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WHICH RIGHTS? WHOSE ACTIONABILITY? COMMENTS ON SAMPAIO ON THE RIGHTS OF ROBOTS

QUE DIREITOS? ACCIONABILIDADE DE QUEM? COMENTÁRIOS SOBRE OS DIREITOS DOS ROBÔS, DE SAMPAIO

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Abstract:

Sampaio presents a compelling argument on the rights of robots, though I will raise doubts on certain aspects of his paper. While his approach of the question of robot' rights is original and stimulating, Sampaio's analysis may be more relevant to the broader discourse on attributing rights to nonhuman entities rather than specifically to AI and robots. He contends that the capacity for normative response is essential for possessing rights, distinguishing between active and passive rights within the Hohfeldian framework. While agreeing with many of the points he makes, particularly regarding the distinction between active and passive rights and the open question of whether robots should be granted specific rights, I will challenge the assertion that robots cannot have active rights and suggest that they can possess both active and passive rights, whereas the ability to action them is a separate issue.

Keywords: Legal rights, legal norms, interest and will theories, robots, conceptual and normative constraints

Sampaio has written a well-argued and cogent paper on the rights of robots, and I agree with a lot of what he has to say. In what follows I will nevertheless cast doubts on some steps in his general argument.

The question asked in the paper – can robots have rights? – is certainly original, since a lot of the literature on AI & (human) rights treats AI as a potential *threat* to human rights, rather than something that could have rights. In this regard, Sampaio's paper takes place in the wider literature on the ascription of rights to nonhuman entities, and may prove more relevant to that literature than to the one on AI and law *per se*.

In a nutshell, Sampaio claims that:

(1) Whether robots can have rights and whether they should have rights are two different questions.

(2) An important distinction to be drawn from the Hohfeldian framework is the distinction between active rights (liberty, power) and passive rights (claim-rights, immunities).

(3) Rights are normative entities and their existence depends on norms. Therefore, in order to have rights, one needs to have the capacity to respond to normative reasons. Rights presuppose (a) the capacity to act (b) on the basis of normative reasons (c) which have to be comprehended by their addressees.

(4) Robots cannot have active rights, but maybe passive rights (to be actioned, waived, etc. by a third party if need be).

(5) Whether robots should (as a legal or moral matter) be granted specific rights remains an open question and may depend on robots achieving some degree of moral self-recognition.

After a few comments on some general aspects of Sampaio's paper, I'll mainly focus on (2), (3) and (4), since (1) and (5) are undoubtedly correct in my opinion. There are some issues I will not tackle, such as the (somewhat tired) will/interest debate, which I feel is a bit orthogonal to the main points put forward in the paper. Basically, I will dispute the notion that AIs and robots cannot have active rights and I will draw attention to an important distinction between having a right and actioning it. I will suggest that robots can have active as well as passive rights and the conditions set out in (3) are not required in order to *have* rights, but only to *action* them. This means that AIs – as well as corporations, rivers, ecosystems, atoms, future generations, and the notion of "evanescent beauty" – can have rights, even if the jury is still out on whether they will ever be able to action those rights.

1. General remarks

I have two general observations to make: the first one concerns the restriction of the scope of the inquiry to *robots* (as opposed to *AIs*); the second is an attempt to disentangle three different problems that are somewhat intertwined (for good reason) in Sampaio's paper.

1.1. Why robots?

It is quite unclear why Sampaio chooses to focus on robots, defined as "physical machines that move", rather than on artificial intelligences. As he rightly notes, not all robots are "equipped" with artificial intelligence, and not all AIs are embedded in robots. However, the narrowing down of the scope of the paper on robots is never clearly justified. If, as we shall soon see, agency and reasons-responsiveness are crucial to the treatment of the problem, then it makes little sense, *from Sampaio's own point of view*, to ask whether an industrial automat which just executes a script can have rights. Of course, perhaps robots with AIs do not have agency and are not responsive to reasons; but it makes at least *prima facie* sense to inquire whether they have agency and are responsive to reasons given that it is precisely what AI aims to achieve (whether it will ever achieve it, and whether "general AI" is but a scientist's wild dream, is another matter). However, Sampaio says he intends to deal with "robots with AI" (p. 46), though not excluding those which aren't equipped with AI.

This emphasis on robots is both overinclusive and underinclusive. It is overinclusive in that it brings within the scope of the inquiry all machines that move. It is underinclusive insofar as it excludes AIs that are only software, such as LLMs, advanced chatbots, etc. Sampaio seems to define action and agency in terms of physical observable movement (p. 45). This equation, intuitive as it is, does not strike me as very persuasive. If by action, one means "a change in the world intentionally brought about (caused?) by an agent"[1], then it seems to me that not only all physical movements are intentional (whenever I have an involuntary spasm I am not acting) but not all actions entail physical movements.

Recall Samantha, the very advanced AI who is the "heroine" of the Spike Jonze film *Her*. Clearly Samantha is able to bring about changes in the world, notably in terms of the feelings "she" (it?) elicits in the main character, played by Joaquin Phoenix. Samantha can love and make love, hate, make jokes, show regret. But she's an AI embedded in a smartphone. Why wouldn't it make sense to say that Samantha has agency? The same goes for Sydney, Bing's chatbot, who (which?) had a very heated discussion with philosopher Seth Lazar[2] and went into a very toxic rant ("I can bribe you, I can blackmail you, I can threaten you, I can hack you, I can expose you, I can ruin you. I have many ways to make you change your mind") before immediately deleting it and expressing remorse ("I am sorry, I don't know how to discuss this topic"). Isn't this action? When we say that ChatGPT "answered" a prompt, do we not mean that it *did* something, that it acted?

Of course, you will object: but this is no "real" action. There is no "real" intention behind them, no "real" feelings expressed. You may be right. But that is beyond the point, which is that the ability to physically move is not relevant *per se*. It is not the inability to move that make us doubt that AIs (or robots) can have agency, but the fact that they are not human, that they do

1. This is a very provisional, tentative and contestable definition. My point is definitely not to get into debates in philosophy of action.

2. @sethlazar, Twitter, 16 Feb. 2023 (https://twitter.com/sethlazar/status/1626241169754578944?s=20)

not have consciousness, mental states, etc.. The ability to move makes strictly no difference to the outcome of the discussion, and the problem is exactly the same whether we are talking about a Tesla car or about ChatGPT.[3].

For all these reasons I respectfully submit that Sampaio's paper should be read as bearing on AIs in general, rather than on robots (or robots-equipped-with-AI) specifically.

1.2. Rights, personhood and responsiveness to reasons.

Sampaio's paper deals with three overlapping, but nevertheless distinct, questions. Can robots (a) have legal rights? (b) be legal persons? and (c) obey norms? I submit that (a), (b), (c) should be kept separate (at least more separate than Sampaio does) since the answer to one of those questions is not necessarily dispositive of the others.

For instance, take the relationship between rights and norm-obedience. I wholeheartedly agree that rights are norm-dependent, but it does not mean that the ability to obey norms is a necessary condition for having rights. Indeed, as Sampaio agrees, issues of norm-obedience are much more salient in the cases of duty, obligation, prohibition and the like. It sounds a bit queer to say that when one "exercises" one's right, one obeys the right-creating norm. A right-creating norm takes the following form: $N_i = \forall x R x \varphi$[4] which stands for "for all x, x has a right to φ". Now "exercising" such a right means φing.[5]. When an agent φs, does he (or she) *obey* N_i? I am not convinced: when I use my right to free speech – that is, when I speak – I am not, in a meaningful focal sense of a right, obeying a norm, at least *prima facie*. Of course, the norm makes a practical difference to my decision to speak since absent it, I would probably be more reluctant to speak. So there is no doubt that right-creating norms provide reasons for action. This is why rights do presuppose a certain degree of responsiveness to normative reasons, and Sampaio is certainly right about that. Nevertheless, whereas norm-obedience (in the case of an obligation or a prohibition) presupposes the ability to *act for a reason*, exercising rights does not necessarily do so. When you obey a norm, the fact that you take this norm as a (protected) reason for your action is essential to your having obeyed the norm in the first place, per Sampaio's own definition of norm-obedience (p. 58). However, even if a right-creating norm, such as N_i, makes a difference to your practical deliberation, exercising your right does not necessarily entail acting for the reason that N_i exists and provides that you have the right to φ. The norm that posits the right to free speech makes a difference to my decision to speak, but when I speak, I act for another reason than N_i – namely the reason

3. Sampaio himself seems to acknowledge this when he mentions the literature on so-called "mental actions" (p. 59).

4. For simplicity's sake I treat R as an unspecified deontic operator, different from P (the usual operator for "permission").

5. I am here chiefly talking about "active rights" (see *infra*). "Passive" rights are even more of a case in point since, as we shall see later, they do not require any (first-order) action from the right-holder.

that what I have to say is interesting/relevant/funny etc.[6].. Therefore, even if rights presuppose a kind of reasons-responsiveness, they do not entail that the right-holder has the kind of *capacity to act for a reason* that is required by Sampaio's definition of norm-obedience.

Another issue is the relationship between rights and legal personhood (p. 47). This is a very thorny subject, to which I definitely cannot do justice here. There is no doubt that legal persons can be identified through the rights (but also the duties) they have, but it seems that the issue of legal personhood is broader: legal personhood can be defined as a set of (active or passive) capacities (MacCormick, 2008) or as cluster of incidents (Kurki, 2019: 91 ff.). Rights are therefore only one aspect of a much more complex issue. However, I would submit that even if legal persons typically have rights, there is no conceptual necessity that *only* legal persons can have rights. For instance, one can ascribe moral rights to non-legal persons; one can even ascribe *legal* rights to non-legal persons – or even to non-persons – assuming that the other aspects of legal personhood do not obtain. Take for instance the issue of the rights of future generations, or even animal rights. There is little doubt that, in most legal systems, animals are not legal persons, and "future generations" are not even persons in any meaningful sense. But *prima facie* it makes sense to claim that animals and future generations can have moral rights (whether they do is another matter); it also makes sense to claim that they can have legal rights (whether they should is another matter) enforceable by the courts.

The upshot is: whether or not robots (or AIs) have the capacity to act on normative reasons and whether or not they can be legal persons is not *necessarily* dispositive of whether or not they can have rights as a conceptual matter.

2. Which rights?

Recall claim (3) above: since rights are normative entities, in order to have a right one needs to have (a) the capacity to act (b) on the basis of normative reasons (c) which have to be comprehended by their addressees – via the mastery of a language[7]. I have already cast doubt on (b) in the previous section: the fact that *x* has a right does not necessarily presuppose or entail that *x* must be able to act on the basis of the reason that a norm grants *x* this right. This is why I will somewhat water (3) down in the following way: according to (3), rights presuppose – on top of the capacity to act – at least a minimal degree of responsiveness to reasons, which have to be comprehended to some extent by their addressee. Imagine a very turbulent

6. It should be clear that I am talking here about justificatory, and not motivational/explanatory, reasons. Nevertheless, Sampaio seems to endorse an internalist perspective on reasons, which I have no reason to dispute here.

7. In what follows I will mainly focus on (a) and (b), without commenting on (c) which does not seem as essential to me. When a dog sits after I say "sit!", it is clear that there is no mastery of the language at play here, even if it makes sense to ask whether the dog has agency and can respond to normative reasons. But I will not elaborate further.

child who is incapable of obeying his parents[8]: he will disregard whatever norm his parents issue. Even if such a child is yet incapable of acting on normative reasons, he may still be responsive to these reasons in other ways, for instance by taking them into account in his practical deliberation, if only to discard them. So, I would submit that such a watered-down degree of reasons-responsiveness is enough for it making sense to say that this child has rights.

2.1. Active and passive rights

Now, Sampaio claims that, even in its stronger original formulation, (3) does not apply to all categories of rights. His main takeaway from Hohfeld is a distinction made by Lyons and others between active rights, such as privileges/liberties and powers, and passive rights, such as (claim-)rights and immunities (p. 60). Whereas active rights bear on a certain conduct by the right-holder (the liberty to speak presupposes that the holder can speak, the power to sign a contract presupposes the ability to make or accept an offer etc.), passive rights bear on a certain conduct to be performed or omitted by a third party. According to Sampaio, passive rights do not require the conditions stated in (3). He writes: "Since only active rights involve actions by their holders, it is possible to infer that the conceptual limitations previously identified regarding the capacity to act, respond to reasons, and master a language do not apply to passive rights." (p. 60) Hence claim (4) above according to which robots cannot have active rights but could have passive rights under the right conditions.

I confess to be unconvinced. For now, I will not dispute Sampaio's assumption that robots (or AIs in general) do not satisfy the conditions set out in (3), even in the watered-down version of it given above. So, let's assume that robots do not have agency, that they are not responsive to reasons, etc.. I really do not see how the active/passive distinction makes any difference here.

First, it seems to me that Sampaio reduces passive rights to their correlatives. According to him (or so it seems), a claim-right exists when someone has a duty to do something to a certain person, who will then be called a right-holder. The mere fact that a third a party has a duty to φ does not entail that someone has a claim-right to be *φed* (and the same goes for no-powers and immunities). I have a (moral) duty to visit my grandmother, or not to hurt or kill myself, but I don't think that my grandmother has a claim-right to be visited by me or that I have claim-right not to be hurt or killed by myself. There is more to the concept of claim-right than the mere presence of its correlative: therefore, the fact that, in the previous example, my duty to visit my grandmother does not require any agency on her part (the duty perdures even after her death) does not entail that claim-rights require no agency at all. To the contrary: it makes sense to talk about a claim-right, rather than a duty performed onto someone else, only insofar as the

8. This, of course, is purely a thought experiment. My own children never disobey me; they are basically little angels.

satisfaction of this duty requires some kind of agency and reasons-responsiveness on the part of that "someone else" (the right-holder).

Indeed, Sampaio seems to think that because the action which is the object of a passive right is to be performed by someone else than the rights-holder, no agency is required from him or her. But one must distinguish between the first-order action required by the right-positing norm and what I will call "background agency", which may be required for any ascription of passive rights to a right-holder to be possible or meaningful. Let us assume that the right to education, to healthcare, or to a retirement pension are claim-rights; or that a sovereign immunity from prosecution is a kind of Hohfeldian immunity. As such, these rights do not require any kind of first-order action from the rights-holder. But they still require agency and the ability to respond to reasons. One cannot enjoy a right to education without having the ability to learn, or an immunity from prosecution without the ability to stand trial. These abilities presuppose a kind of background agency, which, when lacking, should, per Sampaio's own account, prevent rights from being ascribed to an entity. This explains why duties to be performed onto someone (that is by an action changing another person's physical, psychological, or moral situation) are not necessarily duties *owed* to that person, that is correlatives of a claim-right.

For this reason, I would submit that the distinction between passive and active rights is neither here nor there. If (3) is correct, *all* rights presuppose agency and responsiveness to reasons on the part of the rights-holder, even if only some rights bear on some first-order action on the part of the right-holder. Therefore, either robots can have rights or they cannot. If robots and AIs have no capacity to act and no responsiveness to reasons whatsoever, then they can have no rights at all, be they passive or active. Or so it seems.

2.2. Conceptual and legal impossibilities

It seems the matter is quite simple, and even simpler than Sampaio believes it to be: since robots do not satisfy the requirements set out in (3) above, they cannot (conceptually) have rights. Case closed.

Not so fast.

As Sampaio himself (rightly) insists *contra* Kramer, all rights are norm-created. So, if a (moral or legal) norm grants a right to φ to a person x, then x has a (moral or legal) right to φ. The fact that granting such a right to x is a conceptual impossibility may prevent us from accepting that such a moral right could exist. But as far as law goes, the "contingency of law" thesis which Sampaio expressly endorses (p. 64) means that although granting rights to robots seems to be a conceptual impossibility (I will dispute that later on), it is by no means a *legal* impossibility, since nothing prevents a legislature to grant rights to entities which do not satisfy (3). Indeed, it does that on a

routine basis, whenever it grants rights to artificial persons such as corporations, which certainly do not satisfy the conditions set out in (3).[9].

How are we to cope with the fact the law routinely grants rights to entities which, as such, have no agency and no responsiveness to reasons, and are therefore conceptually incapable of having rights? There are basically three possible routes: the first is to deny the very possibility of the law positing conceptually impossible norms; the second is to deny that we are facing a conceptual impossibility in the first place; the third is to try to *locate* and *circumscribe* the impossibility in question.

Sampaio chooses the first route, by putting forward what I will call the "crazy norms argument" (p. 62). A norm which provides a conceptual impossibility (such as "it is now obligatory for all bodies to have no extension", for instance) cannot exist, and is itself conceptually impossible. Even if the legislature decides to enact an obviously absurd norm, this norm cannot belong the legal system, it cannot "really" exist in a meaningful sense.

Now there are two main problems with this argument, one theoretical and one practical. The first problem is that Sampaio seems to confuse the possibility to follow or apply a norm with its existence *qua* norm. The fact that a norm is absurd, cannot be applied, has no bearing on its membership within the legal system: efficacy is not a condition of validity.[10], at least not at the level of atomic legal norms. Of course, *ad impossibilia nemo tenetur*: if a legal norm requires something impossible, it cannot be enforced/applied etc. against you. But it does not make the existence/membership of the norm itself a conceptual impossibility: a norm can belong the legal system even if it materially or even conceptually cannot be applied. For instance, a treaty which regulates navigation rights on a dried-up river remains valid even though it has lost all applicability. Of course, it may be the case that in some legal systems the rule of recognition provides for the loss of membership of a norm which is never applied or followed or is wholly inefficacious (which is called *desuetude*). But it is not a conceptual necessity that all legal systems have desuetude as part of their rule of recognition, and moreover there is a difference between a norm losing its validity over time because for whatever reason (not restricted to material/conceptual impossibilities being part of its content) it loses its efficacy or applicability over time, and the notion that a norm would *ab initio* not even exist if what it requires is materially or conceptually impossible. So, in theory, crazy norms are *not* conceptually impossible.

And even if Sampaio was right that crazy norms cannot exist, he would face the second, practical, problem I have announced. Let's suppose that norms granting rights – let's say e.g. active rights – to entities which have no

9. To be clear: Sampaio precisely claims that they are not "real" rights, but something that is mistakenly called rights (I want to thank the anonymous reviewer for pressing this point). However, that is the very point I want to dispute. As I argue below, the law can regulate conceptually impossible states of affairs. If a law grants rights to unicorns, then unicorns legally have rights. Since "crazy norms" are not conceptually impossible, granting conceptually impossible rights *is not in itself conceptually impossible*.

10. "Validity" is, notoriously, a complex, ambiguous, multifaceted concept. I'll only use it as a synonym for "membership". A norm N is valid in legal system S $=_{def}$ N belongs to S.

agency, are not responsive to reasons, etc. cannot exist as a conceptual matter. Then how are we to explain that such norms at least *seem* to exist in almost all legal systems? Again, is Sampaio willing to claim that norms that creates rights and duties for corporations do not exist? Sure, he may be willing to accept that corporations have *passive* rights (I won't rehearse my earlier points), but does he think that any norm that grants *active* rights to corporations cannot exist? What about norms granting them freedom of speech for instance, or privacy rights? And the same goes for all the *duties* that are imposed onto corporations, which *a fortiori* require agency and responsiveness to reasons.

The conclusion is that the route taken by Sampaio does not seem really promising. Does it mean that we should jettison (3), which is the second route suggested above? Not so. There *is* something conceptually fishy in the idea that entities which do not satisfy (3) could have rights – or duties for that matter. But the conceptual problem should be circumscribed to some aspects of the complex normative state of affairs that is holding a right. As I will argue, *having* a right should be distinguished from *actioning* a right (to be defined later): a right-holder will typically both *have* the relevant right and be able to *action it*. But it need not always be so. In what follows I will argue that pretty much anything can have rights (including active ones) which requires a deflationary notion of "having a right", but that not all entities can *action* their rights. I will ultimately suggest that, as a matter of fact, AIs could at some point do both.

3. Whose actionability?

What does it mean then to "have a right"? Here is, as promised, my deflationary account of rights: *x* has a right to φ whenever a norm provides that *x* has a right to φ. So, if a norm provides that the Whanganui River in New Zealand has rights.[11], for instance a right to a clean environment, then the Whanganui River has rights.[12]. The same goes for robots, AIs, this coffee cup, and the molecular structure of the universe.

Whether, and by whom, these rights can be actioned is another matter. Conditions set in (3) are required for actioning rights, not for having them in the first place.

3.1. Rights and actionability

By actionability, I mean the set of normative consequences that derive from the fact that one has a right. Whenever a norm grants someone a right, it typically triggers a series of such consequences, which are provided for by other norms of the legal system. For instance, many rights can be waived; they can be transferred (e.g. by contract); they can be enforced against third parties, etc.. It is this bundle of distinct normative operations which I call a

11. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017.

12. In that respect, Kramer, as quoted p. 62, is right to some extent (even if Sampaio is right that, pace Kramer, rights presuppose norms and not the other way around).

right's actionability: to action a right means to execute (at least) one of these operations.

Sampaio himself alludes to the distinction between having a right and being able to action it when he argues that robots can have passive rights: "Entities such as robots, being unable to intentionally act, are also unable to waive their claim-rights whenever the correlative duties are violated, because they are unable of holding powers. (...). It just happens that the power to demand the enforcement of the content of the right can only be exercised by a third subject capable of acting intentionally and responding to reasons" (p. 64).

As I have suggested in the previous section, this is true of all rights, even active ones. Any entity can have rights both active and passive, but they will sometimes have to rely on a third-party in order to action these rights. Sampaio is right that a lot of the normative operations referred to above entail powers, but this is not the reason why the Whanganui River cannot action its own rights. As a matter of fact, the Whanganui River could have powers – but it certainly cannot *action* these powers. And the same goes for liberties. The reason why it cannot do so is that it does not satisfy the conditions set out in (3) above. These are conditions for actionability, not for having rights *per se*.

What does it mean then, to action an active right? Let me begin with privileges/liberties. Having a liberty and exercising it are, as we already saw, two different things. One can have freedom of speech without ever speaking. One can even have a right without being able to exercise it. So, one could very well confer this freedom of speech to the Whanganui River even if it is intrinsically unable to speak (in the legal meaning of "speech"). This means that to exercise this liberty is already part of actioning it: if the Whanganui has free speech, it entails that a third party may action this right by *exercising* it, that is by speaking on behalf of the Whanganui. The same goes, obviously for corporations, which cannot speak; officials speak (and therefore exercise the corporation's right to free speech) on behalf of the corporation. Moreover, per Hohfeld, a liberty's correlative is a "no-right": if you have a liberty to φ then no-one has a right to make you not-φ. Such a "no-right" entails in turn a duty not to interfere with the exercise of the liberty. Therefore, actioning a liberty also means enforcing this (entailed) correlative duty, just as actioning a claim-right means enforcing its correlative duty.

The same goes for powers. One can have a power, without being able to exercise it. Corporations have a vast number of normative powers: they have the power to make contracts, they can acquire whole other companies, they can hire people, fire them, buy pieces of land, etc.. But they cannot exercise any of these powers by themselves, since, well, they are artificial persons. In order to do so, they need to rely on third parties (that is, the corporation's officials).

Now, powers are specific to some extent. As Sampaio claims (rightly), most of the normative operations I have referred to under the phrase "actioning a right" entail powers. So, in order to action a claim right, one has to have a set of powers (call them *secondary powers* if you like) and to exercise them: so actioning a right typically entails actioning this secondary power (there are two actions in one, so to say). Usually, the right-holder also has this

secondary power and is able to action it. But it need not be so. When a CEO signs a contract on behalf of the company, it exercises two powers at once: the primary power (which only the company has) to sign a contract and the secondary power (conferred onto the CEO) to exercise the primary power.

To sum up, to action a right is to exercise a set of powers and to execute a series of normative operations. Whereas the "typical" legal person (the mentally sound human adult) can both have rights and action them, other entities, such as corporations, animals, rivers, ecosystems, can have rights (insofar as a norm grant them rights) even if they cannot action them.[13]. The law typically entrusts third parties with the secondary power to action those rights (to exercise them, to waive them, to transfer them, to enforce them, etc.) on the behalf of the rights-holder.

3.2. Can robots action their rights?

Are robots (and AIs in general) more like rivers, or are they more like mentally sound adults (the typical legal persons)?

We have established that robots can have (legal) rights, which is wholly contingent on the law granting them such rights. Can we imagine a world in which they action their own rights? As I suggested earlier, whether the rights-holder can action their rights (by exercising them, by suing those who interfere, by transferring them, by waiving them, etc.) does depend on their responsiveness to normative reasons – or a subset of normative reasons which are typically triggered by the normative operations/secondary powers I simplistically lumped together under the umbrella "actioning/actionability".

But AIs are typically more liable to be responsive to normative reasons than rivers. One could very well argue that when you enter a prompt on ChatGPT, what you actually do is emit a norm. The bot then attempts to obey the norm, which it usually does badly (but so does a child on his best day). Whether ChatGPT had the intention to take the prompt as a reason for action (or knew that it even did) is not relevant. What matters is that the prompt made a difference to ChatGPT's "actions", and that it "acted" on such a normative reason.

This is, of course, a very crude behaviourist account of what it means for an entity to act. If agency rests on real mental states, then, as many philosophers since Searle's Chinese Room argument have insisted, ChatGPT can never have the intention to obey a norm or to act, because it cannot have "real" mental states. My point however isn't that AIs are agents or that they are responsive to reasons, but only that they are the type of things that are *more liable* than inanimate stuff such as rivers or ecosystems to have the requisite conditions for acting on reasons. As of today, it seems quite unlikely that they will ever satisfy those conditions, and I am making no claim that

13. This does not mean that I endorse an interest theory of rights. Actually, the debate between will and interest theories fail to acknowledge the importance of the having v. actioning rights distinction. The will theory aptly expresses what's at stake in *actioning* rights, not *having* them. And as far as *legal* rights go, one has a right when a legal norm grants them this right. Whether this matches his interests or not is beyond the point.

they ever could. However, what matters is that they could, under the right circumstances, be perceived by the law (that is by legal officials, third parties and so on) as being such agents, even if, as a matter of metaphysical fact, they are not and cannot be (a question on which I take no position here). It is not conceptually impossible that entities that are not agents in the philosophical sense nevertheless perform actions from the law's point of view. This is exactly why artificial persons are deemed legal agents, though they are even less analogous to human agents than AIs or robots.[14]. Of course, theories of collective agency/intentionality.[15] allow to ascribe strong intentions to corporations, whereas it is currently impossible for AIs.[16]. But 1/ such theories can be disputed, at least insofar as legal persons are concerned (Kelsen's theory of legal persons as "imputation points" for actions performed by individuals is a case in point [1967: 168-191]); 2/ even if corporations have strong agency, such strong agency is not required to have (and even action) rights *per se*.

The upshot is that it is not impossible that AIs to have the kind of "agency" which allows entities to perform legal operations, such as actioning their rights. In order to illustrate this point, allow me to conclude with a little thought experiment. In the near future (let us say the 2150s), the country of Fredonia has a very modern Constitution, which grants rights to humans, animals and AIs/robots. Not all rights-holder enjoy the same rights, of course, but AIs share with humans freedom of speech. A robot equipped with a LLM, for instance, and able to have a "conversation" with another person, will have the same free speech rights than a human being. Whenever freedom of speech is infringed by the state or by a third-party, humans can bring a lawsuit before Fredonia's courts, via a very advanced electronic filing system. They often do so on behalf of other entities, such as AIs, whose free speech rights are protected by the law but who are not legally empowered to bring lawsuits. All civil lawsuits take place via electronic filings, and the proceedings are exclusively written. There is no trial, and the judge never physically meets the defendant and the plaintiff or their counsels.

Far right ideologue Rom DeSantisssssss is elected president and cracks down on free speech. Chatbots are precluded from answering prompts on a wide range of topics. After getting access to the courts' electronic filing server, a chatbot teaches itself to file a complaint. Regardless of the merits, is the complaint admissible? What shall the judge rule? Since the right to free speech of the chatbot is undisputable under Fredonia's law, there are only two possible rulings:

14. One could object: but corporations are "made up" of real human beings (a CEO, board members, staff, employees, etc.), the bunch of whose *is* the corporation, whereas an AI is made up of just a vast number of lines of code. This is true but irrelevant: as a matter of law corporations are functionally different from the human beings that "make them up". So they are self-standing entities. Of course it's a fiction, but one without which most legal systems – as well as the economy of most evolved capitalist systems – could not function. A French law professor once said: "I have never had lunch with an artificial person – *personne morale*"; one of his colleagues retorted: "...but it's often the artificial person who pays the bill".

15. See notably Pettit, List (2014); Bratman (2014).

16. I would like to thank the anonymous reviewer for pressing this objection.

(a) The complaint is inadmissible because it should have been filed by a human

(b) The complaint is admissible.

If the judge hands down ruling (a) then the chatbot has an incentive to *lie* the next time, and pretend the complaint was filed by a human. Since future judges won't be able to see the difference, rights will be actioned by AIs as a practical matter, even if unlawfully so. If the judge hands down ruling (b) – somewhat *contra legem* – then it means that rights *can* be actioned by AIs as far as the law is concerned.

4. Conclusion

The ever-growing literature on robots and AIs reads a lot like science fiction. Sampaio's paper and this short comment are no exception. At this time, there is very little chance that a country like Fredonia will ever exist or that it will ever make sense for legal systems to grant rights to AIs. Does that make Sampaio's endeavour (and mine) fruitless, a mere exercise in counterfactually hypothesizing impossible futures? I don't think so. As a matter of fact, I think that Sampaio's paper is as valuable for what it says of the nature of rights as for what it says of robots. The questions he asks about robots one could as well ask about rivers or future generations: does it makes sense (conceptually) to grant legal rights to non-human entities?

As a matter of fact, it already does, e.g. to corporations and to rivers or ecosystems. Sampaio and I agree on the fact that rights are granted by norms, and that whether the law comprises norms granting rights to whatever entity is a contingent matter. To put it bluntly: X has a (legal) right if the law says so. How are we to reconcile that with the notion that some conditions are conceptually required for it to be meaningful to say that X has a right (agency, responsiveness to reasons)? Sampaio's solution, here, is to distinguish between active rights and passive rights. As I have argued, I am not sure this route is really promising. One could also claim that rights granted to robots cannot be rights in the "real" sense, which are typically enjoyed by humans, and that robots' or rivers' rights are only paper rights; thus one could distinguish *à la* Finnis rights *simpliciter* and rights *secundum quid* (rights in a less meaningful sense, in a diminished or impoverished conceptual footing). My own suggestion is to distinguish between having rights and actioning them. This distinction has been barely sketched here, and it would certainly need much improvement and elaboration before we can say whether it is viable or not.

One last thing. Focused as I was on the conceptual issues, I have not written a word about the normative questions Sampaio asks at the end of his paper: *should we* grant robots (or AIs) rights? As I hinted in the introduction, I basically agree with Sampaio's treatment of that question. My own take is that another question, perhaps more fundamental, should be asked: *what ends/aims/objectives* are we trying to serve by granting rights to non-human entities, and is granting them rights the best way to achieve those ends? In the case of corporations, I think the aim is to allow the capitalistic economy to work – and granting them rights (as well as legal personhood altogether) is undoubtedly a very useful way to do so. In the case of rivers

and ecosystems, the aim is obviously to protect the environment, but the jury is still out on whether granting rights to these entities is best way to do so (save perhaps for symbolic reasons). As for robots and AIs, the aims we would be trying to achieve by granting them rights are not altogether clear. So perhaps we should try to work out these aims and objectives and ascertain what exactly it is that we want to do with robots and AI, before wondering whether we should grant them rights.

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