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The Law of Automated and Autonomous Legal Entities

My lightning round discussion focuses on the laws of automated and autonomous legal entities.

Some in the class, especially those with a blockchain background, may be familiar with the concept of a decentralized autonomous organization. My discussion will take, as a thought exercise, a legal entity that goes a step further than a DAO: an automated autonomous organization. Akin to a program which conducts legally significant affairs on its own.

The overarching question here is: how would the law treat such an organization? What would the standard be for automated entities? I think that question can be split into two parts. First, how would the law treat liability stemming from an automated entity? Second, would that entity have legal personhood?

We can take the classic example of an autonomous car injuring a pedestrian. What entity or entities has tort liability for those injuries? The manufacturer? The driver? The AI? Is there any criminal liability to assign? Can an AI have criminal intent? And what would you do with it if it did? How would you place an AI in jail?

Broadly, the literature has considered many different potential liability frameworks for AI, including: strict liability, agency law or products liability. Or inventing a new framework entirely, perhaps a jurisdiction. In his article "How to Sue a Robot", Roger Michalski coined the term "*in robotam*" for this purpose: a jurisdiction specific for artificial intelligences.

As it relates to the second question on personhood, over the years, the law has assigned different legal statuses for many non-adult human persons. Children, animals, wild animals, corporate persons, even bodies of water such as rivers have acquired legal standing in certain circumstances.

What standing should an autonomous organization have? Should AI have intellectual property rights over its inventions or works? Should it have the authority to conduct business as any ordinary LLC? Should we fashion a new legal status specifically for autonomous entities?

These are difficult, fact-specific questions. However, the legal literature has provided several concepts that I have bundled together into what I call a "Working Proposal." First, treat an autonomous entity as an agent under agency law. The principal is human creator / controller / owner who defines the AI's scope of authority in a registry of some kind. If anyone is familiar with the concept of a "robot.txt" file, this could be akin to the AI registry.

The AI is permitted to act within its scope of authority - but should it ever leave that scope, strict liability would apply. But against whom? Many scholars commenting on the ramifications of autonomous weapons systems have articulated the phrase "meaningful human control"; that is, those with meaningful human control over the AI could be responsible in a strict liability framework.

This would satisfy a social demand for AI responsibility and avoid a potential accountability gap that could occur. Consider the scenario of an autonomous car injuring a pedestrian with no one being held legally responsible.

It is still very early in the evolution of the regulation of autonomous entities, but it is a critical discussion to have, as it may become very relevant sooner than many think. So, what would be your proposal? How should we apportion liability stemming from the actions of artificial entities? What should be the legal standing of AI? And perhaps most importantly, what implications would our treatment of AI have on the future of law and technology? Thank you.