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POST HUMANISM VIS-A-VIS RIGHT TO BE FORGOTTEN: TO FORGET OR NOT TO FORGET

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Abstract

In the West, it is widely assumed that there is already a fundamental distinction between people and objects. This distinction informs the construction of “the human” and human subjectivity as distinct from all others. The distinction has recently been called into question by post humanist philosophy, which claims that the distinction between human and nonhuman agents—or indeed, bodies—is always the product of a separate group of forces. As a consequence, the line between human and nonhuman creatures is continuously changing. This transition of boundaries, as post humanist philosophers have argued, can be visualised explicitly in relation to modern media. The scholars will seek to comprehend these new themes of human rights, as well as the evolution of these rights, in this study. The main goal of this work is to comprehend the post-human data issue through the lens of Right to be forgotten (“RtbF” for brevity). This study will look at the post-human concept and how it has evolved over time, using philosophical theories as a guide. RtbF's concept and need, with the primary goal of determining how it differs from prior laws with comparable goals. Applying this RtbF to post-human data subjects in the third segment to see if they're capable of having such rights. Recent changes in EU law defining increased online privacy, such as the

‘General Data Protection Regulation’ and ‘Right to Be Forgotten’ event, may be interpreted as striking a balance between an individual's privacy and dissemination of information.

Keywords: GDPR, Post-humanism, Right to be forgotten, Internet of Everything

1. Introduction:

Looking back, from the emergence of humans to the present-day digital era, no one can deny the irreversible changes brought by humans. Be it the forming of a society, imperialism, democracy, or the new digital rule, the changes, and the growth rate are hard to miss. With these changes, we humans have also succeeded in humanizing things and concepts which do not inherently or naturally possess human attributes. One can say that the lens with which we see the world has become human.

Among these new concepts, posthumanism seems to be knocking hard at our doors. Recently the rapid technological developments have led us to a more frequent interaction between humans and machines. From the medical field to weapons development to social media, there is not one aspect of our life, culture, politics, and the civilization itself which is not being affected by such advancements. Granting personhood to non-natural entities has a long history with convenience being the base argument. There are numerous examples of the same including corporations, temples, organizations, and whatnot. The idea is to give them certain human rights and impose some obligations so that the regulation of such entities becomes somewhat convenient. The recent widespread debate on granting personhood to AIs



(“Artificial Intelligence”) is also one such example.

However, the range of entities capable of possessing rights or having personhood is not the only thing to have evolved, the nature of these rights has undergone a huge evolution as well. One such example of evolved rights associated with the all-new era of social media and the data-oriented economy is the Right to be Forgotten (“RtbF”). Article 17 of the General Data Protection Regulation (“GDPR”)¹, for the first time, recognized this right.

In this paper, the researchers will try and attempt to understand these new subjects of human rights and the evolution of these rights themselves. The central aim of this paper will be to understand the posthuman data subject in the light of RtbF. Part I of this paper will deal with the posthuman concept and its evolution with the help of philosophical theories. The next part will be dealing with the concept of and need for the RtbF where the main aim will be to understand how it is different from the previous legislations made with similar intent. In the third segment, we will apply this RtbF to the posthuman data subject and will see if they are capable of having such rights. To conclude, the idea here is not to provide a solution, but to develop a deeper understanding of the concepts.

2. Introducing Posthumanism:

The concept of posthumanism is a step further from the idea of humanism. So, to understand it, we first need to get a basic

grasp of ‘humanism’. The American Humanist Association defines ‘humanism’ as a “progressive philosophy of life that, without theism or other supernatural beliefs, affirms our ability and responsibility to lead ethical lives of personal fulfillment that aspire to the greater good.”² Broadly speaking, ‘humanism’ denotes a range of movements with the central belief in unique moral agency and supremacy of human beings.

The emergence of humanism can be traced back to the renaissance period as a reaction to the authoritarianism of the spiritual and religious groups. The entire movement resulted in transferring the ropes to human destiny from the unreasonable and selfish whims of these so-called divine agents to the rational white men. Looking back now, it might seem like a half victory, but it still was a major feat then. From that point on, this humanist ideology was quite successful in placing humans at the center of the moral worldview.

In contrast to the humanist ideology, post-humanism has rather a recent emergence history, dating back to around the 1990s³. The basic notion of post-humanism, which deals with the present and future technological developments and the change that they will bring into society, is already challenging the central thought of humanism. The post-humanists, notwithstanding their internal deviations on ideology, have a common standpoint where they unite in the argument that human beings are not the only

¹ General Data Protection Regulation [2018] OJ L 119 (GDPR)

² American Humanist Association, ‘Definition of Humanism’ (*American Humanist Association*) <[https://americanhumanist.org/what-is-](https://americanhumanist.org/what-is-humanism/definition-of-humanism/)

[humanism/definition-of-humanism/](https://americanhumanist.org/what-is-humanism/definition-of-humanism/)> accessed 29 April 2021

³ Andy Miah, ‘A Critical History of Posthumanism’ in Bert Gordijn and Ruth Chadwick (eds), *Medical Enhancement and Posthumanity* (Springer 2009)



entities capable of having moral agency and personhood.

2.1: Approaches to Post-humanism

In the short time, from their emergence, post-humanism has developed several theories under its umbrella and is still forming a large part of an ongoing debate on the moral agency of entities other than humans.

One of the most heard groups of post-human theorists is the transhumanists. According to them, given the technological advancements, human beings will undergo a radical change in the coming future. The latest technologies relating to implants, biohacking, cloning, cognitive enhancements, etc. are going to alter the basic notion of humans itself. They might lead to the evolution of humans in such a way that they are unrecognizable from the present-day standpoint. A supporter of this theory, Ray Kurzweil, is of the view that these technological advancements will bring an end to human history as we know it and will bring new ways into a picture that mere mortals like us cannot even comprehend.⁴

While the beliefs of Ray Kurzweil resonate with the transhumanist's views, others have a different approach to understanding posthumanism. For instance, Philosopher Donna Haraway⁵ believes that combining humans and technology will not enhance humans physically but will rather help us in realizing the interconnection between humans and non-human entities. Sympathizing with cyborgs, she argues that

⁴ David Brin, 'Preparing for our posthuman future of artificial intelligence' (*Kurzweil*, 9 March 2017) <<https://www.kurzweilai.net/preparing-for-our-posthuman-future-of-artificial-intelligence>>

⁵ Donna Haraway, 'A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late 20th Century' in Joel Weiss, Jason Nolan, Jeremy

the barriers we have created between humans and non-humans like natural and artificial, organic and inorganic, self and other are all temporary ideas and can be rewritten in our conscious and renegotiated at any time. Furthering this thought, she also has this vision that if we are capable enough to accept being part human and part machine, there may be a chance that we can get over the differences of gender, race, religion, etc., and accept each other as we are.

In the end, considering all these arguments, the entire discussion boils down to the fact where humans need to make room for the non-humans in the moral world, which only humans had the exclusive membership earlier.

3. Right to be Forgotten & GDPR:

The adoption and enforcement of GDPR⁶ on 14 April 2016 and 25 May 2018 respectively, led to a revolutionary change in protecting the personal data of the data subjects and putting a firm hand on the data controllers in their use of such data. In addition to the awareness and security about many rights concerning one's data protection, new rights like RtbF were also acknowledged.

3.1: Need for RtbF

The RtbF has mainly evolved through the need to forget. As stated by Mayer-Schönberger, "forgetting performs an important function in human decision-making."⁷ On a similar line of thought, German philosopher Friedrich Nietzsche

Hunsinger and Peter Trifonas (eds), *The International Handbook of Virtual Learning Environments* (Springer 2006)

⁶ GDPR

⁷ Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* (first published 2011, Princeton University Press) 117



stresses the point that how “it is generally impossible to live without forgetting.”⁸ However, with the coming of the digital age and modern computers being able to potentially store almost everything, the debate on the phenomenon of forgetting took a different route. The capacity of modern computers to never forget was a welcome feature then. It was Blanchette and Johnson,⁹ the first computer scientists who recognized the importance of forgetting for the information systems. According to them, “privacy policies must address not only collection and access to transactional information but also its timely disposal as part of a broader and comprehensive policy approach.”¹⁰ There are several cases where people have been affected by viral Internet trauma. The rise in the general level of depression and suicide rates should not come as a surprise where the illegal circulation of private stuff like photographs and videos is involved. Leaving the victims with no means to apprehend the culprit or to get over the trauma since the information can never completely be taken down from the internet.

2.1.1. Google V. Spain (“RtbF Case”)¹¹

In 2014, the Court of Justice of the European Union ruled that the European citizen's right to privacy includes that they can request commercial websites such as Google, which collects and uses personal data, for removal of such data from their websites. Given that the data has become irrelevant. Although this decision was only binding for the

technological intermediaries and not on the original publisher, it was still successful in starting the much-needed debate about the RtbF.

3.2 RtbF under GDPR

RtbF as introduced in article 17 of the GDPR¹², not only includes the right to erase but also acknowledges the right to be forgotten. The simple difference between both is that where the former deals with the deletion of data by the data controller, the latter focus on the removal of data from all the possible sources.¹³ This article is fairly unique in its application from the previously existing legislation of similar nature. For example, sub-clause (1)¹⁴ of this article provides for the situations in which a person has the right to request the controller for the erasure of their data. This article, in addition to an express request, also specifies that withdrawal of previously given consent for use of personal data is sufficient for the erasure of such data by the controller. Also, under article 17 (2)¹⁵, such withdrawal of consent will not only apply to the original controller processing the data but all the controllers who received such data. Meaning that the withdrawal of consent would lead to the deletion of the specific personal data by all the controllers who would have received the data. These provisions though seem to be very gallant in their approach for providing absolute control to the data subjects of their data, cannot still deal with the technical issues that will come forth with the

⁸ Friedrich Nietzsche, *The Use and Abuse of History* (first published 1873, Lightning Source 2006)

⁹ Jean-François Blanchette & Deborah G. Johnson, ‘Data retention and the panoptic society: the social benefits of forgetfulness’ (2002) PL 33-45

¹⁰ *ibid*

¹¹ Case C-131/12 *Google Spain v. Agencia Española de Protección de Datos (AEPD)* [2014]

¹² GDPR, art 17.

¹³ Eugenia Politou, Efthimios Alepis and Constantinos Patsakis, ‘Forgetting personal data and revoking consent under the GDPR: Challenges and proposed solutions’ [2018] PL 11

¹⁴ *ibid*

¹⁵ Eugenia (n 13)



enforcement of these rules, especially from the data controllers' point of view.

4. Posthumanism & RtbF:

Looking at the rights of data subjects under GDPR and then understanding those data subjects from a post-humanist lens, one can make a basic assumption that such treatment of privacy in both online and offline mode has reached beyond the concept of human rights. Katherine Hayles, in her book "How We Became Posthuman"¹⁶ has an interesting take where she tries to accomplish the connection between humans and non-humans by using the concepts dematerialization and rematerialisation. She argues in her narrative that through dematerialization, how a human body and their information can be separated from each other and such information can be treated as a commodity. At the same time, she also relates the construction process of a human and non-human being in cybernetic discourse. The aim here is to dissolve the ancient understanding of human beings as separate and supreme beings and to objectively look at the deconstruction and reconstruction of things irrespective of whether they are human or not. A simple way to do that is to understand and accept how a human body has evolved into having post-human personhood.

The basic notion of dematerialization¹⁷ that the information will be free from any restriction of the mortal world also finds resonance in the story of DPD and GDPR where there is a mention of the "free

movement of personal data."¹⁸ However, this policy is threatened when confronted with the rights of natural persons towards their personal information. In the RtbF case¹⁹, where the privacy right of a natural person was given priority over any economical right of a data controller. Even the preamble of GDPR is very clear about the rights of a natural person concerning the processing of personal data being a fundamental right.²⁰

This theory creates an opportunity for the post-humanists to establish the "double movement of a person to data and data to person"²¹ and use the rematerialisation of personhood to prove that the data protection rights are not only limited to humans but the post-human data subjects as well.

Another argument for the acceptance of post-human data subject's rights could be the capitalist rematerialisation of personhood. The RtbF case²² and GDPR²³ are both in agreement as to the process or qualification for the personal data that can be forgotten or erased. The checkpoint is the relevancy of such data and by comparing the interest of the person to whom the data belongs and public interest. For example, the RtbF of a commercial persona will have less possibility of being granted than that of a regular person. So, a clear point to be made here is that personas can be treated as a commodity separate from a human and used as a mask that can be given to anything.

16 N. Katherine Hayles, *How We Became Posthuman* (first published 1999, University of Chicago Press 2008)

17 Donna Haraway, *Simians, cyborgs, and Women: The Reinvention of Nature* (first published 1991, Routledge 2013); Hayles (n 13)

18 GDPR

19 Google (n 11)

20 GDPR

21 Jannice Käll, 'A Posthuman Data Subject? The Right to Be Forgotten and Beyond' [2019] PL 1153

22 Google (n 11)

23 GDPR



Conclusion:

In the words of a cyborg from the seminal movie Blade Runner “*Mere data makes a man. A and C and T and G. The alphabet of you. All from four symbols. I am only two: 1 and 0.*”²⁴ A posthumanist lens enables us to see this commonality between us humans and a future sentient AI. In this environment, where futurists in unison are proclaiming that a self-aware AI is imminent, the already established posthumanist doctrine could help navigate the intricacies of nuanced lawmaking in the future. In this regard, Rtbf could be regarded as one of the first post-humanist laws but with the proliferation of AI, self-driving cars, and quantum computing, more of these are on the horizon. Rtbf is a right that cannot exist in abstraction and only the interaction of humans and the digital platforms with an insatiable capacity to store data could have brought this paradigm shift. What is often missed are the very humane stories²⁵ that have led Rtbf to be included in GDPR. It is not difficult to assume that shortly the common ailment of both a human and a sentient AI will still be the existential questions that we humans even now often struggle with. In all probability, for an AI the question of oblivion becomes even more important with its infinitely replicable memory. In contrast, we humans, if left to our own devices are biologically engineered to wither away and so will our memories. The digital space has produced a wrinkle in this hardwired nature of our existence and Rtbf is the prescribed remedy for it. But it is far from enough as elimination of information on the internet is much easier said than done and the

protocols for its implementation to its fullest needs to be devised.

Posthumanist theory enables the reconstruction of legal personhood to its basic constituents, thus allowing the subject to be both everything from humans to humans *in vitro* and extensions of humans and sentient AI. However, considering such a vast array of cognizant beings need to be based on the commonality of a deconstructed being presented as an amalgam of data. Both objectivity and subjectivity of a posthuman interpretation are thus reliant on the critical interactions that these data subjects record as their imprint. Not surprisingly, this enables us to recognize the obfuscated hegemonical constructs in our current as well as the posthuman world. This is not so different from the ever-present techno-capitalistic gaze of which borrows the reductionist contextualization of humans, thus metaphorically flattening the very humanity of its customers. Even with its advancements, it lacks the ability of a posthuman lens to actualize relational linkages between these data subjects to give a more holistic equalization of humans and non-humans. This so-called digital avatar of an individual has thus increasingly gained prominence in the identity of a human. From a post-human lens, Rtbf could be understood as much a right that is meant for the biological being as for the digital imprint of it and thus readily accommodating non-human entities.

²⁴Blade Runner 2049, Denis Villeneuve, Warner Bros. Pictures, [2017]

²⁵ Jeffrey Toobin ‘The Solace of Oblivion’ (Newyorker, 22 September, 2014)

<<https://www.newyorker.com/magazine/2014/09/29/solace-oblivion>>