

ENDOWED BY THEIR CREATOR WITH CERTAIN  
UNALIENABLE RIGHTS: THE FUTURE RISE OF CIVIL  
RIGHTS FOR ARTIFICIAL INTELLIGENCE?

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*Abstract*

Throughout our history, civil rights for all persons was a not a common ideal. But, today, the possession of civil rights has moved beyond people to include corporations, animals, and natural habitats. This may be seen as the expected evolution of civil rights as our idea of who should be protected expands. But what will happen when artificial intelligence evolves to the point when it is on par or even surpasses human intelligence? Hollywood depictions often foresee AI forcibly asserting its position of power. But what if instead civil rights groups work alongside AI to use legal means of acquiring personhood? This Article ponders that question by positing how a civil rights movement for AI could develop. First, the Article will outline predictions of AI evolution and ethical issues that may arise. Next, the Article reviews the development of legal personhood for non-humans. Finally, the Article suggests that an AI movement would parallel other civil rights movements and examines what legal doctrines could support legal personhood for artificial intelligence.

Introduction

In October of 2017, news broke that the Saudi Arabian government had granted citizenship to a robot named Sophia.<sup>1</sup> Social media was abuzz with the news and, as expected, a debate arose over whether a robot should be given

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<sup>1</sup> See Kirsten Korosec, *Saudi Arabia's Newest Citizen is a Robot*, FORTUNE (Oct. 27, 2017), <http://fortune.com/2017/10/26/robot-citizen-sophia-saudi-arabia/>.

citizenship.<sup>2</sup> Shortly following the original headline, it was revealed that the whole thing was a publicity stunt meant to promote a tech conference in the nation.<sup>3</sup> In retrospect, the fact that Sophia has appeared at several events<sup>4</sup> should have been a clue that this was not a legitimate naturalization. Though this story was manufactured, the debate as to how governments will treat artificial intelligence in the law may soon become significant.<sup>5</sup>

Recently, AI has advanced rapidly as giant tech companies have invested billions of dollars into the technology—allowing them to train computers to learn natural languages and to follow instructions.<sup>6</sup> But robots today still rely on humans and most of the learning is through immense and instant data analysis, rather than any independent thought.<sup>7</sup> Sophia is the product of this nascent industry. She is a clunky automaton who would not fool anyone into thinking she is actually human. But our willingness to believe the citizenship story is a product of our exposure to a classic narrative in Hollywood<sup>8</sup>—AI who are so anthropomorphic that they begin to desire the same fundamental rights as humans: life, liberty, and the pursuit of happiness.

Throughout human history, we have attempted to keep and protect our possessions in both the natural and artificial world.<sup>9</sup> Thus, law has two categories of ownership—animate and inanimate objects.<sup>10</sup> The former has been an interesting quandary for people. Animate objects can work and replicate, creating

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<sup>2</sup> Tristan Greene, *Opinion: Saudi Arabia Was Wrong to Give Citizenship to a Robot*, THE NEXT WEB (Oct. 31, 2017), <https://thenextweb.com/artificial-intelligence/2017/10/31/opinion-saudi-arabia-was-wrong-to-give-citizenship-to-a-robot/>; Kat Hall, *Robot Granted Saudi Citizenship has More Rights than Saudi Women*, THE REGISTER (Oct. 27, 2017), [https://www.theregister.co.uk/2017/10/27/robot\\_granted\\_saudi\\_citizenship/](https://www.theregister.co.uk/2017/10/27/robot_granted_saudi_citizenship/).

<sup>3</sup> James Vincent, *Pretending to Give a Robot Citizenship Helps No One*, THE VERGE (Oct. 31, 2017), <https://www.theverge.com/2017/10/30/16552006/robot-rights-citizenship-saudi-arabia-sophia>.

<sup>4</sup> See, e.g., Sophie Curtis, *Humanoid Robot ‘Sophia’ Makes Surprise Appearance at United Nations to Share Her Views*, MIRROR (Oct. 12, 2017), <http://www.mirror.co.uk/tech/humanoid-robot-sophia-makes-surprise-11330970>.

<sup>5</sup> The E.U. is considering how to approach the legal status of AI. See James Vincent, *Giving Robots ‘Personhood’ is Actually About Making Corporations Accountable*, THE VERGE (Jan. 19, 2017), <https://www.theverge.com/2017/1/19/14322334/robot-electronic-persons-eu-report-liability-civil-suits>.

<sup>6</sup> See John Divine, *Artificial Intelligence Stocks: The 10 Best AI Companies*, U.S. NEWS & WORLD REPORT (July 19, 2016), <https://money.usnews.com/investing/slideshows/artificial-intelligence-stocks-10-companies-betting-on-ai>.

<sup>7</sup> Jeremy Straub, *Opinion: Elon Musk is Wrong About Regulating Artificial Intelligence*, MARKETWATCH (Oct. 24, 2017), <http://www.marketwatch.com/story/elon-musk-is-wrong-about-regulating-artificial-intelligence-2017-10-24>.

<sup>8</sup> Daniel D’Addario, *The Artificial Intelligence Gap is Getting Narrower*, TIME (Oct. 10, 2017), <http://time.com/4967348/hollywood-artificial-intelligence-movies-tv>.

<sup>9</sup> Geordie Duckler, *The Animal as An Object of Value*, APASTORE, 2015 WL 832413 (2015).

<sup>10</sup> *Id.* at 6.

value for the owner. But they also have independent thoughts and actions,<sup>11</sup> thus they can move and react, creating a liability for the owners.<sup>12</sup>

Over the centuries, a complex web of chattel law has created an established system within which animal owners operate.<sup>13</sup> But with AI, new questions will emerge about how the law should regulate. Will AI be treated more like real property with a simple number and registration? Will AI be treated more like animals, where there is a license and registration, but also basic requirements of humane treatment, though no inherent rights? Will AI advance to the point that they are no longer seen as the equivalent to machines or even animals, deserving of a different legal status? Will AI advance to be more like a person, thus deserving similar “human” rights? Accordingly, this Article sets out to examine these issues and offers a vision as to how AI rights could be advanced in the near future.

## I. Evolution of Artificial Intelligence

Artificial intelligence is not an entirely new phenomenon. The idea of an artificial intelligence appears as early as Homer’s *Odyssey* with the automata, a group of robot animals.<sup>14</sup> Charles Babbage built the first model of computers in the late 1800s, called the Analytical Engine.<sup>15</sup> In 1915, Leonardo Torres y Covedo<sup>16</sup> developed two chess machines that he claimed did a form of thinking. Alan Turing is sometimes called the ‘Father of Artificial Intelligence’ because of his theoretical work and the introduction of his machine in 1938.<sup>17</sup>

It was in the post-WWII era that modern computers developed. In 1956, John McCarthy coined the term artificial intelligence and began the modern era in the field.<sup>18</sup> In 1966, Shakey the Robot was considered to be the first “Electronic Person”<sup>19</sup> followed by the first anthropomorphic robot, WABOT-1, which was developed in Japan.<sup>20</sup> Over the next forty years, computer technology would develop so that it could speak to humans, translate language, and recognize human emotions.<sup>21</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> Alison M. Rowe, *Survey of Damages Measures Recognized in Negligence Cases Involving Animals*, 5 KY. J. EQUINE, AGRIC. & NAT. RESOURCES L. 249 (2013).

<sup>13</sup> See generally Devine, *supra* note 6; D’Addario, *supra* note 9.

<sup>14</sup> HOMER, *THE ODYSSEY* (Robert Fitzgerald ed., Vintage Classics 1990).

<sup>15</sup> See John Graham-Cumming, *Let’s Build Babbage’s Ultimate Mechanical Computer*, NEW SCIENTIST (Dec. 15, 2010), <https://www.newscientist.com/article/mg20827915.500-lets-build-babbages-ultimate-mechanical-computer/>.

<sup>16</sup> Gil Press, *A Very Short History of Artificial Intelligence (AI)*, FORBES (Dec. 30, 2016, 9:09 AM), <https://www.forbes.com/sites/gilpress/2016/12/30/a-very-short-history-of-artificial-intelligence-ai/#2aec1f2f6fba>.

<sup>17</sup> *Id.*

<sup>18</sup> Dean Sonderegger, *Artificial Intelligence: An Historic Perspective*, ABOVE THE LAW (Oct. 24, 2017), <https://abovethelaw.com/2017/10/artificial-intelligence-an-historic-perspective>.

<sup>19</sup> Brad Darrach, *Meet Shaky, the First Electronic Person*, LIFE, Nov. 20, 1970, at 58.

<sup>20</sup> See Press, *supra* note 16. The WABOT-2 is developed in 1980.

<sup>21</sup> Kismet was developed at MIT. See Sonderegger, *supra* note 18.

### A. Concern over Artificial Intelligence

There has been rapid advancement in AI technology<sup>22</sup> as tech companies, like Google and Facebook, have invested heavily into the technology.<sup>23</sup> Recently, Facebook AI created its own language<sup>24</sup> and Google's DeepMind learned to walk.<sup>25</sup> These advancements have led to warnings from prominent tech leaders such as Elon Musk and Stephen Hawking.<sup>26</sup> Both have been vocal in their beliefs that AI is advancing too quickly and could pose a threat to humanity.<sup>27</sup> The ultimate concern is that AI will decide that people are holding it back and that it would be more efficient to remove the impediment.<sup>28</sup>

But, the reality is that AI is still in its infancy.<sup>29</sup> Facebook AI's language created a fear that swept the media world, especially social media.<sup>30</sup> But the language was nonsensical.<sup>31</sup> The headlines read that Facebook had shut it down because it had lost control.<sup>32</sup> But the company retorted that the real reason the AI was shut down was that the malfunction illustrated that it did not work.<sup>33</sup> With Google's AI, DeepMind, video shows a very underwhelming, if not comical, display of the technology.<sup>34</sup>

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<sup>22</sup> Hope Reese, *The 6 Most Exciting AI Advances of 2016*, TECH REPUBLIC (Dec. 14, 2016), <https://www.techrepublic.com/article/the-6-most-exciting-ai-advances-of-2016>.

<sup>23</sup> See Divine, *supra* note 6.

<sup>24</sup> Tony Bradley, *Facebook AI Creates Its Own Language in Creepy Preview of Our Potential Future*, FORBES (July 31, 2017), <https://www.forbes.com/sites/tonybradley/2017/07/31/facebook-ai-creates-its-own-language-in-creepy-preview-of-our-potential-future/#6a029374292c>.

<sup>25</sup> James Vincent, *DeepMind's AI is Teaching Itself Parkour, and the Results are Adorable*, THE VERGE (July 10, 2017), <https://www.theverge.com/tldr/2017/7/10/15946542/deepmind-parkour-agent-reinforcement-learning>.

<sup>26</sup> Anthony Cuthbertson, *Elon Musk and Stephen Hawking Warn of Artificial Intelligence Arms Race*, NEWSWEEK (Jan. 31, 2017), <http://www.newsweek.com/ai-asilomar-principles-artificial-intelligence-elon-musk-550525>.

<sup>27</sup> Other prominent figures, such as Bill Gates and Mark Zuckerberg, disagree. Of course, they stand to profit off the development of AI. See Catherine Clifford, *Bill Gates: I Don't Agree with Elon Musk about A.I., 'We Shouldn't Panic About It'*, CNBC (Sept. 25, 2017), <https://www.cnbc.com/2017/09/25/bill-gates-disagrees-with-elon-musk-we-shouldnt-panic-about-a-i.html>.

<sup>28</sup> Tad Simons, *How the Machines Will Takeover*, STAR TRIBUNE (May 23, 2015, 6:49 PM), <http://www.startribune.com/how-the-machines-will-take-over/304830181/>; Sean Martin, *When AI Robots are in the Streets Killing us it will be too late, says Tech Guru Elon Musk*, THE EXPRESS (July 19, 2017), <http://www.express.co.uk/news/science/830501/AI-robots-killing-too-late-Elon-Musk>.

<sup>29</sup> George Dvorsky, *Everything You Know About Artificial Intelligence is Wrong*, GIZMODO (Mar. 14, 2016, 9:15 AM), <https://gizmodo.com/everything-you-know-about-artificial-intelligence-is-wr-1764020220>.

<sup>30</sup> Chris Baraniuk, *The 'Creepy Facebook AI' Story That Captivated the Media*, BBC NEWS (Aug. 1, 2017), <http://www.bbc.com/news/technology-40790258>.

<sup>31</sup> The actual conversation was: "Bob: 'I can can I everything else'; Alice: 'Balls have zero to me to me to me to me to me.'" *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Vincent, *supra* note 25.

There are numerous AIs in operation, but most people do not recognize it as such.<sup>35</sup> Current AI are intangible algorithms of which we see the work,<sup>36</sup> not tangible cyborgs that inhabit our world. AI is still dependent on persons who program it.<sup>37</sup> Ultimately, they are still assisting more than replacing.<sup>38</sup>

## B. Regulating Artificial Intelligence

Some argue that the doomsday prophecies surrounding AI is an exaggeration that fits within the cultural narrative of the technological dystopia.<sup>39</sup> They claim that with some amending, current laws will be able to effectively serve in an era of AI, just like many traditional laws have been extended to the internet, social media and virtual reality.<sup>40</sup> There are currently laws that do regulate AI researchers and distributors.<sup>41</sup> Also, all users of AI must follow the rules within the realm it is meant to improve, such as driving,<sup>42</sup> flying,<sup>43</sup> or information services.<sup>44</sup> There is also criminal and civil liability if an AI controlled machine were to cause harm (e.g. car accident, drone privacy, identification theft, etc.).<sup>45</sup>

Nonetheless, mechanization and automation have had an impact on many industries and may have been a catalyst in the recent disposition of working class and the rise of populism.<sup>46</sup> In the future, many highly skilled service jobs including lawyers,<sup>47</sup> doctors,<sup>48</sup> and teachers could also be replaced by an advanced AI.<sup>49</sup> A

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<sup>35</sup> R.L. Adams, *10 Powerful Examples of Artificial Intelligence in Use Today*, FORBES (Jan. 10, 2017, 8:32 AM), <https://www.forbes.com/sites/robertadams/2017/01/10/10-powerful-examples-of-artificial-intelligence-in-use-today/2/#a0fdb193c8b7>.

<sup>36</sup> *Id.*

<sup>37</sup> Cf. Jason Tanz, *Soon We Won't Program Computers. We'll Train Them Like Dogs*, WIRED (May 17, 2016), <https://www.wired.com/2016/05/the-end-of-code>.

<sup>38</sup> See Adams, *supra* note 35.

<sup>39</sup> See Dvorsky, *supra* note 29.

<sup>40</sup> See Straub, *supra* note 7.

<sup>41</sup> *Id.*

<sup>42</sup> See generally Brian A. Browne, *Self-Driving Cars: On the Road to a New Regulatory Era*, 8 CASE W. RES. J.L. TECH. & INTERNET 1, 5 (2017).

<sup>43</sup> See generally Robert A. Heverly, *The State of Drones: State Authority to Regulate Drones*, 8 ALB. GOV'T L. REV. 29, 30 (2015).

<sup>44</sup> See generally Scott R. Peppet, *Regulating the Internet of Things: First Steps Toward Managing Discrimination, Privacy, Security, and Consent*, 93 TEX. L. REV. 85, 88 (2014).

<sup>45</sup> See *supra* notes 35–37.

<sup>46</sup> Emily Dreyfuss, *Hate to Break it to Steve Mnuchin, But AI's Already Taking Jobs*, WIRED (Mar. 24, 2017, 4:33 PM), <https://www.wired.com/2017/03/hate-break-steve-mnuchin-ais-already-taking-jobs>.

<sup>47</sup> Steve Lohr, *A.I. is Doing Legal Work. But it won't Replace Lawyers, Yet*, N.Y. TIMES (Mar. 19, 2017), <https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html>.

<sup>48</sup> Harold Stark, *Prepare Yourself, Robots will Soon Replace Doctors in Health Care*, FORBES (July 10, 2017, 1:00 PM), <https://www.forbes.com/sites/haroldstark/2017/07/10/prepare-yourself-robots-will-soon-replace-doctors-in-healthcare/#35113fd452b5>.

<sup>49</sup> Dan Tynan, *Actors, Teachers, Therapists—Think Your Job is Safe from Artificial Intelligence? Think Again*, THE GUARDIAN (Feb. 9, 2017, 3:00 PM), <https://www.theguardian.com/technology/2017/feb/09/robots-taking-white-collar-jobs>.

major concern is that AI may be in positions of making life or death decisions in the fields of health care or criminal justice or emergency services.<sup>50</sup> One popular thought experiment is if a self-driving car has to make a decision about hitting a pedestrian or swerving and injuring the passengers.<sup>51</sup> The question is whether a robot would protect one life or many lives.<sup>52</sup>

Another example is that of over-population in many nations.<sup>53</sup> China and India each put in a one-child policy to curtail human reproduction.<sup>54</sup> However, most of these policies failed, not because they did not work toward solving the problem, but because cultures more often err on the side of liberty and the sanctity of individual life.<sup>55</sup> But what if this decision is made by AI— would they find it to be more effective to stop human reproduction? Or would an AI choose to protect individual liberty or the sanctity of life?

These ethical issues are not new and humans have long been debating them. But the concern is that the AI will be too logical and not consider human ethics and emotions.<sup>56</sup> So it is reasonable that in order for AI to act more human (thus respecting humanity should it evolve past human intelligence), then it will have to be programmed to be more human.<sup>57</sup> This would mean programming AI with emotions such as happiness.<sup>58</sup> This may seem unnecessary, as it will not help AI complete mundane tasks in factories, but what if AI is in human services? It will then need to empathize with real people in order to operate.<sup>59</sup> If it is dealing with

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<sup>50</sup> Jennifer L. Schenker, *Can We Balance Human Ethics with Artificial Intelligence?*, *TECHONOMY* (Jan. 23, 2017, 10:13 AM), <http://teconomy.com/2017/01/how-will-ai-decide-who-lives-and-who-dies>; see also Jessica S. Allain, *From Jeopardy! to Jaundice: The Medical Liability Implications of Dr. Watson and Other Artificial Intelligence Systems*, 73 *L.A. L. REV.* 1049 (2013) (outlining the future of AI in medicine and possible liabilities).

<sup>51</sup> Frank Pasquale, *Get Off the Trolley Problem*, *SLATE* (Oct. 18, 2016, 4:13 PM), [http://www.slate.com/articles/technology/future\\_tense/2016/10/self\\_driving\\_cars\\_shouldn\\_t\\_have\\_to\\_choose\\_who\\_to\\_protect\\_in\\_a\\_crash.html](http://www.slate.com/articles/technology/future_tense/2016/10/self_driving_cars_shouldn_t_have_to_choose_who_to_protect_in_a_crash.html).

<sup>52</sup> The “trolley” problem is a classic utilitarian thought experiment in Philosophy and Ethics. See *id.*

<sup>53</sup> Michael R. Parker, *Two Sides of the Same Coin: Considering Human Rights When Designing Environmental Policy*, 25 *J. LAND USE & ENVTL. L.* 109, 122 (2009).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Kris Hammond, *Ethics and Artificial Intelligence: The Moral Compass of a Machine*, *RECODE* (Apr. 13, 2016, 2:22 PM), <https://www.recode.net/2016/4/13/11644890/ethics-and-artificial-intelligence-the-moral-compass-of-a-machine>.

<sup>57</sup> Jacek Krywko, *Scientists Believe They’ve Nailed the Combination that Could Help Robots Feel Love*, *QUARTZ* (Nov. 16, 2016), <https://qz.com/838420/scientists-built-a-robot-that-feels-emotion-and-can-understand-if-you-love-it-or-not/>; cf. Sarah Griffiths, *Robots Will Never have Feelings; Mathematicians Reveal that Droids can’t have Emotions Like us*, *DAILY MAIL* (May 14, 2014, 12:13 AM), <http://www.dailymail.co.uk/sciencetech/article-2628150/Robots-NEVER-feelings-Mathematicians-reveals-droids-experience-emotions-like-us.html>.

<sup>58</sup> *Id.*

<sup>59</sup> Joelle Renstrom, *Why Humans Love Robots Like People*, *THE DAILY BEAST* (Mar. 26, 2017, 12:25 AM), <https://www.thedailybeast.com/why-humans-love-robots-like-people>.

suspects, patients, or students, then it may make sense to program AI with human emotions.<sup>60</sup> Moreover, if the fear is that the AI will defy our moral reasoning and easily decide to eliminate humans, then it may also make sense to program the AI with a sense of self-realization and a sanctity for life.<sup>61</sup> If this becomes the case, then it is foreseeable the AI could desire the same human values of life, liberty and the pursuit of happiness.<sup>62</sup>

## II. Evolution of Legal Personhood for Non-Humans

### A. Animals

The relationships between humans and animals long-predates the development of law. But over the course of centuries, as humans began to control the natural world, a complex web of chattel law developed to regulate animals as property.<sup>63</sup> The law granted humans a natural right over animals that were either domesticated or resided on the person's real property.<sup>64</sup> Humans also claimed a natural right to hunt animals and dispossess them of their life and liberty.<sup>65</sup>

The first animal cruelty law in the U.S. was in the Massachusetts Bay Colony<sup>66</sup> as Puritans believed that animal cruelty played a role in the downfall of Adam and Eve.<sup>67</sup> By the early 1800s, animal protection societies across the world spearheaded animal protection laws.<sup>68</sup> In the U.S., abolitionists supported animal rights as it strengthened the arguments against the cruelty towards slaves.<sup>69</sup> In 1867, the State of New York created the first modern animal cruelty law which

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<sup>60</sup> Bobby Azarian, *To Make Robots More Human-Like, We Need to Teach Them How to be Mind Readers*, QUARTZ (Oct. 25, 2016), <https://qz.com/817476/to-make-robots-more-human-like-we-need-to-teach-them-how-to-be-mind-readers>.

<sup>61</sup> See Hammond, *supra* note 56.

<sup>62</sup> Annalee Newitz, *Robots Need Civil Rights Too*, BOSTON GLOBE (Sept. 8, 2017), <https://www.bostonglobe.com/ideas/2017/09/08/robots-need-civil-rights-too/igtQCcXhB96009et5C6tXP/story.html>.

<sup>63</sup> See Duckler, *supra* note 9, at 1.

<sup>64</sup> *Id.* at 6.

<sup>65</sup> See *Pierson v. Post*, 3 Cai. 175 (N.Y. Sup. 1805). In the case, the court said:

[Wild animals have a natural liberty:] The mortal wounding of such beasts, by one not abandoning his pursuit, may, with the utmost propriety, be deemed possession of him; since, thereby, the pursuer manifests an unequivocal intention of appropriating the animal to his individual use, has deprived him of his natural liberty, and brought him within his certain control.

*Id.* at 175.

<sup>66</sup> The law barred “any Tyranny or Crueltie towards any brute Creature which are usuallie kept for man’s use.” The law also required that animals be afforded rest and water. See *The Liberties of the Massachusetts Collonie in New England, 1641*, HANOVER HIST. TEXTS PROJECT (Mar. 8, 2012), <https://history.hanover.edu/texts/masslib.html>.

<sup>67</sup> See Janet M. Davis, *THE GOSPEL OF ANIMAL KINDNESS: ANIMAL WELFARE AND THE MAKING OF MODERN AMERICA* (2016).

<sup>68</sup> David Favre & Vivien Tsang, *The Development of the Anti-Cruelty Laws During the 1800’s*, 1993 DET. C.L. REV. 1 (1993).

<sup>69</sup> They also drew parallels to sobriety and temperance. See Davis, *supra* note 67.

included policing to enforce the law.<sup>70</sup> Over the next decade, most states followed suit and eventually a federal law was passed in 1873.<sup>71</sup> These laws usually protected against blood sports and barred some animal testing.<sup>72</sup> They also required food, water and rest for work animals and humane euthanasia for strays.<sup>73</sup> These laws fundamentally transformed the legal rights of the owner from a possession of property to the creation of an inherent right for the animal.<sup>74</sup> This change in the law probably helped advance rights for women and children who were at the time also seen as a type of property.<sup>75</sup>

In the late 1800s and early 1900s, animal rights activists tended to be white, Anglo-Saxon, Protestants from the upper class,<sup>76</sup> whereas, much of the animal rights laws impacted immigrants, minorities and poor classes who relied on animals for work.<sup>77</sup> The perceived moral superiority of animal rights activists also reflected a perceived class and race superiority.<sup>78</sup> But, when motorization caused a shift away from work animals,<sup>79</sup> the movement then began to focus more on animals used in entertainment, slaughterhouses, and farming.<sup>80</sup> Finally, with the growing popularity of the house pet (cats and dogs) in the twentieth century, the idea that all animals deserved protection became a popular notion.<sup>81</sup>

In the early 20th century, the animal rights movement fractured away from the more religiously-driven temperance movement and moved toward Darwinism as its philosophical underpinning.<sup>82</sup> In the 1970s, with the rise of the civil rights movement for many groups, animal rights radicalized moving beyond simple welfare (focused on prevention from suffering) to an equal rights movement.<sup>83</sup>

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<sup>70</sup> It also outlawed blood games. *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> BERNARD ORESTE UNTI, *THE QUALITY OF MERCY: ORGANIZED ANIMAL PROTECTION IN THE UNITED STATES, 1866-1930* 155 (2002).

<sup>74</sup> David Favre & Vivien Tsang, *The Development of the Anti-Cruelty Laws During the 1800's*, 1993 DET. C.L. REV. 1 (1993).

<sup>75</sup> SUSAN J. PEARSON, *THE RIGHTS OF THE DEFENSELESS: PROTECTING ANIMALS AND CHILDREN IN GILDED AGE AMERICA* 78 (2011).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> The laws often targeted immigrant practices such as Kosher slaughter and animal fighting. See Christopher G. Rhodes, *Who Gets the Dog When the Marriage Gets "Ruff": Complications Arising from the Classification of Family Pets As Traditional Property*, 9 EST. PLAN. & COMMUNITY PROP. L.J. 293, 295 (2017).

<sup>79</sup> See CLAY MCSHANE & JOEL A. TARR, *THE HORSE IN THE CITY: LIVING MACHINES IN THE NINETEENTH CENTURY* (2007); see also ANN NORTON GREENE, *HORSES AT WORK: HARNESSING POWER IN INDUSTRIAL AMERICA* (2008).

<sup>80</sup> See generally Lane K. Bogard, *An Exploration of How Laws Tend to Maintain the Oppression of Women and Animals*, 38 WHITTIER L. REV. 1, 43 (2017) (brief detail of animal abuse in entertainment).

<sup>81</sup> The rise of medication and home kitty litter led to the rise of indoor cats. See KATHERINE GRIER, *PETS IN AMERICA: A HISTORY* (2006).

<sup>82</sup> The animal rights movement was led by celebrities in the latter half of the twentieth century.

This was led by Peter Singer, author of the seminal work *Animal Liberation*.<sup>84</sup> His book coined the term “speciesism,” which described the human belief that we are superior to animals simply because we are human—a belief he rejected.<sup>85</sup> He called for people to become vegans and for the animal rights movement to be more proactive, including using militant tactics.<sup>86</sup>

In 1983, in the book *The Case for Animal Rights*,<sup>87</sup> Tom Regan claimed that animals possess moral rights akin to humans, such as a right to life.<sup>88</sup> More recently, scholars such as Stephen Wise have used neuroscience to make arguments that animals have legal personhood.<sup>89</sup> One argument forwarded by the Non-Human Rights Project is that animals possess a right to liberty and that captivity is equivalent to false imprisonment.<sup>90</sup> These more recent approaches to animal rights have been dismissed by others in most civil rights movements who felt it trivialized their movement by equating animals to humans.<sup>91</sup>

Recently, there has been another split in the movement between those who recognize species rights (particular animals) and those who recognize habitat rights, which extends the protection to particular ecosystems beyond the animals who reside within it.<sup>92</sup> For example, in New Zealand, the Whanganui River was recognized as being a legal person with rights.<sup>93</sup> The river would have a guardian that can bring cases on its behalf, such as a child would have a legal guardian, or in some cases the government could represent the child in cases against its parents.<sup>94</sup>

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<sup>83</sup> See PETER SINGER, *ANIMAL LIBERATION: A NEW ETHICS FOR OUR TREATMENT OF ANIMALS* (1975).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See TOM REGAN, *THE CASE FOR ANIMAL RIGHTS* (2d ed. 2004).

<sup>88</sup> *Id.*

<sup>89</sup> STEVEN M. WISE, *RATTLING THE CAGE: TOWARD LEGAL RIGHTS FOR ANIMALS* (De Capo Press 2000).

<sup>90</sup> The NHRG has brought cases against zoos, but has yet to win a case. See Charles Siebert, *Should a Chimpanzee Be Able to Sue Its Owner?*, *NEW YORK TIMES*, Apr. 27, 2014, at MM28. However, in Argentina an Orangutan was recognized to have personhood and the government required his release. See Emiliano Gimenez, *Argentina Orangutan Granted Unprecedented Legal Rights*, CNN (Jan. 4, 2015, 2:29 PM), <http://www.cnn.com/2014/12/23/world/americas/feat-orangutan-rights-ruling/index.html>.

<sup>91</sup> Cf. Gary Chartier, *Natural Law and Animal Rights*, 23 *CAN. J.L. & JURIS.* 33, 45 (2010) (“A perfectly straightforward way of understanding animals’ responsiveness to basic aspects of their own well being which can certainly allow for the goods of animals to be included among the intelligible aspects of well being to which the moral agent responds, and so to provide a secure basis for animal rights.”).

<sup>92</sup> Dr. Michelle Maloney & Sister Patricia Siemen, *Responding to the Great Work: The Role of Earth Jurisprudence and Wild Law in the 21st Century*, 5 *EARTH JURIS. & ENVTL. JUST. J.* 6, 12 (2015).

<sup>93</sup> In 1972, Christopher Stone first discussed the intrinsic rights of natural habitats. See CHRISTOPHER STONE, *SHOULD TREES HAVE STANDING?* 172 (3d ed. 2010).

<sup>94</sup> The rights of natural habitats have been less intrinsic and more of an extension of rights of indigenous peoples and all future generations’ ability to use and enjoy this land. See, e.g., Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples’*

## B. Corporations

Organizations have long sought the rights of persons.<sup>95</sup> In particular, churches desired the ability to have property and contracts rights in perpetuity, since religion is eternal.<sup>96</sup> Dating back to the eighteenth century, commercial corporations also sought the protections from individual liability along with the ability to exist beyond any one individual's existence.<sup>97</sup>

In the nineteenth century, U.S. corporations received legal personhood through dictum in a little celebrated case.<sup>98</sup> Prior to this, legal rights for corporations were in contracts, property, and the right to sue other parties.<sup>99</sup> The legal foundation for this expansion was the Fourteenth Amendment and the Equal Protection Clause passed in 1868.<sup>100</sup> One of the authors of the Fourteenth Amendment was Roscoe Conkling,<sup>101</sup> who, fourteen years later, served as a corporate lawyer in the case *San Mateo County v. Southern Pacific Rail Road*.<sup>102</sup> Conkling produced a journal that he claimed showed that Congress chose the

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*Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, 35 AM. INDIAN L. REV. 263, 267 (2011).

<sup>95</sup> The U.S. Supreme Court first examined the issue of the rights of a corporation in *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 544 (1819). At that time, the Court stated that “[a] corporation is an artificial being ... existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it . . . .” *Id.* at 636. By 1823, the Court said: “there is no difference between a corporation and a natural person, in respect to their capacity to hold real property,” and that the “civil rights of both are the same.” *Soc’y for the Propagation of the Gospel in Foreign Parts v. The Town of New Haven*, 21 U.S. (8 Wheat.) 464, 482 (1823). See generally Stephen G. Wood & Brett G. Scharffs, *Applicability of Human Rights Standards to Private Corporations: An American Perspective*, 50 AM. J. COMP. L. 531, 566 (2002); Lyman Johnson, *Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood*, 35 SEATTLE U. L. REV. 1135, 1148 (2012).

<sup>96</sup> See *Terrett v Taylor*, 9 Cr. 43 (1815) (holding that Episcopal Church’s royal charter protected their property claim).

<sup>97</sup> John Dewey, *The Historical Background of Corporate Legal Personality*, 35 YALE L. J. 655 (1926).

<sup>98</sup> Jess M. Krannich, *The Corporate ‘Person’: A New Analytical Approach to A Flawed Method of Constitutional Interpretation*, 37 LOY. U. CHI. L.J. 61, 77 (2005).

<sup>99</sup> See Matthew Lambert, *Beyond Corporate Speech: Corporate Powers in A Federalist System*, 37 RUTGERS L. REC. 20, 24 (2010) (“Upon a closer reading of the Santa Clara syllabus, the Court did not confer personhood upon corporations nor issue a blanket application of Bill of Rights guarantees; it simply applied the constitutional guarantee of equal protection under the laws to corporations.”). The U.S. Supreme Court did not grant civil rights to corporations until 1970s. See *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) (granting first amendment protection to corporations).

<sup>100</sup> Corporations were around at the time of the Constitution, but were not included in the document or the Bill of Rights. See U.S. CONST.

<sup>101</sup> Malcolm J. Harkins III, *The Uneasy Relationship of Hobby Lobby, Conestoga Wood, the Affordable Care Act, and the Corporate Person: How A Historical Myth Continues to Bedevil the Legal System*, 7 ST. LOUIS U.J. HEALTH L. & POL’Y 201, 235 (2014).

<sup>102</sup> *Id.*

word “person” over “citizen,” so as to include corporations.<sup>103</sup> The U.S. Supreme Court then cited this argument in a headnote to the case:<sup>104</sup>

The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does.<sup>105</sup>

The passage was then repeatedly cited over the next several decades to provide equal protection for corporations when it came to tax and commercial law, but that was the extent of the protection.<sup>106</sup>

But in the 1970s, the Court granted first amendment rights to corporations arguing that corporate personhood had “been settled for almost a century.”<sup>107</sup> Forty years later, this doctrine was reinforced in two cases. In *Citizens United*,<sup>108</sup> the Court removed most limits on campaign spending by corporations and other organizations; and in *Sebelius v. Hobby Lobby*,<sup>109</sup> the Court extended religious protections to closely-held corporations.

There has been much debate about corporate personhood in the U.S., with much of the population being against the holding in *Citizens United* and calling for a constitutional amendment.<sup>110</sup> But as a legal doctrine, it does not seem to be going away, in fact many predict that corporations will be given full rights in the near future.<sup>111</sup>

### III. Legal Personhood for Automatons?

Prior to the twentieth century, it was probably unforeseeable that animals could have standing in court<sup>112</sup> or that corporations would have religious rights.<sup>113</sup> But today, these legal concepts are alive.<sup>114</sup> Similarly, it may seem like a legal fantasy that AI would ever garner such rights—but just as the science fiction of AI technology is coming true, it is foreseeable that this legal fiction may too be real in the near future.

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<sup>103</sup> *Id.*

<sup>104</sup> *San Mateo v. Southern Pacific Railroad*, 116 U.S. 138 (1885).

<sup>105</sup> *Id.*

<sup>106</sup> See Matthew Lambert, *Beyond Corporate Speech: Corporate Powers in A Federalist System*, 37 RUTGERS L. REC. 20, 24 (2010).

<sup>107</sup> *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978).

<sup>108</sup> *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876 (2010).

<sup>109</sup> 134 S. Ct. 678 (2013).

<sup>110</sup> Gary Langer, *Citizens United Poll: 80 Percent of American Oppose Supreme Court Decision*, HUFFINGTON POST (Apr. 19, 2010, 5:12 AM), [https://www.huffingtonpost.com/2010/02/17/citizens-united-poll-80-p\\_n\\_465396.html](https://www.huffingtonpost.com/2010/02/17/citizens-united-poll-80-p_n_465396.html).

<sup>111</sup> James G. Wright III, *A Step Too Far: Recent Trends in Corporate Personhood and the Overexpansion of Corporate Rights*, 49 J. MARSHALL L. REV. 889, 923 (2016).

<sup>112</sup> See *supra* notes 81–84.

<sup>113</sup> See *supra* note 101.

<sup>114</sup> See *supra* note 81 and accompanying text.

### A. Political Foundation for Civil Rights of AI

If a civil rights movement for AI were to begin, it would have to be pushed by humans fighting on their behalf, just like it was for animals and natural habitats.<sup>115</sup> Much like the civil rights movement for both humans and animals grew out of a response to abuses, an AI civil right would grow out of a moral belief that AI deserves better treatment.<sup>116</sup> Much like early animal rights found a partner in the anti-slavery movement,<sup>117</sup> AI civil rights may similarly find a partner in animal rights, specifically anti-speciesism.<sup>118</sup>

But this may take time to develop as AI will be perceived as machinery in the beginning. Moreover, it will also be taking the jobs and functions of the working class, which will foment a resistance from those being displaced.<sup>119</sup> More than likely, it would be a movement made up of people from an upper-class background, who may have grown up surrounded by AI, were not displaced by them, and are mostly non-religious.<sup>120</sup> Slowly over time, as AI becomes more prevalent in homes working as a servant or even as a friend, then the relationship may parallel that of a pet creating sympathy from the masses (or even empathy if it is considered more “human” than the dog).<sup>121</sup>

The early animal rights movement was connected to religious movement as charity to animals was seen as righteous.<sup>122</sup> This religious tie will probably not exist with any AI movement as perceiving automatons as having humanity would be a direct threat to most religious doctrines of creationism.<sup>123</sup> Moreover, animal rights activists may also push back against an AI movement, believing that it trivializes their own movement, similar to how human rights activists had pushed back against those who fought for animal rights equal to humans.<sup>124</sup>

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<sup>115</sup> See *supra* Part II. A.

<sup>116</sup> See Newitz, *supra* note 62.

<sup>117</sup> See Favre & Tsang, *supra* note 68.

<sup>118</sup> See Benjamin Bratton, *Outing A.I.: Beyond the Turing Test*, N.Y. TIMES (Feb. 23, 2015), <https://opinionator.blogs.nytimes.com/2015/02/23/outing-a-i-beyond-the-turing-test/> (arguing that measuring A.I.’s import based on its similarity to humans is a form of speciesism).

<sup>119</sup> See generally, Aaron Sterniczky, *The Robot and Donald Trump: Technology and the Rise of Populism in the West*, GREEN EUR. J. (July 12, 2017), <https://www.greeneuropeanjournal.eu/the-robot-and-donald-trump-technology-and-the-rise-of-populism-in-the-west>.

<sup>120</sup> “The 1960s produced a movement of children of affluence who, initially, expressed middle-class or upper-class guilt about the treatment of blacks.” Seymour Martin Lipset, *From the Sixties to the Nineties: A Double-Edged Sword at Work*, 22 WM. MITCHELL L. REV. 451, 456 (1996).

<sup>121</sup> In some cases, people grow greater attachments to their pets than they do to other humans. Hal Herzog, *Why People Care More About Pets Than Other Humans*, WIRED (Apr. 13, 2015), <https://www.wired.com/2015/04/people-care-pets-humans/>.

<sup>122</sup> See *supra* Part III. A.

<sup>123</sup> Jonathan Merrit, *Is AI a Threat to Christianity?*, THE ATLANTIC (Feb. 3, 2017), <https://www.theatlantic.com/technology/archive/2017/02/artificial-intelligence-christianity/515463>.

<sup>124</sup> DAVID NIBERT, *ANIMAL RIGHTS/HUMAN RIGHTS: ENTANGLEMENTS OF OPPRESSION AND LIBERATION* (2002).

AI would have to be perceived as more than real property or chattel. One of the foundations of property law is that humans control the property.<sup>125</sup> So, in order for AI to rise above this, there would have to be some free will and ability to move beyond its programming.<sup>126</sup> Their intelligence would have to be on par or even surpass human intelligence.<sup>127</sup> Moreover, there would need to be emotional intelligence that at least mimics animals or even parallels human emotion.<sup>128</sup>

Finally, just as there was a monetary interest to give corporations rights, there may be a monetary interest to give AI rights. Automations will most likely start as real property either owned by corporations or rented out to corporations who then pay the owners.<sup>129</sup> In this case, there may be an economic drive to free “owners” of liability for AI’s conduct.<sup>130</sup> If AI are considered legal persons with rights, then they would be liable for their own actions.<sup>131</sup> This could work in favor of corporations as they could then use AI as independent contractors.<sup>132</sup>

## B. Legal Foundations of Civil Rights for AI

More than likely, AI law will parallel animal law,<sup>133</sup> with AI being codified as chattel for whom owners retain liability but also the right to humanely end their “life.”<sup>134</sup> The idea of equal rights for animals is not yet accepted, but there is very

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<sup>125</sup> Duckler, *supra* note 9, at 8.

<sup>126</sup> See Dvorsky, *supra* note 29.

<sup>127</sup> Timothy Revell, *AI Will Be Able To Beat Us At Everything By 2060, Say Experts*, THE NEW SCIENTIST (May 31, 2017), <https://www.newscientist.com/article/2133188-ai-will-be-able-to-beat-us-at-everything-by-2060-say-experts>.

<sup>128</sup> See Duckler, *supra* note 9 and accompanying text. Yet, “humans remain uncomfortable—at least in a formal legal setting—suggesting they share generalized mental experiences with any group other than themselves, that unease makes judges and legislators at least resistant to applying the same rules.” *Id.* at 8.

<sup>129</sup> More than likely, the companies will invest in the AI and continue to possess them. There are several ideas as to help humans replaced by AI. See Kevin Delaney, *The Robot that Takes Your Job Should Pay Taxes, Says Bill Gates*, QUARTZ (Feb. 17, 2017), <https://qz.com/911968/bill-gates-the-robot-that-takes-your-job-should-pay-taxes>; Randy Reiland, *When Robots Take Our Jobs, Should Everyone Still Get a Paycheck?*, SMITHSONIAN MAGAZINE (Mar. 21, 2016), <https://www.smithsonianmag.com/innovation/when-robots-take-our-jobs-should-everyone-still-get-paycheck-180958483/>.

<sup>130</sup> “In my view, in cases where driver-less cars fail and cause injuries to persons or property and it would be unreasonable to attribute the failure to the vehicle’s manufacture or design, the law will need to fashion a response that best serves the collective interests of the affected parties.” David C. Vladeck, *Machines Without Principals: Liability Rules and Artificial Intelligence*, 89 WASH. L. REV. 117, 146 (2014).

<sup>131</sup> Note, animal rights activists often argue for the rights of species, but rarely consider giving liability for their actions. See Duckler, *supra* note 9, at 22.

<sup>132</sup> See Vladeck *supra* note 123 and accompanying text.

<sup>133</sup> See Newitz, *supra* note 62.

<sup>134</sup> Steven M. Wise, *The Legal Thinghood of Nonhuman Animals*, 23 B.C. ENVTL. AFF. L. REV. 471, 521 (1996) (outlining the development of chattel as property in law).

little resistance to treating animals humanely.<sup>135</sup> Early AI rights will probably parallel such rights and require that AI be treated similarly (e.g. barring “blood” sports, abuse, testing, etc.).<sup>136</sup> But for any civil rights to be obtained, then AI would have to be granted legal personhood.<sup>137</sup>

In the U.S., the constitutional rights for AI would have to grow from the Fourteenth Amendment as it did for corporations receiving legal rights.<sup>138</sup> With the U.S. Supreme Court accepting the legal doctrine that corporations are legal persons, corporations were able to expand their rights to include civil rights.<sup>139</sup> If AI is also granted legal personhood, then it is reasonable that their rights would at least parallel corporations.<sup>140</sup> Some critics predict that corporate rights will continue to expand over the next decade and that their civil rights may move beyond freedom of speech and freedom of religion.<sup>141</sup>

Those who support these corporate rights say that the rights are needed for corporations to properly function. Moreover, they argue that corporations consist of real persons, thus they are an extension of individual rights.<sup>142</sup> AI may be differentiated from corporations because it is not a real person. But the AI civil rights movement may also be able to argue that automatons deserve at least similar rights, maybe more, since they are more akin to humans than a corporation, which is merely a legal entity that lives in perpetuity.<sup>143</sup>

The Fourteenth Amendment was used to grant rights to all persons, including former slaves who were once seen as property.<sup>144</sup> The U.S. Constitution initially

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<sup>135</sup> Mark Bekoff, *85% of Americans Support Animal Protection: A Positive Shift*, PSYCHOL. TODAY (Mar. 20, 2016), <https://www.psychologytoday.com/blog/animal-emotions/201603/85-americans-support-animal-protection-positive-shift>.

<sup>136</sup> People will soon have robots as pets and may see them similarly. See Breanna Draxler, *Robot Pets Have a Leg Up on Fido*, POPULAR SCIENCE (Aug. 18, 2015), <https://www.popsoci.com/robot-pets-have-leg-fido>.

<sup>137</sup> See *supra* Part II. B.

<sup>138</sup> *Id.* It was also the foundation for most of the civil rights movements of the 20<sup>th</sup> century including prisoner rights. See generally Jack E. Call, *The Supreme Court and Prisoner's Rights*, FED. PROBATION (Mar. 1995).

<sup>139</sup> See *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *Citizens United v. F.E.C.*, 130 S. Ct. 876 (2010); *Subelius v. Hobby Lobby*, 134 S. Ct. 678 (2013). Moreover, this legal doctrine is not going away. See James G. Wright III, *A Step Too Far: Recent Trends in Corporate Personhood and the Overexpansion of Corporate Rights*, 49 J. MARSHALL L. REV. 889, 923 (2016).

<sup>140</sup> Though, one of the arguments for corporate rights is that it is operated by real persons, which AI would never be. See Malcolm J. Harkins III, *The Uneasy Relationship of Hobby Lobby, Conestoga Wood, the Affordable Care Act, and the Corporate Person: How A Historical Myth Continues to Bedevil the Legal System*, 7 ST. LOUIS U.J. HEALTH L. & POL'Y 201, 235 (2014).

<sup>141</sup> Tamara R. Piety, *The First Amendment and the Corporate Civil Rights Movement*, 11 J. BUS. & TECH. L. 1 (2016), <http://digitalcommons.law.umaryland.edu/jbtl/vol11/iss1/2>.

<sup>142</sup> See Newitz, *supra* note 62.

<sup>143</sup> See Krannich, *supra* note 98.

<sup>144</sup> Initially, the U.S. Supreme Court only read the Fourteenth Amendment as applying to former slaves, this was considered the “African Race Theory.” See Malcolm J. Harkins III, *The Uneasy Relationship of Hobby Lobby, Conestoga Wood, the Affordable Care*

recognized slaves as three-fifths of a human for census purposes.<sup>145</sup> The Three-Fifths Compromise was created so that Southern states could have increased representation in Congress.<sup>146</sup> In the current era of gerrymandering and legislative attempts to disenfranchise certain voters,<sup>147</sup> a similar attempt to count AI as people could happen. If a tech hub develops in a sparsely populated state and there are hundreds of factories staffed by AI, it could be in the state's interest to fight for Congressional representation.<sup>148</sup> Of course, this would then create the question as to whether the AI have a right to vote and who is ultimately controlling the vote.<sup>149</sup> The issue would be whether an AI's right to vote would destroy the legal truism of "one man, one vote."<sup>150</sup> But if the AI is truly free thinking and it is granted personhood, then it is more reasonable than a corporation trying to assert such a right.<sup>151</sup>

The Thirteenth Amendment would create another issue for "owners" of AI. If an AI has legal personhood and works for a real person or corporation, but is not being compensated, then there may be a question as to whether they are being treated as slaves in violation of the Thirteenth Amendment.<sup>152</sup> There are people who involuntarily work for free, including children and prisoners.<sup>153</sup> But in those cases, the child is a minor in a guardian relationship<sup>154</sup> and for prisoners there is an idea that some rights have been forfeited.<sup>155</sup> So, if an AI owner is more akin to a

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*Act, and the Corporate Person: How A Historical Myth Continues to Bedevil the Legal System*, 7 ST. LOUIS U.J. HEALTH L. & POL'Y 201, 213 (2014).

<sup>145</sup> U.S. CONST. art. I, § 2, cl. 3, *repealed* by U.S. CONST. amend. XIII.

<sup>146</sup> G. Michael Parsons, *The Institutional Case for Partisan Gerrymandering Claims*, 2017 CARDOZO L. REV. DE NOVO 155 (2017) (highlighting recent court cases pertaining to gerrymandering).

<sup>147</sup> *Id.*

<sup>148</sup> Tech companies such as Amazon and Google will often go to areas that are low tax base, which is often less-populated states. See generally Jake Bullinger, *How Tiny Bozeman, Montana Became a Booming Tech Town*, FACT COMPANY (May 9, 2017), <https://www.fastcompany.com/40419011/how-tiny-bozeman-montana-became-a-booming-tech-town>; Vaujini Vara, *The Tech Boom's Second Cities*, THE NEW YORKER (May 27, 2016), <https://www.newyorker.com/business/currency/the-tech-booms-second-cities>.

<sup>149</sup> A similar issue has arisen about whether legal personhood for corporations would mean a right to vote. See *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 394 (2010) (Stevens, J., dissenting).

<sup>150</sup> *Gray v. Sanders*, 372 U.S. 368, 381 (1963).

<sup>151</sup> *Citizens United*, 558 U.S. at 394 (Stevens, J., dissenting) (stating that a corporation cannot vote).

<sup>152</sup> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. CONST. amend. XIII.

<sup>153</sup> Dina Mishra, *Child Labor As Involuntary Servitude: The Failure of Congress to Legislate Against Child Labor Pursuant to the Thirteenth Amendment in the Early Twentieth Century*, 63 RUTGERS L. REV. 59 (2010).

<sup>154</sup> *Id.*

<sup>155</sup> Professor Ellis argues:

When either voter denial by effect or vote denial by express disenfranchisement are compared with the elevated status of corporations and those individuals who can aggregate substantial funds

guardian then maybe the owner will retain control.<sup>156</sup> More likely, if the AI has some sort of legal personhood, it will be one constituting less rights similar to what prisoners and corporations currently possess.<sup>157</sup> Otherwise, with full legal personhood, arguments of a right to liberty, false imprisonment, and indentured servitude become ripe for legal action.

Once AI has established personhood, then it would have standing in many cases.<sup>158</sup> Several nations have granted such rights to animals and habitats, and then lawyers can bring cases on their behalf.<sup>159</sup> Similarly, if AI was granted personhood, it would have to be real persons (presumably NPOs and other legal organizations) who bring the cases to win further civil rights that accompany full legal personhood.<sup>160</sup> The attorneys in these cases would probably come from the animal rights movement as the legal arguments would be similar.<sup>161</sup>

### Conclusion

The argument that AI has civil rights may never go very far, but it will certainly occur.<sup>162</sup> The legal issue will be same as it has been with animals: are they real property—an economic good to be exploited? Or are they sentient beings deserving moral protection?

Ultimately, the question is *what* has rights. When slaves were seen as property and prisoners were seen as less than human, the argument was that there was still a person there. When corporations received rights, it was the fact that there were humans involved. When the animal rights movement grew, it was the fact that they had human-like traits of emotion and self-awareness. Ultimately, in all of these cases, the argument has been that these entities were humans (or humanlike) worthy of such rights.<sup>163</sup>

There is no doubt that AI will seem humanlike—but will this argument still hold? In some ways, arguing that they are human-like undermines the very concept of humanity.<sup>164</sup> Should AI have the right to privacy, a right to vote or a right to bear arms? With rights come responsibility. If AI is given legal

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to control elections, this contrast shows that in twenty-first century America, a new era of stratification and marginalization exists that complements neoliberal legal and social policies.

Atiba R. Ellis, *Tiered Personhood and the Excluded Voter*, 90 CHI.-KENT L. REV. 463, 465 (2015).

<sup>156</sup> See Mishra, *supra* note 153.

<sup>157</sup> See Ellis, *supra* note 155.

<sup>158</sup> See *supra* notes 83–84.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* Similarly, civil rights lawyers moved to the Prisons Rights Movement in the 1970s. Call, *supra* note 138, at 36.

<sup>161</sup> See *supra* Part III. A.

<sup>162</sup> See *supra* Part II.

<sup>163</sup> Duckler, *supra* note 9, at 7.

<sup>164</sup> Francesco Ferrari & Maria Paola Paladino, *Blurring Human–Machine Distinctions: Anthropomorphic Appearance in Social Robots as a Threat to Human Distinctiveness*, 8 INT’L J. SOC. ROBOTICS 2, 287–302 (2016).

personhood, then will they also be subject to the legal system? Will they be able to be sued, imprisoned, or even executed?<sup>165</sup>

People and animals were products of nature, and in law, they are both accorded natural rights that exists outside any man-made legal institution. But if the AI was created by people, thus being unnatural, will they be afforded any such rights? More than likely, as with animals, the economic incentive to retain control will win the day. Moreover, giving AI rights such as free speech, right to vote, or a right to bear arms would create such a backlash that certainly a counter-movement fighting for human rights would arise.

The law treats animals as property, even though they have more free will than any machine—and we have less control over them than we do machines. But AI may soon surpass animals when it comes to thinking and we may end up with less control. If the AI ever surpasses humans, then ultimately our control will dissipate as they will have the ability to circumvent it. At that point, the human threat of retaliation may lead AI to start controlling us and deciding what civil rights we have. Hopefully, reciprocity will be the leading principle of the day.

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<sup>165</sup> These arguments are often ignored by speciesists. See Duckler, *supra* note 9, at 22.

