history of AI is rather messy, but it tends to work out as follows. In the 1950s, a visionary mathematician named Norbert Wiener was testing a version of the Turing machine with a chess program. It worked and Turing called it “computers that think.” The machine became known as the first “universal” machine, and it allowed theorists to explore the ramifications of the computational universe.²⁰ But it was too slow to accomplish its full promise. What makes the Turing machine so fascinating is that in theory the only reason it can achieve human-level intelligence is because of a very specific device it uses to store its data. In 1950, Alan Turing published a paper on the development of intelligent machines. John McCarthy provides his definition of artificial intelligence later in 1956.²¹ Reason searches, also known as means-to-end algorithms, were first developed in 1956 to “walk” straightforward decision paths and make decisions. The capacity to process word strings and solve intricate mathematical expressions was made possible by these methods. Natural language processing is the term for word processing.

AI is increasingly present in our lives, and its impact will continue to expand significantly in the coming years. From predictive text, to social media news feeds, to virtual homes and mobile phone voice assistants, AI is already a tangible part of our everyday life. AI offers automated translation, assists shoppers buying online and recommends the fastest route on the drive home. It is also a key component of much-debated, rapidly developing technologies such as facial recognition and self-driving vehicles. How can one possibly define AI considering its multifaceted tasks? There is no single agreed definition of AI: “it is a general term referring to machines’ evolving capacity to take on tasks requiring some form of intelligence. The tasks that AI performs can include generating predictions, making decisions and providing recommendations. This means that AI may make decisions itself, or provide information for use in human decision-making.”²²

Artificial Intelligence is everywhere. Each time a new AI technology is introduced, legal and ethical questions arise especially on the private space of the human person. Philosophers, legal practitioners and policy makers struggle to keep pace as they confront unforeseen possibilities

and heightened risks. This is particularly true as it relates to privacy right of the human person. For example, in November 2022, OpenAI launched ChatGPT²³, a long form, question answering AI chatbot that uses Reinforcement Learning from Human Feedback to answer questions conversationally. With each new user, OpenAI is better able to deliver on its promise of gathering and using data to further train and fine-tune its program. Already the technology has been called “highly capable”²⁴ with Microsoft committing to its potential by announcing a \$10 billion investment into the technology.²⁵ On February 6, 2023, Google announced Bard AI in response to (and in direct competition with) ChatGPT.²⁶ The use of ChatGPT raises interesting questions across industries. For example, in academic settings, there is already widespread debate over whether the use of AI will boost cheating and disrupt education, or whether it can be used as a tool for good.²⁷ Already, institutions are being forced to enact new policies and procedures to respond to the critical changes ChatGPT presents.²⁸

As if the challenges of ChatGPT are not enough, Meta founder and CEO Mark Zuckerberg on Thursday, 18th April, 2024 announced its free artificial intelligence assistant, Meta AI, is rolling out across its social media platforms WhatsApp, Instagram, Facebook and Messenger. It's the company's biggest push into AI yet. The assistant can answer questions, create animations and generate images. Meta AI was built on the company's latest large language model called Meta Llama 3. It is an intelligent assistant that is capable of complex reasoning, following instructions, visualizing ideas and solving nuanced problems. This latest application is raising some ethical questions around the privacy right of the human person looking at all its functions.

3. UNDERSTANDING PRIVACY RIGHT

We can think of privacy in concentric circles with ourselves in the center. In the middle, held closest to us, are the secrets, thoughts, and rituals that we keep entirely to ourselves and share with no one. Further out are the conversations we have and the actions we take that involve others but that we expect to remain private. We also expect a measure of privacy toward the outer circles, as some issues are kept within the family or inside our company without further publication. Certain information we hide from the neighbors, some financial data we prefer to keep from the government, and there are certain things that our mothers-in-law have no business knowing. Privacy is complex and personal. Yet no matter what each person's perception of privacy is, some invasions are so extreme that they raise an immediate cry from everyone who hears about them. “Privacy is a right of an individual. That is to say, it would be wrong for other individuals or institutions to compromise an individual's privacy.”²⁹

In the contexts of this study, the concept of privacy is employed to govern the conduct of other individuals who intrude in various ways especially data driven means upon one's life. Privacy in these contexts can be generally understood in its familiar informational sense; it limits the ability of others to gain, disseminate, or use information about oneself. While privacy has been defined in many ways over the last century, this study favors what has been called a “control”based definition of privacy. A right to privacy is a right to control access to, and uses of, places, bodies, and personal information.³⁰ A serviceable definition of “personal

information” is “any information relating to an identified or identifiable natural person... one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity.”³¹ Study on “privacy is indispensable for the exercise of a range of human rights, such as freedom of expression, freedom of association, as well as being fundamental for the exercise of personal

autonomy and freedom of choice, as well as broader societal norms.”³²

4. AREAS OF WORRY ABOUT HUMAN PRIVACY RIGHT ON AI

a. Data exploitation: Consumer products, from smart home appliances to connected cars and phone applications, are often built for data exploitation. Consumers are commonly faced with an informational asymmetry as to what kinds and how much data their devices, networks, and platforms generate, process, or share. As we bring ever-more smart and connected devices into our homes, workplaces, public spaces, and even our bodies, educating the public about such data exploitation becomes increasingly pressing.³³

b. Identification and tracking: AI applications can be used to identify and thereby track individuals across different devices, in their homes, at work, and in public spaces. For example, while personal data is routinely (pseudo-) anonymised within datasets, AI can be employed to de-anonymise this data, challenging the distinction between personal and non-personal data, on which current data protection regulation is based.³⁴ Facial recognition is another means by which individuals can be tracked and identified, which has the potential to transform expectations of anonymity in public space. Machine learning systems have even been able to identify around 69% of protesters wearing caps and scarves to cover their faces.³⁵ In the context of law enforcement, facial recognition can allow the police to identify individuals without probable cause, reasonable suspicion, or any other legal standard that might otherwise be required for law enforcement to obtain identification by traditional means.³⁶

c. Inference and prediction of information: Using machine learning methods, highly sensitive information can be inferred or predicted from non-sensitive forms of data. People’s emotional states e.g. confidence, nervousness, sadness, and tiredness, can be predicted from typing patterns on a computer keyboard.³⁷ When sensitive personal data, such as information about health, sexuality, ethnicity, or political beliefs can be predicted from unrelated data (i.e. activity logs, phone metrics, location data or social media likes) such profiling poses significant challenges to privacy and may result in discrimination.

d. Profiling to sort, score, categorize, assess and rank individuals and groups: AI-driven applications are used to automatically sort, score, categorize, assess and rank people, often without their knowledge or consent, and frequently without the ability to challenge the outcomes or effectiveness of those processes. In most recent time, for instance, IBM promoted the use of AI to separate ‘genuine’ refugees from other types of migrants.³⁸ Machine learning

also plays a growing role in scoring systems which shape access to credit, employment, housing or social services.

e. **Decision-making:** AI systems can be used to make or inform decisions about people or their environments, potentially based on profiling. In other words there is no transparency. “Embedded in every technology there is a powerful idea, sometimes two or three powerful ideas. These ideas are often hidden from our view because they are of a somewhat abstract nature. But this should not be taken to mean that they do not have practical consequences.”³⁹ An environment that knows your preferences and adapts itself according to presumed interests raise important issues around privacy, autonomy and the ethics of such adaptations. Personalization, not only of information but also of our perception of the world, will become increasingly important as we move towards connected spaces like smart cities⁴⁰ or augmented and virtual reality (AR and VR).

5. GOVERNMENT PROMULGATED PRIVACY LAWS

Governments of most countries of the world are directly or indirectly involved in privacy. Countries are focusing on overseeing AI’s speedy adoption and ensuring that the future includes both business benefits and clear public safeguards for privacy and trust. United Kingdom (UK) has declared appropriate AI use a priority, citing its potential to pose a ‘high risk’ to individual rights and freedoms. It calls public trust paramount for safe AI adoption. The *National AI strategy* sets out an ambitious 10-year plan for the UK to remain a global AI superpower. The UK proposes a pro-innovation approach to AI regulation. The Information Commissioner’s Office (ICO) has provided AI and data protection resources, including the AI and Data Protection Toolkit, to aid in this effort. The Centre for Data Ethics and Innovation (CDEI) has also published its AI Barometer.⁴¹ United States (US) has not yet proposed federal AI legislation or regulations. However, some states have enacted state-level AI-related laws, while others are in the process of doing so. The National Institute of Standards and Technology (NIST) have developed an *AI risk management framework* and the Federal Trade Commission (FTC) has issued guidance on *Using artificial intelligence and algorithms*.⁴²

With the involvement of UK and US and many other countries of the world, hope is renewed that before long every country of the world will enact laws that will protect the individual from the pervasive nature of AI, especially concerning human privacy right. These laws are necessary because the underlying principle why privacy is important bothers on human autonomy. The word “autonomy” is derived from the Greek stems for “self” and “law” and means literally “the having or making of one’s own laws.” Its sense therefore can be rendered at least approximately by such terms as “self-rule,” “self-determination,” “self-government,” and “independence.” These phrases are all familiar to us from their more frequent, and often more exact, application to states and other political institutions. Indeed it is plausible to suppose that the original applications and denials of these notions were to states and that their attribution to individuals is derivative, in which case “personal autonomy” is a political metaphor.⁴³

CONCLUSION

Artificial intelligence is becoming a popular and reigning field in computer science because it has improved humans and has the potential to solve the impossibilities. However, in the future if not now, intelligent machines will either replace or augment human skills in many areas. The application areas of artificial intelligence have a tremendous impact on many areas of life, such as education, law, philosophy, engineering, business, medicine, and weather forecasting, to solve complex problems in various fields. The work of many laborers can be done with one machine. But artificial intelligence has another side. It's ethical side. Being totally dependent on machines can ruin our lives. The mindset of I can't work alone, will invariably bring about I'm going to be lazy. Another drawback is the lack of human privacy as discussed in the work. Therefore, the machine should only be used where it is needed. Overuse of the AI can cause serious troubles. We should understand the issues relating to AI and use the systems with due care. While coming to person and privacy right of AI, before giving the status of person to AI robots, the government should consider the social and legal trends. The main ethical consideration is that AI robots are not qualified to receive personhood status because they can never satisfy the need persons in any country where they are operational can satisfy. Artificial intelligence will bring about a major revolution in human history. Human civilization will thrive by augmenting human intelligence with artificial intelligence as long as technology remains useful. It is conceivable though, that artificial being of comparable moral worth to humans may one day appear. Failing to recognize that merit may disclose us to be either an 'autistic species', unable to comprehend the minds of other types of beings, or merely opinionated against those different from ourselves.

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