



FACULTY OF LAW, UNIVERSITY OF MALAYA

CELEST



CENTRE FOR LAW AND ETHICS IN SCIENCE AND TECHNOLOGY



IN THIS ISSUE

Featured Article

In this month's newsletter, Dr Ainee Adam offers some insight into how we might approach the regulation of Artificial Intelligence. She explores the thoughts of Confucius and Bentham on laws and regulations and ponders the possibility of adopting the views of these philosophers in addressing the issue of regulating AI technology.



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News

Congratulations to our members on the following publications:

Tan, S.Y.L.; Muhammad Ershadul Karim, Izura Masdina Zakri & Pardis Moslemzadeh Tehrani. (2019). Emerging Technologies in Malaysia and ASEAN: Selected Legal and Policy Issues. Kuala Lumpur, University of Malaya Press.

Sik, C.P. (2020). Digital Copyright Law of Malaysia. Subang Jaya, Sweet & Maxwell.

Ali Alibeigi, Abu Bakar Munir, Mohammad Ershadul Karim & Adeleh Asemi (2019). Right to Privacy, a Complicated Concept to Review. Library Philosophy and Practice, pg 1-35.

Ali Alibeigi, Abu Bakar Munir, Mohammad Ershadul Karim & Adeleh Asemi (2019). Towards Standard Information Privacy, Innovations of the New General Data Protection Regulation. Library Philosophy and Practice, pg 1-19.

Bin Abdul Aziz, M.F., Bin Mispan, M.S., and Doni, F. (2020). Organic Food Policy and Regulation in Malaysia: Development and Challenges. In Goh, B.C. and Price, R. (Eds.), Regulatory Issues in Organic Food Safety in the Asia Pacific. Springer, Singapore (Forthcoming, 2020).

Events

- **25 February 2020**

Dr Mohammad Firdaus Bin Abdul Aziz participated in a round-table discussion on the establishment of a collaborative research group of Malaysian Cellular Immunotherapy for Cancer Research at the Hospital Canselor Tuanku Muhriz, Universiti Kebangsaan Malaysia.

Upcoming Events

- **16 April 2020**

Conference on “The Intersection Between Traditional Knowledge and Technology: Challenges and Opportunities”, jointly organised by CELEST and the Centre for Legal Pluralism & Indigenous Law.

***Regulation of Artificial Intelligence Technology:
A Philosophical Perspective***

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Author's Biography

Dr Ainee Adam is currently the Deputy Dean (Research) and a Senior Lecturer at the Faculty of Law, University of Malaya. She was previously a postdoctoral fellow at the Centre for Law and Business at the National University of Singapore. Her current research interest is in examining contemporary copyright issues from an Asian perspective. Ainee has published several articles in journals including the Queen Mary Journal of Intellectual Property, European Intellectual Property Review and the Hong Kong Law Journal.

Introduction

In early 2018, the Facebook-Cambridge Analytica data scandal erupted when it was discovered that Cambridge Analytica, a political consulting firm, had used AI technology to identify registered voters who were sympathetic to certain political messages and ideals based on what people had liked on Facebook. The information was subsequently used to provide voters with personalised political advertisements thus potentially influencing their behaviour during the elections. [1]

The scandal resulted in calls for the regulation of AI technology and the ethical use of it. While some governments have initiated the first steps toward governing AI technology, [2] industry players have also taken measures to self-regulate their use of AI technology. [3]

However, as policymakers struggle to formulate laws and regulations capable of addressing issues arising from the use of AI technology (which continues to evolve on a daily basis), it bears questioning: Is regulation necessary?

Many have debated on this matter by identifying the reasons for: (1) the (urgent) need for regulations; (2) what is perceived to be futile attempt at regulating AI technology; (3) regulation may be premature and could potentially stifle the development and evolution of AI technology.

Taking a step away from this debate, this article looks at the perspectives of two famous philosophers, Bentham and Confucius, on laws and regulations with the aim to shed a different light onto the issue of regulating AI technology.

First outlining Confucius and Bentham's view on laws and regulations, the article then proceeds to identify some of the characteristics of AI technology. Based on these characteristics and applying the philosophers' approaches, the article examines whether these approaches could potentially be one of the factors to be considered when regulating (or not) AI technology.

Confucius

Confucius suggested that laws and regulations are ineffective in governing a nation. This is because they merely amount to external compulsion and would not intrinsically change an individual's behaviour. Morals, on the other hand, is a much more effective tool in governing a nation/society as the government may rely on individuals to innately adhere to moral standards without coercion. [4]

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Confucianists later clarified what amounts to moral standards to regulate one's conducts as the following:

Do not use what you dislike in your superiors in the employment of your inferiors. Do not use what you dislike in your inferiors in the service of your superiors. Do not use what you dislike in those who are before, to precede those who are behind. Do not use what you dislike in those who are behind, to follow those who are before. Do not use what you dislike on the right, to display toward the left. Do not use what you dislike on the left, to display toward the right. This is called the principle of applying a measuring square.' [5]

It is therefore clear that Confucius and Confucianists were of the view that individuals who are capable of being ashamed of their own behaviour would create an orderly society. In such circumstances, the government would not need to resort to coercion in the form of regulation and punishment. In order to foster this feeling of shame, Confucius advocated the inculcation of strong moral standard in every person.

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Bentham

Bentham, on the other hand, took a vastly different view from Confucius. Recognizing the need for regulation (sometimes) to safeguard and promote the happiness of the majority, he proposed that the government should refrain from regulating certain matters. A prime example of this is where the government aims to increase national wealth.

He was of the opinion that individuals (entrepreneurs) acting in their own interests would be more successful in achieving this aim than government regulations as the prior are better motivated in preserving and increasing their personal wealth. This would, in turn, result in an increase of national wealth.

Government regulations, on the other hand, could potentially serve as stumbling blocks considering that the government may not be as well-versed in the inner workings of the matter.

Conversely, Bentham stated that government regulations would be appropriate in matters where an agenda is to be promoted. This is based on the premise that regulations compel individuals to behave in a certain manner, thus achieving the government's agenda. [6]

For example, the government's agenda may be to ensure that corporations are more socially responsible. Left to their own device, it may not be likely that many corporations would engage in charitable activities out of their own accord. Therefore, regulations may be necessary to ensure that corporations behave as per the government's agenda. [7]

Accordingly, it can be said that, for Bentham, the need for regulations is dependent on the government's ultimate objective. Where the ultimate objective is better achievable by the society, the government should then refrain from regulating the subject matter in question. However, where the government has an agenda which may be better promoted by the government, regulations are then necessary.

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To regulate or not to regulate

Prior to answering the question of whether we should regulate AI technology or abstain from it, it is necessary to first understand the capabilities of AI technology.

The technology has been known to transform businesses by allowing them to work faster and smarter with less resources. Amazon, for example, makes use of AI technology to analyse purchasers' behaviour online and subsequently predict books that may be of interest those purchasers.

This prediction then serves to identify the products to be stocked at specific locations, allowing the company to reduce the time required to make deliveries to its purchasers thus enticing more purchases to be made. Based on this, AI technology arguably supports businesses, and subsequently the nation, in gaining higher economic returns.

AI technology has also impacted other sectors such as the healthcare sector. The technology, for example, has allowed computer systems to access, analyse and even identify patterns and disease traits from the vast (past and incoming) data available, providing medical practitioners with invaluable assistance when diagnosing and treating patients.

The same capabilities have also been adapted by some government agencies to analyse various documents and video footages for national security, defence and military purposes, such as detecting hostile activities and identifying security risks. This significantly reduces the time spent by analysts to personally go through those documents and footages to do the same.

It is therefore apparent that AI technology is a powerful tool and has the capability of improving numerous existing products and services. It should, however, be born in mind that there are risks attached to the technology and it is these risks that policymakers are most concerned about.

In the examples provided earlier, the technology predicts consumer behaviour, medical conditions as well as hostile activities and security risks by analysing data provided to it. Among the risks connected to these examples are: Has the data owner consented to his/her data being collected and used by the relevant entity? Was the data used for the purpose it was collected and as permitted by the data owner?

What are the steps taken to ensure that the data (and the technology) is not misused, be it by the relevant entity or by hackers? Are these steps sufficient to safeguard the data and the technology? Who bears the responsibility if the AI technology makes a mistake in its analyses and prediction?

Bearing in mind the highly varied use of AI technology and the risks accompanying it, Confucius's approach towards regulations and laws would easily garner a response that it is too simplistic. This is particularly so in the light of a multicultural society consisting of varying degree and perspective on moral standards and ethics.

Bearing in mind the highly varied use of AI technology and the risks accompanying it, Confucius's approach towards regulations and laws would easily garner a response that it is too simplistic.

However, Confucius's argument is certainly attractive. If entities were to incorporate the principle of applying a measuring square as elaborated by Confucianists into their standard operating measures when treating the data in their possession, it is likely that regulation may not be necessary.

This is, of course, provided that the public as well as policymakers are confident that the entities (and its employees) have inherently strong moral character and capable of self-regulating themselves with honour and integrity.

On the other hand, if we were to apply Bentham's approach, it would be necessary to first identify the government's ultimate objective and subsequently determine whether the objective be better achieved by individuals acting in their own interest, or by the government?

From one perspective, it is only natural that the government would be interested in further advancement in artificial intelligence as it promises efficiency and improvements to existing products and services.

Industry players and scientists involved in the development of AI technology would be in a better position to achieve the government's objective. Following from this, the government should refrain from interfering via regulations and laws.

Nevertheless, it is also arguable that the government would consider it its agenda to ensure that AI technology is developed and used in a safe and ethical manner. Considering the risks earlier identified, it may be too risky to leave it to the industry players to self-regulate. Consequently, regulations and laws may play an important role in ensuring that the risks are adequately managed, thereby achieving the government's agenda.

Based on these lines of reasoning, at first glance, it appears as though both Confucius and Bentham do not quite help in answering the question of whether AI technology should or should not be regulated. However, a closer look at these arguments would show that there is merit in their approaches.

Confucius's approach, for example, arguably sounds utopian in nature and highly unlikely to be applicable in the current society. Nevertheless, it certainly would not cause any harm to hold entities to a higher moral standard. As some policymakers and industry players are currently drafting codes of ethics for AI technology, it may be possible to incorporate the principle of applying a measuring square, or a version of it, into the code.

The question that arises then, even if there is a code of ethics, would entities comply with it voluntarily? Would the code (and their perceived compliance) be sufficient to allay the concern and sometimes, distrust, that the public and policymakers have towards AI technology and entities using it? It is at this point that Bentham's approach may be of some assistance.

Where the government/policymakers have a certain agenda and it can be better achieved via compulsion or encouragement from the government, regulations and laws should then be enacted, in addition to the code of ethics. However, where the objective is better achieved by the entities, the government should refrain from regulating.

Nevertheless, recognising that there may be circumstances where the use of AI technology is less risky and would not require strict regulation, the code of ethics would, perhaps, suffice. After all, it is important to abstain from over-regulation as it could potentially stifle the development and evolution of AI technology.

Conclusion

This article certainly does not suggest that we should do away with all regulations or even stop all attempts to regulate the use of AI technology. Certainly, regulations are important in regulating the use of AI technology in some matters. However, we should also keep in mind the option of not regulating and to use this option where possible and suitable.

It may be that in some situations, the entities are better suited at regulating themselves, as suggested by Bentham. Or it may be that morals and ethics are/should be sufficient, as suggested by Confucius. It may even be that both moral and ethics as well as regulations should be used to regulate the use of AI technology for some matters.

Where the government/policymakers have a certain agenda and it can be better achieved via compulsion or encouragement from the government, regulations and laws should then be enacted, in addition to the code of ethics. However, where the objective is better achieved by the entities, the government should refrain from regulating.

References

1. Philip Bump, Everything You Need to Know about the Cambridge Analytica-Facebook Debacle, The Washington Post (19 March 2018)
<https://www.washingtonpost.com/news/politics/wp/2018/03/19/everything-you-need-to-know-about-the-cambridge-analytica-facebook-debacle/>;
Kevin Granville, Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens, New York Times (19 March 2018)
<https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html>.
2. See for example Nicholas Davis and Edward Santow, Artificial Intelligence: Governance and Leadership White Paper (2019) Australian Human Rights Commission (1 February 2019)
<https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/artificial-intelligence-governance-and-leadership>; EU Guidelines on Ethics in Artificial Intelligence: Context and Implementation. European Parliament (September 2019)
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640163/EPRS_BRI\(2019\)640163_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640163/EPRS_BRI(2019)640163_EN.pdf);
Personal Data Protection Commission Singapore, A Proposed Model Artificial Intelligence Governance Framework (January 2019)
<https://www.pdpc.gov.sg/-/media/Files/PDPC/PDF-Files/Resource-for-Organisation/AI/A-Proposed-Model-AI-Governance-Framework-January-2019.pdf>.
3. See for example Mark Zuckerberg, A Blueprint for Content Governance and Enforcement, Facebook (15 November 2018)
<https://www.facebook.com/notes/mark-zuckerberg/a-blueprint-for-content-governance-and-enforcement/10156443129621634/>.
4. KL Alex Lau, Angus Young, 'In Search of Chinese Jurisprudence: Does Chinese Legal Tradition have a Place in China's Future?' 20(5) International Company and Commercial Law Review (2009) 155.
5. Fung Yu-Lan, A Short History of Chinese Philosophy, 79-80.
6. Jeremy Bentham, A Manual of Political Economy, 33-35.
7. See for example Li-Wen Lin, 'Corporate Social Responsibility in China: Window Dressing or Structural Change?' 64 Berkeley Journal of International Law (2010) 64.

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