Co-funded by the Erasmus+ Programme of the European Union

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Legal Reasoning
& Cognitive Science

Materials from Recognise Video-Lectures

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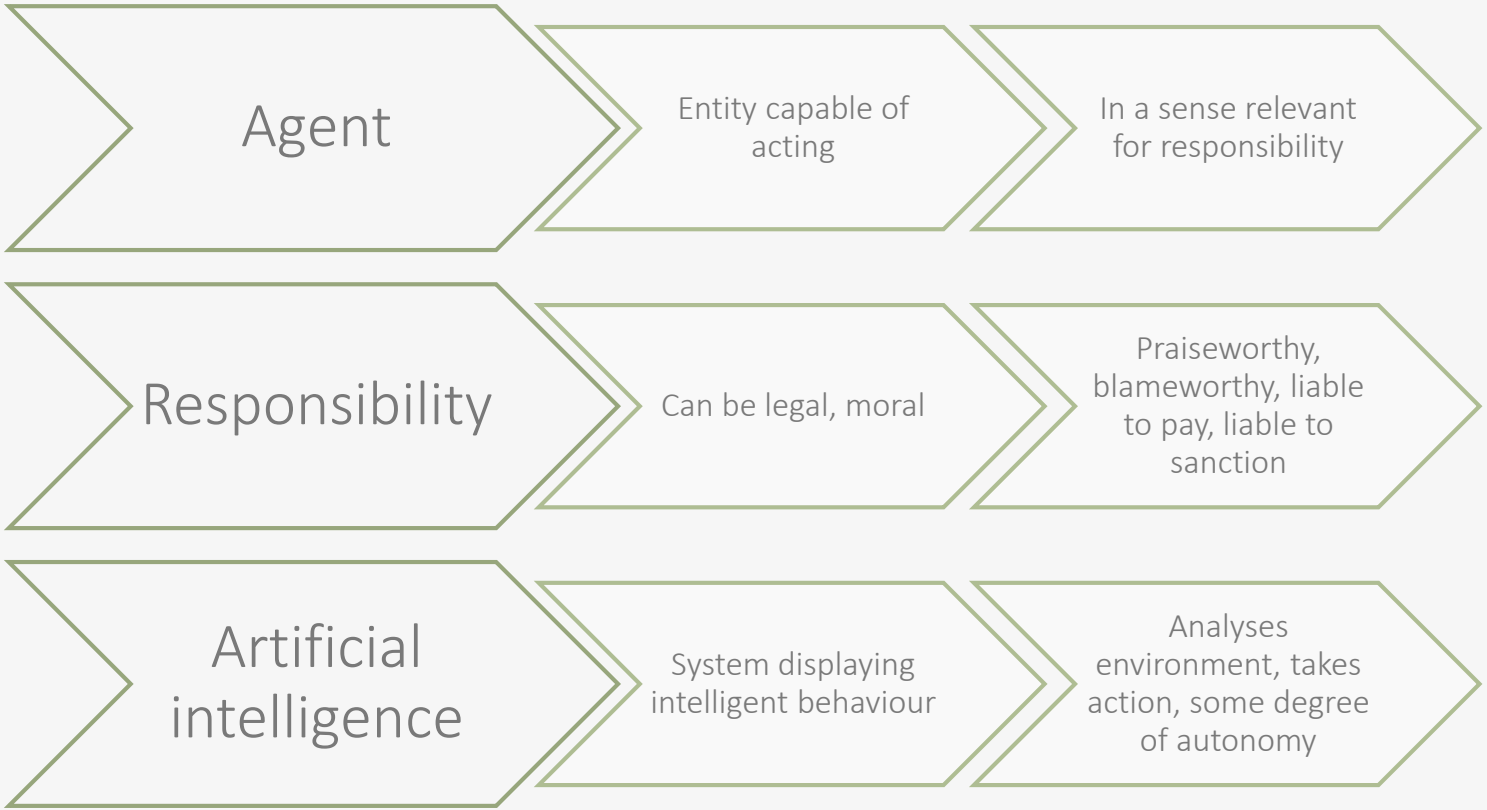
Acts and responsibility of AI

Part 1

What am I talking about?



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Why do we need to talk about it?

(Potential) liability gap

Increasing autonomy

Black box

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Two questions

Can law hold AI liable?

Should law hold AI liable?

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Legal agency and responsibility/liability

Permissivist - restrictivist

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Restrictivist argument #1

(Premise 1)

An entity lacking *xyz* characteristics cannot be legally responsible.

(Premise 2)

Artificially intelligent entities lack *xyz* characteristics.

(Conclusion)

Artificially intelligent entities cannot be legally responsible

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(2) The view from (some) legal theory

Law as conventional tool

Law as an artifact

If we make the legal world, we have (some) control over it

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Part 2

Restrictivist argument #2

Law should regard only those entities as agents that are ‘real’ agents

AI lack the characteristics of ‘real’ agents

Law should not regard AI as agents

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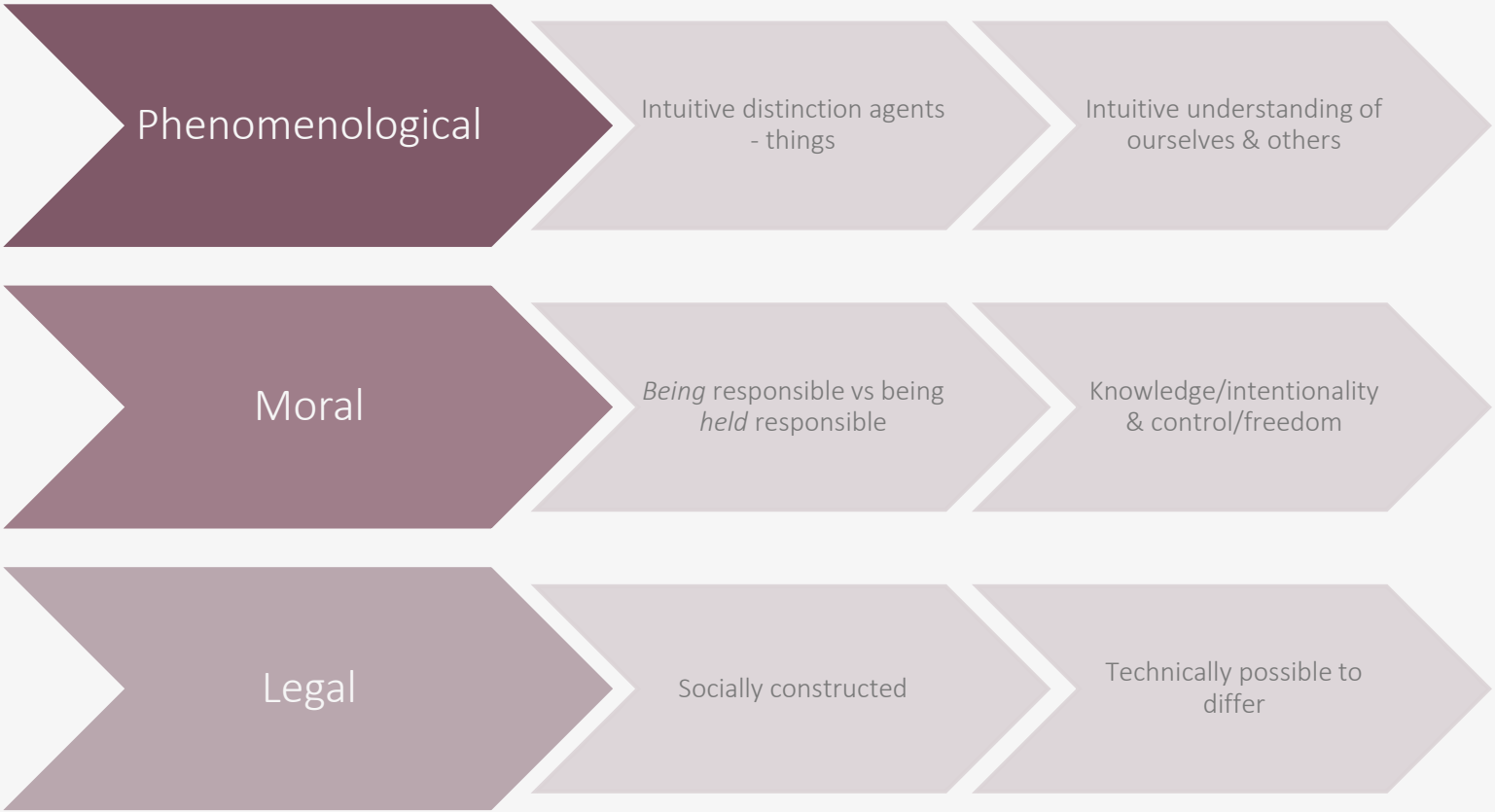
‘Real’ agency & ‘real’ responsibility?



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Moral / Phenomenological = real?

Real agents must meet rationality, free will, autonomy, phenomenal consciousness conditions

Human beings are real agents because we fulfil these conditions

Human beings are responsible for our intentional and free actions

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What's the problem?

Assumption that intuition/phenomenological view = reliable information about reality

Are intuitions/phenomenological view sufficient basis for making choices about (legal) ascription of agency/responsibility?

This is where the cognitive sciences come into the picture.

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Relevance of the cognitive sciences

Increasingly, theories about how our understanding of world & ourselves in it is constructed

Examples: dual-process theories, implicit biases, confabulation, illusion of conscious will

Calls into question reliability of information from phenomenological experience

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So do we have an answer?

No

Role for legal theory & normative framework

Role for phenomenological experiences, too

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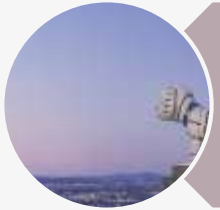
Conclusion

"For the law, cognitive sciences change everything and nothing"

Law as social practice determines its own concepts



CS insights allow reflection on fundamental presuppositions underlying law

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