

Review of: "[Essay] Not Quite Like Us? — Can Cyborgs and Intelligent Machines Be Natural Persons as a Matter of Law?"

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Potential competing interests: No potential competing interests to declare.

This essay by Professor Gervais is an interesting exercise in the philosophy of the law as applied to machines in the modern day. It skips past the fundamental reality of the judicial process in that it ignores the fact that courts are uniquely human institutions, created by human beings historically, as a mechanism for the resolution of human problems. Like much of the human experience, courts have evolved from a system of combatants wrapped in iron to juries of our peers, together with precedent as a societal guidebook for the decision-making process. Yet, the statement that "lawyers and judges. . .are trained to use fuzziness and definitional flexibility in their interpretation and application of the law" seems to imply that the judicial process is inherently divorced from the social reality that it serves and needs help from machines. Nothing could be further from the practical reality of the court. To that extent, even the most advanced of machines probably cannot be endowed with the "right" to participate in that process on the same level as human beings. To do so could eventually subordinate the human basis of the system to something that potentially could elevate logic over humanity.

The reason is quite simple. No matter the purpose of the machine, whether to supplant or enhance the human interface, it is limited by the implicit bias of the person who programmed it. That program cannot evolve by itself without some re-programming that, again, involves implicit bias. Professor Gervais concedes as much in the reference to the UNESCO, World Commission on the Ethics of Scientific Knowledge and Technology (COMEST), Report of Comest on Robotics Ethics, U.N. Doc. SHS/COMEST-10/17/2 REV. (14 September 2017), contrasted with the UN Declaration of Human Rights.

The line between humans and machines, for legal purposes, can be as simple as acknowledging that a machine has no history in itself, only what its programming has given it; whereas, human beings can, and do, research history outside of themselves to determine who they are. That said, the essay provides some clues to the potential utility of machines in the judicial process because of their analytical capabilities when confronted with large quantities of data. Indeed, this very pragmatic outcome does not require any consideration of investing the machine with "rights", though there is a place for the machine as an evidentiary feature of trials.

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