

A Pirate Looks at 40 ... Am I Too Early?

*Yes I am a pirate, two hundred years too late
The cannons don't thunder, there's notbin' to plunder
I'm an over-forty victim of fate,
Arriving too late, arriving too late*

—Jimmy Buffet, *A Pirate Looks at 40*.

As a pirate looking at 40 (with all apologies to Jimmy (and Kurt)), I am sometimes saddened by the relative silence of the cannons of our profession. As a man solidly in the middle of Generation X, I was born too late to have fought in the primary battles over federalism, race, gender, and free speech—the cases that define who we are as a modern country. Sure, there have been other big cases, but few as thematic, temporal, and fundamental as these. My only hope is that I have not been born in the doldrums of the profession—too late and too early. You see, there are storms brewing on the horizon: ones that will almost certainly require us once again to cause our metaphorical cannons to thunder.

I am a commercial litigator, but have a focus on technology. I recently attended a presentation on 10 things to know about current technology given by my friend, Prof. Allen Kupetz of the Crummer Graduate School of Business at Rollins College. While the presentation was interesting, a question he posed as we were walking out was even better: “Will self-aware software programs have rights?” Don't be so quick to write this question off as a flight of fancy. According to Moore's Law, computer processing power will double every two years. Indeed, in October 2012 two gentlemen were awarded the Nobel Prize for quantum physics having direct application to theoretical quantum computers (thousands of times faster than current computers). IBM's Watson won Jeopardy! and Cleverbot.com (a souped-up version) sort-of passed the Turing Test being deemed to be human 59.3% of the time while *actual* humans were only deemed to be human 63.3% of the time. (See cleverbot.com/human). In other words, human beings having blind conversations with the software thought it was human almost 60 percent of the time. When speaking with actual humans, these same people only believed the human actually to be human four percent more often.

Let's take another step on the path. Is it permissible for humans to implant computers in their bodies? What if that computer is directly implanted in the brain and stimulates regions of the brain in a way similar to heroin? Or, conversely, what if by implanting computers in everyone's body we enhance reflexes to

reduce car accidents—would everyone be required to have such implants similar to current immunizations? You see my point. These disruptive technologies will deploy any way but smoothly.

Kupetz's question also reminded me of my (bad) third-year law review article in which I posed the question of whether an individual's right to privacy would permit a parent to choose the genetics of their “designer” children. You want a 6'2” male with blonde hair, average weight, a tendency to above average intelligence, and an increased resistance to disease? You got it. What if the parents want to incorporate non-human gene lines or recombine human traits in a non-typically human manner? What if we want a smarter guard dog?

All of these questions challenge our fundamental conception of what it means to have rights. Heretofore, at least in civilized modernity (however defined), humans are recognized to have certain fundamental inherent rights. Indeed, even corporations have certain rights. While not per se rights, even animals are protected in civilized society. Thus, what about the next wave of quasi-humans or sentient non-humans? Do they have equal rights to humans? And what does it mean to be human anyway?

Some would say that these are problems for another day; however, many of these technologies are here today and others will be upon us in the remainder of my lifetime. I only hope that I am still spry enough to be a part of the battle when the cannons are once again thundering and society, through its legal system, gets to address these massively disruptive questions. In the mean time, I'll just sit back, watch, and eat my transgenic popcorn. **TFL**

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