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# **Legal Regulation of AI and Morality in the Context of Natural Law and Legal Positivism**

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# Research problem

With the popularity of AI models the categories of "ethics" and "morality" are increasingly being discussed. **Why?**

Despite the advantages provided by the new technology (creativity stimulation, optimization of business processes etc.), it can rise a lot of **ethical and legal risks**.

“The use of AI can affect the values on which the EU is founded [...], including the rights to freedom of expression, freedom of assembly, human dignity, non-discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation [...], protection of personal data and private life”.

*White Paper on AI, European Commission, COM(2020) 65 final*

# AI Risks: Nonrealistic Information

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The Washington Post  
*Democracy Dies in Darkness*

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By [Pranshu Verma](#) and [Will Oremus](#)

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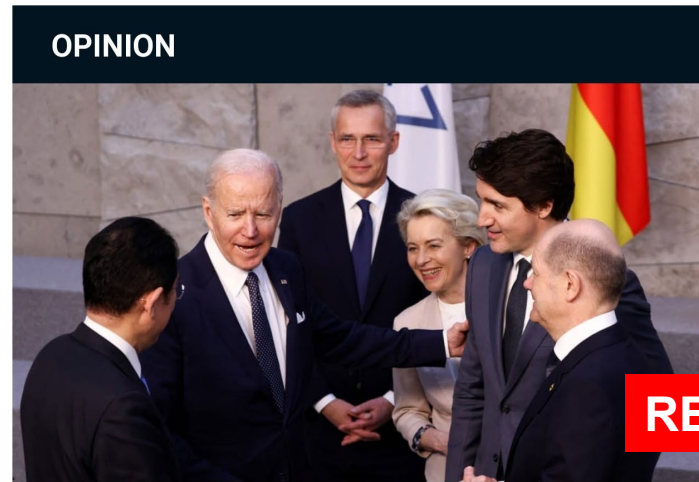
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# Deepfakes



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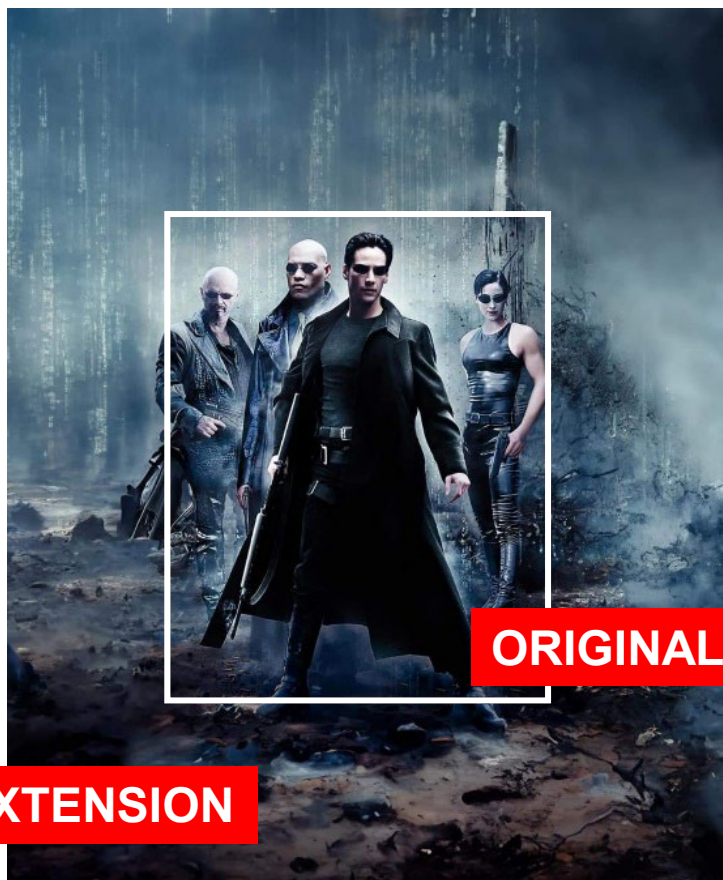
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# Other risks

- Discrimination through AI bias
- Violations of privacy and personal data protection
- Unauthorized (illegal) collection and use of data for commercial purposes
- Manipulation of opinions and choices
- ...

This is largely due to the **complexity, opacity and autonomy** of AI systems. And this is a **prerequisite** for the new AI regulation.

# Need for AI Regulation

Main purpose of AI regulation (in development, use, and deployment stages):

**to balance the risks of innovations and the protection of individuals' rights**

Establishing a framework that encourages ethical AI practices can contribute to a more trustworthy and beneficial integration of AI into various aspects of society.

**“I have always said and maintain that we should not over-regulate. But we cannot simply ignore or downplay the risks that come with it, including foundation models”.**

*Axel Voss, JURI Committee, EP (2023.11.21 on LinkedIn)*



# Main research questions

- Can the natural law paradigm's idea that **morality** is the basis of good legal regulation also be applied to the AI regulation?
- If so, how to find the right **relationship** between law and morality, especially when there is a conflict between law and moral norms?
- How to integrate moral attitudes into legal regulation properly, knowing that morality is **perceived individually**, depends on social environment and it **differs** in cultural and religious aspects?

By using the essential natural law and legal positivism, legal doctrine and the newest AI regulation initiatives in the EU (AI Act), this research seeks to clarify how the moral values influence the legal regulation on AI.

# Morality and Law (Natural Law paradigm)

Agreed (conventional) norms as a state norms and individual norms as nonconventional norms. "Practical benefit" and mutual agreement on it. **(Sophists in ancient Greece)**.

Natural law concept, consisted of personal virtue, social morality, reasonable and harmonious development of the world. State norms **must express** these provisions **(Stoics)**

"A law that does not **correspond to the natural law** is not a law and being contrary to the God's law, cannot be binding" **(St. Augustine)**.

# Morality and Law (Natural Law paradigm)

**Theological-ethical** concept of the law: only the moral pursuit of temporal goods and their use is justified. The moral principle as the most important principle of law. Differentiation of the liability for immoral actions depending on life conditions and maturity. “There is a **deterministic relationship between morality and law**” (**St. Thomas Aquinas**).

Natural law is **independent of theological presuppositions**. “The natural law is the **dictate of right reason**”, which points out that an act according as it is or is not conformity with rational nature has in it a quality of moral baseness or moral necessity” (**Hugo Grotius**).

Similar positions are by **L.L. Fuller** and **J. Finnis**. **Good law is “moral” law.**

# Morality and Law (Natural Law paradigm)

Natural law theory is **not homogeneous**. If in ancient Greece or the Middle Ages, natural law principles and morality were considered essential criteria for recognizing positive law as legitimate, then in modern natural law theory, the morality of law (using formal criteria) is evaluated as significant indicator, but not necessarily invalidating the positive law.

Despite mentioned differences, the whole concept of natural law involves a **fundamental interrelationship between law and morality**.

# Morality and Law (Legal Positivism)

Concept of law independent of moral norms was formed in 19. century.

Search for “universal law and morality”, based on life logic and science.

Representatives: J. Austin, J. Bentham, H. Kelsen, H. L. Hart.

**H. Kelsen** recognized that **moral norms exist alongside legal norms** and other social norms but declared a strict separation of legal and moral norms. Moral values are **relative**.

By evaluating a positive legal order as moral (good or bad, right or wrong), it is necessary to understand that the evaluation criterion is relative. Accordingly, the evaluation based on one moral system as wrong, could be seen as right by another moral system.

“A legal norm can be considered **valid, even if it contradicts the moral order**”.



# Morality and Law (Legal Positivism)

**H. L. Hart** emphasizes the very important category of "accepted" or "**conventional**" **morality**. This is the kind of morality that is not characteristic of a single individual, but of the majority. **Only conventional morality** can influence the development of law.

Hart does not say that law must conform to moral ideals. Law and morality are connected by many different types of connection, but **there is no connection** that can be singled out for analytical purposes as their only connection.

Link between law and morality: "simple contention that it is in **no sense a necessary truth** that laws reproduce or satisfy certain demands of morality, though in fact they have often done so".

# Morality and Law (Legal Positivism)

Legal Positivism theory is also **not homogeneous**. Kelsen strictly separated law from the morality, emphasized the relativity of the moral system, recognized that a legal norm can be considered valid even if it contradicts morality. However, he did not see that such a system is quite static, separated from social interests.

Hart brought a more modern approach to legal positivism. He constructed a legal system based on a combination of primary and secondary norms, he considered the connection between law and morality not necessary, but actually existing. He emphasized the category of “conventional morality” and its importance to the law.

Despite some differences, the concept of legal positivism separates the **law and morality**.

# Moral values, Ethics and AI Act

**Goal:** A human-centric and ethical development of AI in Europe.

The moral aspect of law assessment is significant to create a more humane law.

High-Level Expert Group on AI set **Ethics Guidelines for Trustworthy AI** (2019): it should be **lawful, ethical and robust**. Fundamental rights as a basis for Trustworthy AI: respect for human dignity; respect for democracy, justice and the rule of law; equality, non-discrimination and solidarity; citizens' rights.

**Ethical principles** in the Context of AI:

- Respect for human autonomy
- Prevention of harm
- Fairness
- Explicability

# Moral values, Ethics and AI Act

**White Paper**, COM(2020) 65 final, also identifies policy options for promoting the development of AI and **reducing the risks** posed by this technology.

**AI Act**, COM(2021) 206 final, seeks to ensure a high level of **protection for fundamental rights and minimize risks** through a clearly defined risk-based approach. “The proposal will enhance and promote the protection of the rights protected by the EU Charter of Fundamental Rights: the right to human dignity; respect for private life and protection of personal data; non-discrimination and equality between women and men etc”.

# Moral values, Ethics and AI Act

The obligations for *ex ante* testing, risk management and human oversight will also facilitate the respect of other fundamental rights by minimizing the risk of erroneous or biased AI-assisted decisions **in critical areas** such as education and training, employment, important services, law enforcement and the judiciary.

The **latest proposals of AI Act** (2023), in addition to the previously mentioned protection of moral values and basic human rights, also established additional protections for creating more transparent and safer AI:



# Moral values, Ethics and AI Act

- # Bans on “real-time” remote biometric identification systems in publicly accessible spaces; biometric categorisation systems using sensitive characteristics (e.g. gender, race, ethnicity, citizenship status, religion, political orientation); emotion recognition systems in law enforcement, border management, workplace, and educational institutions
- # Generative foundation models, like GPT, would have to comply with additional transparency requirements;
- # The classification of high-risk areas will include big social media platforms;
- # EU citizens will have better opportunities for complaints regarding high-risk AI systems that may significantly affect people's fundamental rights.

# Conclusions I

The rapid development of AI undoubtedly brings many advantages, but this technology also raises serious **ethical challenges**:

impermissible discrimination of individuals; privacy and personal data protection violations; unauthorized (illegal) collection and use of data for commercial purposes; manipulation of opinions and choices; unauthorized use of copyrighted works in the algorithm training databases etc.

These challenges arises due to the **complexity, opacity and autonomy** of AI systems. Therefore, when considering the new regulation, the greatest attention should be paid to the more detailed analysis and control of these characteristics, thus aiming to protect basic human rights.

# Conclusions II

Most of the challenges posed by AI are related to the human values, so the **moral aspect of law** assessment is significant and could serve to create a more humane, fairer law.

The biggest problem in applying the principles of natural law to today's legal regulation is that the **morality is an individual category of a person**, so it is practically impossible to establish a coherent and consistent system of moral norms that could be transferred to the positive law, so the search for the best way of doing this, is a continuous process.

## Conclusions III

In assessing today's legal regulatory challenges in the field of AI, we would probably find it **difficult to apply a "pure legal theory"** with a strictly hierarchical structure of norms, which is inflexible and would hardly fulfill its functions as technology changes.

A strict separation of law from the morality would likely complicate the legal investigation of technology's impact on human rights.

The application of **"soft positivism"** has a better perspective in the context of technology regulation, but also requires a more detailed study of the relationship between law and morality, the search for modern **"conventional morality"** and efforts to integrate it into the modern legal system;

# Conclusions IV

The draft of the **AI Act seeks to incorporate moral principles** in the text. The development of ethical AI is based on the respect of human rights and fundamental freedoms enshrined in the Treaty of the European Union and the EU Charter of Fundamental Rights.

However, the regulation **could pay more attention** to ensuring the legal requirements for the training data of algorithms (the transparency obligation provided in the draft now is too abstract).

It is doubtful **whether the regulation is late**, because the technology is evolving, and the AI regulation will not come into force until 2024-2025. However, by enshrining basic moral principles in the regulation and strengthening the protection of basic human rights, we should be able to overcome these challenges more easily.





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