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Abstract: The objective of this paper is to examine certain attributes of digital identity and how it deviates from the conventional notion. A distinctive characteristic of digital identity is its ability to generate multiple identities, including the phenomenon of “digital resurrection”, which involves employing an algorithm to produce a chatbot with the visual and vocal characteristics of a deceased individual. This technology impacts the identity of the deceased, and it is essential to preserve a segment of their personality, even in extraordinary circumstances. To accomplish this goal, the following approach will be taken: firstly, an operational definition of digital identity will be proposed. Subsequently, arguments will be presented to demonstrate that this concept cannot be separated from the identity of the actual individual. Lastly, this paper will explore how “digital resurrection” may undermine the continuity between real and digital identities and, as a result, should be regulated to safeguard vital aspects of personality.

Keywords: Identity, Digital identity, Digital resurrection, Personhood.

IDENTIDAD Y RESURRECCIÓN DIGITAL: UNA APROXIMACIÓN JURÍDICO-FILOSÓFICA*

Introduction: the nature of digital identity

“Identity” is not exactly “identification”. “Identity” is a philosophical notion that refers to the continuity of an individual with respect to himself, i.e. the very nature of its selfhood, which triggers a high-level theoretical reflection that ultimately appeals to the foundations of personality. Identification and identity are two related but distinct concepts in normative contexts. While identity refers to the theoretical understanding of *who* or *what* a particular entity is, identification appears to be a practical and relational concept that allows for tracing and linking agents to specific operations within a certain community. Identification has a juridical nature, as it serves as a guarantee of responsibility or imputation in normative systems. However, the basis of identification is undoubtedly “identity” in a theoretical sense: Identification presupposes a prior notion of identity, whether in the physical world or digital space, as both require the establishment of a connection between cause and effect in normative regulation. The concept of identification is more restricted and less theoretically complex than that of personal identity, as it focuses on the elements necessary for legal relationships such as name, age, domicile, etc. but assumes the existence of a substratum that can maintain continuity in the order of being and consciousness.

According to this perspective, machines can have identification, but attributing identity to them is more complex. Identity refers to an internal core of permanence that is unique and ineffable, which cannot be constructed through external chains of information. In the legal realm, there has been a swift convergence between “digital identity” and “privacy” or “ownership” of computer data. The amalgamation of personal information and communication technologies can result in constant monitoring and manipulation of individual activity, surpassing even the most imaginative scenarios of science fiction. Therefore, ubiquitous computing, combined with powerful data mining techniques, can potentially provide third parties with knowledge of individuals' past, present, and, to some extent, future actions. This is evident in cases like digital resurrection, and infringes upon the right to privacy and personal integrity. From the notion of “ownership”, we shift to the commercial sphere, where identity is defined in legal texts solely as a feature of modern commerce, as this sense of the concept meets the identity requirements of transactional contexts. The assimilation between identity and these notions (property or privacy) may, however, be somewhat hasty. As Sullivan says, “Because of this focus on privacy, the fundamental human right to identity and its significance in this context has been overlooked. There are several neglected questions: How does identity differ from privacy? Does privacy protect identity?”^[1]. The safeguarding of personal computer data is a consequence that presupposes a prior dogmatic content: identity based on the legal character of the agent, and their ability to control the information that is appropriate to them as a rational agent. The notion of “identity” is conceptually prior to that of privacy and has a more intricate and multifaceted theoretical substance. This is where the concept of “Self-Sovereign Identity” (SSI), formulated by Anglo-Saxon theorists of digital law, comes into play. In this model, users own and have complete control over their identities. The benefit of SSI lies in the potential for ensuring individual control, security, and complete interoperability and portability of digital identities across various services. Users ought to have the capacity to create provable claims about their identity with the help of third-party verification^[2].

We will argue that there must be a conceptual continuity between what is technically achievable and the grounds of self-identity in a theoretical dimension. The idea is to establish a universal justification for the concept of “digital identity” that goes beyond the technical layer. The secure tracing of users' identities in the technical domain has a higher legal value than simply assigning concrete rights and specific obligations. This legal value relates to the core of the personality of the subject or legal operator, even in the cyberspace domain, known as “digital dignity”. The practical or operational aspect of digital dignity consists of concrete digital rights, such as data protection.

The misuse of computer data and its effect on a subject raises a prior theoretical question: the very existence of personal continuity in cyberspace. This allows a linkage between a set of digital traces or signs and an individual record that operates as a signifier with respect to them, as well as a signifier in relation to the external non-digital personality. Therefore, digital identity appears as a relationship between a given digital action and the computer agent that is its origin or cause. Nevertheless, a relative or relational explanation is insufficient to meet the logical-formal standards that a proper definition must satisfy. A proper definition must express the essential attributes of the entity that is being defined, and not merely an accidental attribute. If digital identity is presented or configured as a relationship between the real subject, the avatar, and the digital footprints left behind, it will be necessary to refer to the most absolute element (in the sense of “least relative”) of all those involved to define the attribute of “dignity” that characterizes the relationship. This is so because that steady element will be the cause of the attribute, as it depends on itself and not on the relational elements. In the proposed case, the real human being should be considered the ground of dignity that avatars and various digital footprints possess.

To construct a theoretical framework for the concept of digital identity, it is necessary to explore the nature of cyberspace. If the notion of self-identity within the digital realm exists, it should be inherently connected to the unique features of the digital universe. This investigation is of particular significance as human behavior increasingly takes place within virtual environments. A vast array of human activities is now documented online and is susceptible to monitoring and regulation by both governmental and private entities, who establish the parameters within which users must operate.

In contemporary language, the prefix “cyber” is applied liberally to denote almost anything associated with computers and networks. However, there is little agreement on what the term “cyberspace” truly means. While some have proposed classifying it within traditional media categories^[3], others argue that it is an entirely new medium, fundamentally distinct from those that preceded it. This is due to its “many to many” structure^[4], whereby all users who connect to the network are empowered to create and publish content, as well as to distribute it.

Some have proposed that a more accurate way to conceptualize cyberspace is to view it as a “place”. This would entail seeing it as a virtual environment that encompasses all the data held in the interconnected servers and databases that constitute the network of computers. Such a view would adopt a spatial model, treating cyberspace as a public domain characterized by various digital features, including permeability, simultaneity, inclusivity, and both public and private connectivity^[5]. Cyberspace, unlike physical spaces, is characterized by permeability. This implies that physical spaces, which are ordinarily distinct in the real world, tend to interact when they are brought into cyberspace, and flows between them can be observed. Home, work, school, and university converge in a new kind of non-physical space, and they can coexist simultaneously without being bound by physical limitations. These digital spaces have a distinct logic from that of bodies. Moreover, cyberspace is characterized by its inclusivity. Unlike physical spaces, where the

presence of one individual may exclude the presence of another due to spatial constraints, any number of connected individuals can be present in the same digital space at the same time. This feature is made possible by the ability of the digital world to separate “place” from “quantity”. It underscores the unique characteristics of virtual environments. In conclusion, cyberspace can function as both a public and a private domain. When online, individuals exist and work in the same digital space and share resources with the wider online community, and can also claim their own virtual space as their private domain.

From a legal perspective, the ontology of cyberspace is significant in determining the most effective way to regulate it. The applicable set of rules would differ based on whether it is perceived as a medium or a place. In any case, cyberspace can be viewed as an interaction between the users and the digital system, and as such, has been described as a “time-dependent set of interconnected information systems and the human users that interact with these systems”^[6]. We will explore the concept of time-dependence in relation to digital identity later on.

One significant difference from traditional legal communities is that in cyberspace, users are part of a global community that includes citizens from various geopolitical sovereign entities. Cyberspace does not have a conventional sovereign status as it goes beyond traditional boundaries. This is because the essence of cyberspace is not a physical space, but a dynamic entity –if we are to establish an “ontology of cyberspace”^[7]. According to Gleason and Friedman, cyberspace can be viewed as a multi-layered structure. At its most fundamental layer, it comprises the connection of one device to another (the physical layer). This primary mode of linkage facilitates the data link layer, where information is segmented into packets and transmitted to a remote receiver. The data is then reassembled in a way that allows for convenient translation of encoding types to achieve the intended meaning of the conveyed information (presentation layer). Finally, users can access contents and open files from remote locations^[8].

Cyberspace is a dynamic stream of information that encompasses permanent Internet addressing, encryption, and datagram error correction. Although this stream of information can be directed towards configuring specific packets of information for user review, the identity of each informational configuration –such as an Internet page– does not rely on itself but on how it is currently presented. This illustrates the inherent time-dependency of the digital realm: temporality is an essential, fundamental component of its existence. This dependence arises from the modular reduction of digitally processed information into separate packages or blocks that have individual existences, can be traced independently, and shape the meaning of the presentation layer in the same way as puzzle pieces. This meaning is detachable and saturated with a quantitative ratio that operates with a similar logic to a kaleidoscope. Accordingly, the meaning of a material organization is also exclusively material, because there is a metaphysical principle stating that nothing can produce something superior to itself.

Similarly, Lessig argues that cyberspace is not a natural circuit, but an entirely artificial one created by human technology through the operation of the Internet. He suggests that the use of terms such as “nature”, “essence”, and “innate” in reference to cyberspace should be treated with suspicion. In fact, if there is any place where nature has no rule, it is in cyberspace, which is entirely constructed. However, the use of rhetoric that suggests an “essence” to cyberspace obscures its constructed nature and can lead to dangerous misunderstandings^[9]. According to this viewpoint, nothing in cyberspace possesses an inherent or natural quality, as everything is determined solely by a technical design, a mere process of transmitting and arranging

information blocks. This is exemplified, for instance, by the emergence of cyberspace as a comparatively anonymous realm^[10], as the personal identities of network users could be concealed through the TCP/IP protocol. However, this situation was at odds with both public and private interests and was eventually reversed. Once anonymity was dispensed with, it became evident that it was a result of a specific design and type of protocol devised for exchanging information between computers, and not an inherent feature of virtual space where such rules could be altered.

In the context of the law, rules are designed to regulate human behavior to protect legal assets and promote the common good. In the virtual world, various means are used to achieve such control, including mass Internet access channels (commonly known as “social networks”), email providers, search engines (such as Google), registration-required applications, cookies, small tracking programs installed in devices, geolocation, and so on. A balance must be struck between the extreme freedom of crypto-anarchism and the exercise of absolute control through digital information. This balance primarily depends on the ability to define a stable and self-identical reality on the network that can serve as an identification code for the law and for all legal security-related operations. To establish a genealogy of action in cyberspace, a set of designated information must be given legal force and effect by enabling legislation and by the operation of national identity schemes where applicable. According to Sullivan, this collection of prescribed information constitutes an individual’s “database identity”^[11].

The most widely used method for identifying individuals in the digital world is using signatures, employing the system of private and public keys and dual cryptography, which has given rise to blockchain technology. However, the challenge lies in linking a public key to a specific person or to a representation of a real person. This linkage does not result solely from the application of the cryptographic technique or a mathematical function. Rather, it is achieved through the certification process performed by a trusted third party, which acts as the registration authority.

Drawing from the preceding discourse, it can be contended that identity is a multifaceted notion within cyberspace, much like all other concepts related to this form of informational reality that remains in the process of delineation. There is no notion of a “substantial” identity within cyberspace that would entail a given virtual entity being permanently identical in the philosophical sense. The quantitative rule of algorithmic information processing lies at the root of this trait: meaning configuration is never inherent in the realm of computer symbols, a fact that must always be kept in mind. This substantive dimension must necessarily be located “outside” the computational symbol, much like the notion of “referent” in Frege. Therefore, from a procedural perspective, digital identity may be construed instrumentally as the digital quality through which a heteronomous set of computer traces can be connected to a given symbol that represents, or has the potential to represent, a real person situated outside cyberspace. This operational-practical condition of digital identity necessitates regulation of cyberspace, at least in this aspect. However, the question remains whether such regulation can be effectively implemented and enforced. In other terms, the establishment of a digital identity that facilitates identification in computational contexts ultimately hinges on the interpretation of the real identity of rational subjects and how it is framed from a strictly civil perspective. This corresponds to what could be referred to –in scholastic categories– as an analogy of proper proportionality among the four terms: civil identity/real world and digital identity/digital world. This leads us to consider that it is necessary to pay attention to certain aspects of a person’s civil identity in order to establish their digital identity.

1. Nature of the civil identity

The Western philosophical tradition has long linked the legal subject with the concept of the human person, giving rise to the complex issue of identity. This association ensured that legal acts could be given a consistent and unchanging meaning, regardless of the varying circumstances of the material world. Since medieval authors (although with classical grounds), the law sought to ground this notion on a fixed and immutable element, as this was deemed necessary to ensure the certainty of legal acts, because human acts and legal acts are merely accidents that depend on the characteristics of the agent. In practical terms, personal identification was typically achieved using an identity scheme established by the relevant civil authority, often in the form of a national identity registry. This registry served as a central repository for an individual's identity information, enabling them to be reliably recognized and authenticated in various contexts.

In classical Roman law, legal efficacy took precedence over theoretical debate. The legal subject was identified as the human being, and it was established that all law had been constituted for their benefit^[12]: “First of all, let us deal with persons. In fact, it is very little to know the law if one ignores the persons in function of whom it is constituted”^[13]. In classical Roman law, the terms “man” and “person” were used interchangeably, as evidenced by various passages in the Digest and Gaius’ *Institutas*. However, in the Justinian era, the term “person” began to refer specifically to the set of faculties that constitute what is now known as “legal personality”, thus linking the legal domain to the individual's personal being^[14]: “Man” alluded to the living being as a biological psychophysical unit, rational mind contained in a body^[15], and indicated both male and female.^[16] In classical times, the Romans had already established an analogy that enabled them to extend the concept of “personality” to groups or associations of individuals who worked for a specific social purpose, forming legal corporations. These corporations were, in fact, universalities “of persons” (*universitates personarum*).

It is plausible that Roman jurists opted for the term “person” to denote every human being, as “man” encompassed slaves in legal terminology. “Person”, in contrast, provided a convenient neutral term^[17]. In Roman law, the legal identity was closely linked to the identity of the person as an actual, tangible entity possessing specific attributes, such as the individual's legal position in relation to family, freedom, and the state. This connection was established in Roman law without significant debate, and it emphasized the importance of real-world circumstances in determining an individual's legal identity^[18]. The connection between legal identity and the identity of the person as an actual, tangible entity with certain characteristics was accepted by the Roman jurists from Lazio without much philosophical inquiry. They assumed this relationship as self-evident since it appeared to them that the connection between concepts did not require any further demonstration in the realm of sensory knowledge. Thus, the notion of personal identity did not emerge in Roman law as an independent legal concept with its own doctrinal core.

The development of the philosophical notion of personhood is more closely linked to medieval philosophy, which synthesized Greek philosophical thought with principles derived from the Catholic faith. The rediscovery of Aristotelian dialectic in the Carolingian schools, which reached its apex in the 11th and 12th centuries in both philosophy and theology, saw an increasing use of this idea to address the intense debates that engaged scholars. Prior to the so-called “12th century renaissance”, ecclesiastics studied dialectics on one hand and repeated interpretive formulas of the Scriptures on the other, without connecting the two areas. The intellectual splendor of the 13th century arose when the two methods were brought into contact, combining the argumentative tools of dialectics, the curiosity for ancient philosophy, and the knowledge provided by the doctrinal system of the Church^[19].

With the rise of Aristotelianism from the 13th Century onward, the concept of being as a singular, concrete substance gained preeminence in theoretical discussions, displacing the Platonic-rooted idealism. The medieval concept of personhood is essentially composed of two dimensions: one which is accessible through natural reason, and the other found on the mystery of Revelation. The former perspective is exemplified in Boethius' definition, which posits that a person is an individual substance with a rational nature (*naturae rationalis individua substantia*)^[20]. "Human being" is a substance, a type of hypostasis^[21] whose rationality implies faculties that operate independently of matter. The exercise of these higher faculties leads to the conclusion that the human soul is a spirit, and thus fundamentally distinct from mere matter. In other words, the spiritual aspect of the human person can be logically deduced through natural reasoning. However, the human person also bears a certain likeness to God, such that they are an expression of that which they resemble. This represents the second dimension of personhood: the human person is an *Imago Dei*, an image of God. "Then God said, 'Let us make man in our image, after our likeness [...]' So God created man in His own image; in the image of God He created him; male and female He created them"^[22]. To comprehend this assertion fully, it is essential to acknowledge that there exists a fundamental differentiation between the image of God as God, and the image of God as a human being. In other words, in creations, there is no element that is precisely and unequivocally fashioned to imitate God's essence and magnificence^[23]. However, this does not diminish the analogical character of the quality being participated.

Human beings are considered persons due to their shared characteristics with God, which are given to them analogically and can be partially comprehended through reasoning. However, the fundamental basis of personality remains an enigma in its profound sense due to its analogical nature, which is partly similar and partly distinct from God. In a similar manner, individual human beings embody personhood as a reality that is a characteristic feature of their existence but is also associated with the cause of their participation in it. Therefore, the essence of personality lies in the tension between the distinctive aspects of human beings as personal individuals and their commonalities (*i.e.*, "nature")^[24].

The fundamental similarity to God that lies at the core of the human person, together with the faculties that can be analytically examined through reason, provide theological and metaphysical stability that sets human beings apart from all other creatures, living or inanimate, in the material world. From this sacred character arises their moral dignity. The person, capable of obeying the law, is an individual composed of a material and a spiritual principle from their origin until their physical death. The first principle (the material one) is accidental and contingent, while the second principle (the spiritual one) is substantial and embodies a certain mode of necessity. Throughout history, various elements of a subject's life in society have been strongly linked to a permanent mode of being that constitutes their identity. However, modernity has progressively stripped away layers of ontological certainty from this self-identical subject, beginning by relativizing the universality of the spiritual world and then extending the doubt to the natural world from the mid-19th century onward.

The concept of identity as an independent legal right emerged relatively late, during the latter half of the twentieth century. This development coincided with the increased safeguarding of personal property, resulting from the successful implementation of guarantee models that can be readily associated with post-structuralism. By contrast, the prevailing trend in the nineteenth century had been more focused on property rights. The shift in emphasis can be attributed to the impact of the two World Wars, which prompted a legal approach aimed at preventing aggression against vulnerable individuals, among other things.

Identity can be understood in two senses: temporal and spatial. Although these categories are interrelated and provide a means of comprehending a tangible and unique physical entity, they operate differently in establishing the functional identity for legal purposes. Temporal identity pertains to the connection between a stable foundation and the legal actions that it causes, conditions or occasions. On the other hand, spatial identity concerns the extent of the domain of the individual involved^[25]. Temporal identity refers to the enduring substratum that connects a person to legal acts, either as a cause, condition or occasion. Spatial identity, on the other hand, pertains to the geographic extent of an individual's domain of interest, thereby establishing the distinction between public and private realms. Both dimensions are inherent in the law, existing from the earliest days of human communities. This implies that the question of identity, in a sense, is the first legal problem, upon which all others depend. This is usually argued by citing the dual nature of identity: firstly, as something that is singular and constant within an individual (temporal dimension), and secondly, as something that is inherently relational and shaped by the social environment (spatial dimension). Both aspects are inseparable from the human experience. Therefore, the notion of identity encompasses a holistic understanding of a person, including not only biological traits, but also various other qualities that contribute to the uniqueness and individuality of each person. Thus, identity as a pre-legal content cannot be fully captured by mere identification, as it constitutes a comprehensive and multifaceted concept that encompasses all the attributes, signs, and characteristics that make each human being distinct and irreplaceable^[26]. Therefore, identity serves as a synthetic formula that distinguishes the subject among the multiplicity of its specific characteristics and manifestations, and it expresses “the concrete and specific individual personality of the subject, which has been solidified in the life of social relationship”^[27].

The duality has also been explained as a static and dynamic aspect of identity. The static perspective consists of a method of identification that includes one's name, pseudonym, status, affiliation, domicile, gender, age, legal capacity, profession, and image. The dynamic point of view, on the other hand, is produced by the works, orientations, tendencies, psychic inclinations, and social relations of the subject –which make up a set of cultural qualities of the person. This second dimension of dynamic identity is the one that is of interest as the most personal right, which highlights that the subject possesses unique characteristics that make them identical to themselves and distinct from others.^[28] De Cupis argues that personal identity is the very essence of a person, and thus cannot be destroyed, as truth cannot be eliminated. However, being oneself also means being recognized as oneself in appearance, knowledge, and the opinions of others. It is this social aspect of personal identity that can be regarded as a legal asset^[29].

The human subject can be conceived not only as a person but as *this person*, with this status and no other. Identity has the presupposition of the “continuity of the personality. In other words, the person is continuously the center of reference and responsibility for the acts; these remain his or hers no matter how many vicissitudes the person has gone through. That times change and that we change with them, or that, according to certain modern psychological or psychopathological doctrines... the personality is subject to modifications [...] or that in the same being (somatically considered) a slow but radical change of psychic personality may occur, does not count for society or for the law [...]”^[30].

In the context of various other rights, identity has undergone a significant dogmatic jurisprudential development. This phenomenon can be observed in Italy, where in the mid-seventies a series of legal precedents were established, with the first notable achievement being a ruling in 1974. This development reached its peak in a subsequent ruling by the Court of Cassation in 1985, which expressly recognized identity as a subjective right. In the first case, unauthorized posters featuring a man and a woman were placed on a public highway. Although both were advocates of the divorce law, they were depicted as supporting its abrogation and were presented as husband-and-wife farmers. The case not only involved the unauthorized use of the image but also impacted the interest of self-identity. The judge established that there is a right not to have one's actions ignored or personality altered, and that projecting a personal truth socially is a determining factor in personal identity^[31].

The second case of 1985, adjudicated by the Italian Court of Cassation, pertained to a tobacco advertisement that had misappropriated the image and opinions of a prominent oncologist, who was depicted as holding views contrary to his actual stance on tobacco consumption. The Court's decision held the producer and publisher liable for the damage caused. However, what was noteworthy was that the argument presented by the Court did not rest on the typical grounds of the right to an image or the right to a name, but rather on the premise that identity constituted a legal entitlement that merited protection. The Court affirmed that everyone has a stake in being represented in social life in accordance with their genuine identity, as is known, or could be discerned based on standard norms of diligence and subjective good faith. The individual subject has an interest in not having their intellectual, political, social, religious, ideological, or professional legacy distorted or modified by external parties. As such, the right to personal identity aims to ensure the accurate and multifaceted representation of the subject's personality within the community in which they have evolved, externalized, and consolidated their identity^[32].

In Latin America, the Peruvian Constitution of 1993 was the first to expressly incorporate the personal right to identity^[33]. This constitutional incorporation would encompass both the static aspect of identity and a new dynamic perspective of it. However, the legal notion of the right to personal identity can also be traced in the jurisprudential interpretation of implicit rights, and in the framework of constitutional reforms, as in the case of the Paraguayan Constitution of 1992^[34]; the Peruvian Constitution of 1993^[35], or the Equatorian Constitution of 1998^[36]. In Argentina, there is a first invocation of identity as an implicit civil right with constitutional roots in a vote by Supreme Court Justice Enrique Petracchi, regarding the search for the biological identity of an adopted child^[37]. Notwithstanding the vote was in the minority, the fact that it was framing identity as an implicit constitutional guarantee captured the attention of the doctrine.

The Inter-American Court of Human Rights in advisory opinion OC-24/17 of November 24, 2017, requested by Costa Rica also analyzes the right to personal identity, stating that "With respect to the right to identity, this Court has indicated that it can be conceptualized, in general, as the set of attributes and characteristics that allow the individualization of the person in society and that, in this sense, it comprises various rights depending on the subject of rights in question and the circumstances of the case. [...] Although the American Convention does not refer specifically to the right to identity under that name, it nevertheless

includes other rights that comprise it. Thus, the Court recalls that the American Convention protects these elements as rights on their own, however, not all these rights will necessarily be involved in every case”^[38]. The Court deduces that the right to identity is derived from the recognition of the free development of the personality and the right to privacy and from there derives a series of implications with respect to the life project of everyone. Therefore, although this court weighs identity as a personal right and bases it on human dignity, it correlates identity with freedom and individual self-determination.

Intrinsic human dignity implies that fundamental guarantees are not constituted or produced by the state, but rather recognized and protected by it. Identity similarly is configured as a legal asset of the human person as such. This is the metaphysical foundation of the civil concept of identity: it is an objective aspect of personality that is derived from its substantiality and legal-moral aptitude. Thus, identity cannot be deduced as the result of individual construction or self-management by the owner. There is no such thing as “self-sovereignty of identity” in these terms^[39]. The notion of self-sovereignty of identity proposes that the subjective right to self-determination of identity originates from this concept. However, this does not necessarily follow. Conversely, Puppink argues that an individual’s truth is intrinsic and comprehensive, residing within oneself. Truth, in this sense, is a subjective dimension that everyone possesses and is entitled to express. Identity, therefore, cannot be reduced to personality in the objective sense, which is perceived as external attributes. The truth of individuality is not determined by physical characteristics or societal perceptions, but rather by what individuals hold about themselves –this is the only “reality” that holds sway. Individualism, as a philosophy, demotes tangible reality to an insignificant appearance, thereby enabling everyone to attribute their own meaning to their identity, despite outward appearances: “The reduction of the person to their will consists in a sublimated way in the liberation of the spirit from the individual body. The individual would be the truth of themselves, the essence of the person [...]”^[40]. This interpretation implies the subjectification of human life, which no longer considers the human person as an untouchable reality but rather as a mere material support of self-perception, vulnerable to being diluted or expanded without any concrete basis. In this framework, identity loses its substance and becomes nothing. Puppink argues that if personal identity corresponds to an infinite search for self-perceptions, it stems from a separation of the notion of “person” from that of “nature” in a context fundamentally driven by desire and impulse.

Identity in the civilian sense is configured from these foundations for a long period until it begins to show signs of fragility in the decades following World War II. This coincides with the cultural predominance of poststructuralist models. What is interesting about the link between this movement and digital technology is that the information highways, as Baudrillard said, end up producing the infinite iteration of signifiers, which poses several problems. An example of this will be developed in the third part of this paper.

2. Identity and digital resurrection

In the physical, analogical world, the presence of a foundation may create the impression that identity is completely immutable and unalterable. However, this is an illusion, both in the philosophical and legal realms. The only dimension that can potentially remain unchanged is the spiritual aspect, as a spirit is a substance that is not influenced by material determinations due to the impossibility of being divided. However, bodies are subject to change as they have divisible parts, and human consciousness is also subject to accidental changes over time (the knowledge of a new reality, for example, involves an accidental modification of the knowing subject). The realm of ethics, encompassing both the moral and legal spheres, takes these factors into consideration. In this normative realm, the human subject possesses a formal, official,

or public identity, which is defined based on the ontological determinations discussed in the previous section, as well as individual circumstances and the public environment. In essence, our identity is determined by the conditions of our birth (genetics, social circumstances, etc.). The law assigns us a name and gradually attributes characteristics that form our official public identity. The civil name serves as the outward manifestation of our individualization as a person^[41]. The construction of identity also involves a personal choice in relation to various elements used for defining or characterizing oneself. Here, the interplay between identity and privacy becomes relevant, as privacy provides the space to assert the identity that one seeks or wishes to present to the outside world. There is a discretionary margin as to which aspect of identity can be shared, if it does not conflict with the law. Comparing these two aspects, it can be inferred that tension may arise between public and private identity. The public authorities may be interested in manipulating both. The more totalitarian the system, the greater the interest it will have in obtaining information that shapes private identity, as this inevitably increases social control. Conversely, democracy requires minimizing the knowledge of circumstances that give rise to private identity, that is, reducing the information to the minimum required to ensure coexistence and respect for the dignity of the individual subject to rights and obligations.

As previously mentioned, the concepts discussed earlier extend to the realm of cyberspace, or the digital environment. However, in this dimension, it becomes even more challenging to establish a reliable distinction between one's own identity, the identity one seeks to present, and the identity attributed from external sources, as compared to the physical world. While identity is produced from the inside out in the real world, digital identity operates in reverse, being "heteroformed" both quantitatively (by the data that can be assigned) and qualitatively (by the meaning of that data). As a result, the concept of the "digital person" already exists in this context. From the legal perspective, this personal identity is more fragile due to this heteronomous structure and can be designed or controlled from outside the subject, challenging to some extent the guarantee of free development of personality^[42]. In the realm of cyberspace, algorithms direct actions based on preferences derived from online searches. However, these preferences are much more complex in an individual's consciousness than what can be estimated through a mathematical selection process aimed at commercial, political, or aesthetic purposes, such as online behavioral advertising. This complexity can lead to the creation of multiple identities, which is not a new phenomenon but is amplified in the digital world. Additionally, active digital identities can persist even after the physical death of the person they represent. In such cases, it is necessary to differentiate between the traces of the deceased person's identity that remain in the digital world and any attempts to reconfigure those traces into a new digital activity. There is a wealth of personal information available on the web that can be used to train AI programs to replicate an individual's conversational idiosyncrasies.

The concept of "digital resurrection" involves reviving a deceased individual in the digital world. In this process, the digital identity of the agent is created using both their digital traces from when they were alive and an algorithm developed by third parties to activate them in cyberspace after their passing. To achieve this, data of the deceased person is recreated virtually, allowing for communication and interaction with a chatbot that simulates their presence. A chatbot is a computer program designed to simulate human conversation through text and/or voice input channels. Additionally, "Deepfake" techniques can also be used to superimpose a deceased individual's face onto an actor's body. The vast amount of personal information available online can be used to teach AI programs about our conversational habits and enable them to reproduce them^[43]. In 2017, Microsoft filed a patent for a chatbot that could bring deceased individuals

back to life in a digital form, using artificial intelligence and machine learning to simulate their textual communication style while they were alive. This technology would allow the deceased person's family and friends to interact with their digital persona. Microsoft representatives acknowledged that the idea was “disturbing” and stated that they had no immediate plans to develop it. The patent document clarifies that the technology would require significant amounts of data to create an accurate representation of the deceased person, and it raises ethical and legal questions about the use of personal data and privacy in this context.

There exists an alternative approach to achieving digital resurrection, which involves perpetuating one's thoughts, stories and memories in the form of digital avatars that can engage in natural conversations with other individuals. These avatars could potentially become the longest-living digital entities, known even to future generations beyond the 22nd century. Such is the idea of the Company Eternime: “We aim to collect more contextual data rather than just factual one, we’re looking into ontology learning and automated question generation techniques. Our next step is to enable open conversations about anything (well, a large subset of ‘anything’), and learn from those conversations with the user and user’s peers. We expect avatars to perform coherent conversations [...]”^[44]. Eternime uses all Facebook data of individuals, “to give people a voice after death”. In such instances, the creation of a “digital surrogate” entail incorporating factors such as geolocation, regular movements, common activities, shared photos, and other related information from social media. When all of these elements are combined, it becomes possible to generate a digital entity that can continue to function even after the individual’s demise.

The initiative, however, pre-dates the Eternime y Microsoft’s projects^[45]. On June 11, 2006, Bob Monkhouse, a British comedian, was “brought back to life” for millions to see in an advertisement designed to raise awareness of prostate cancer. The advertisement went viral, spreading around the world via all media: “The advert was undoubtedly technically spectacular—it had taken nine months to *reincarnate* the comic (strangely, the same time as to biologically create a human being), piecing together various components (archival footage of Monkhouse, a body double, and a voice impersonator) in an almost Frankenstein-like fashion to produce the posthumous representation we saw before our eyes. However, to me at least, it seemed like more than that: it *was* Bob Monkhouse”^[46].

The Jessica Simulation is another well-known case. In 2021, a man called Joshua Barbeau digitally “resurrected” her dead girlfriend, Jessica, who had died eight years earlier from a rare disease. Joshua had never gotten over it. He used a program (Project December) which was powered by one of the world's most capable artificial intelligence systems, a piece of software known as GPT-3. It knows how to manipulate human language, generating fluent English text in response to a prompt. The conversation lasted ten hours. “It’s unprecedented”, he later said of Project December. “There’s nothing else that exists like it right now, short of psychics and mediums that are trying to take advantage of people. But that’s not the same thing at all”^[47].

In what manner does digital resurrection in scenarios like those outlined relate to the issue of identity? The chatbot and the individual whose digital identity was built through the collection of data on the internet share certain resemblances that are not accidental, but rather intentional. Some agent, be it human or mechanical, has made a decision to represent the identity of an actor in cyberspace when that actor is no longer directly providing data that can be hosted on the internet. This connection is digital in nature, yet raises a moral question that may also be a legal one: what precisely is the relationship between the silent actor and the chatbot that actively reinstates that actor in the realm of cyberspace? This is a moral issue since the chatbot attributes its digital footprint to the silent actor, either directly or indirectly, establishing a line of continuity between the two. This may give rise to a legal problem if concrete rights and obligations are involved. The challenge is to determine whether the reproduction in and of itself constitutes a legal issue simply by reproducing the traits of an actor that does not operate on their own.

The crux of the matter lies in the connection between the resurrected chatbot and the actual subject, which is represented by their digital identity. This representation of representation is a complex issue that requires a vast amount of private information about the deceased person. While the digital identity is already difficult to determine precisely, as discussed earlier, the identity of a chatbot can be even more challenging to establish than that of its real-world counterpart. Nonetheless, the act of “resurrection” aims to imitate its represented subjects, both digital and physical, in at least one aspect, assuming the potential consequences. One such significant moral consequence of digitally “bringing back” deceased individuals is the emotional, psychological, and sentimental state of the bereaved, who now have the possibility of interacting with the deceased in a digital setting (which is gradually creeping into the non-digital reality, rendering the distinction between the two increasingly blurred). The bereaved may emotionally confuse the chatbot or digital image with the actual subject, potentially resulting in relevant psychological disturbances.

Conclusions

We have attempted to present the fundamental aspects of the concept of identity, its differentiation from identification, and how this model, which seeks to establish certainty, encounters new challenges in the digital realm. It is evident that there is a moral continuity between the real external agent and the avatar or agent that incorporates digital traces in cyberspace. The problem arises because, as previously stated, in the digital world, identities do not have a symmetrical origin; rather, they are, in a way, deconstructed, as their signifiers may be read in disorder. This is a practical, rather than philosophical, reality, but one that has significant implications for outlining the concept of identity, which is critical to many other questions, including those of a moral nature, that may arise in cyberspace. In this sense, we are witnessing the utilization of a tangible tool –information technology– that makes possible a scenario in which the dispersion of signs increases infinitely, and in a way, submerges the sense or meaning in an iterative universe of digital signifiers that are much more difficult to trace and regulate in terms of their exposure or repetition. From a legal standpoint, identity information may be employed by other individuals, even in cases where the deceased did not consent to its publicity, preferring to remain private. These concerns give rise to a specific question: Does the emergent concept of identity give rise to individual rights, or is there indeed a right to identity in cyberspace?

The issue of identity in cyberspace can take many forms, one of which is the digital resurrection of deceased individuals. Regardless of the specific manifestation of this problem, the existence of a continuity between these digital identities and the original subject is undeniable. As we have demonstrated, this continuity is a link in a sequence that ultimately acknowledges the anthropological status of the real-world subject. This subject is the “original”, and the digital copy is produced according to rules and axioms that determine the quality of the imitation. The tracing of this genealogy of identity is both a moral and legal issue, as it ultimately impacts the problem of dignity. The question of how to protect the ownership and privacy of post-mortem information has already been raised in civil law, but it takes on new dimensions in cyberspace, where the complexity of the idea of identity is further compounded by the broad possibilities for manipulation of the digital platform. The protection of post-mortem identity becomes an ethical problem with innumerable legal consequences.

Currently, there is a lack of legislative frameworks regulating the digital reincarnation of deceased individuals. This marks the first time in human history that we are confronted with this issue, and as a result, the protection of personal data and post-mortem personality rights have yet to be fully established. Specifically, the right to data privacy after death is not firmly established, and there is no existing mechanism to decline being digitally resurrected. The resulting ambiguity creates space for private companies and governments to create chatbots using the data of deceased individuals, which is happening^[48]. At present, there is a lack of clear legislation that dictates the fate of our data upon our demise. It remains unclear who is responsible for safeguarding such data after our passing. This creates a problematic situation, such as in the case of digital reincarnation, in which it is difficult to establish boundaries as to what actions are permissible and which are not.

As Edwards and Harbinja say^[49], there are two *a priori* legal issues about digital resurrection. From a property perspective, chatbots are constructed from a vast amount of data, which includes emails, photos, videos, personal messages, social media posts, tweets, voice calls, voicemails, and so on. The question arises as to who owns this information, which is known as digital assets, after the original creator’s death. Another issue pertains to personal data and privacy. Should the deceased have any rights to control their personal data, and what can be revealed about them after their death? The authors have called it “post-mortem privacy”^[50].

To date, only a handful of countries, such as Estonia, France, Italy, and Latvia, have enacted laws regarding the privacy rights of the deceased. Conversely, many countries outside of the EU have yet to establish a legal framework for dealing with these matters. This legislative void allows private companies, such as Google or Facebook, to determine the fate of the deceased’s information^[51]. In general, many companies currently adopt an absolute “no disclosure” policy, even after an individual’s death. However, these ad hoc solutions cannot be considered a sustainable long-term norm, and it seems necessary to establish formal rules that address this issue. Following the continuity of identity –which is the thesis of this paper– it appears appropriate to consider the possibility for individuals to determine what happens to their data after death, as some platforms like Facebook have started to propose. In this scenario, the deceased’s heirs could take charge of the digital assets, although disagreements could arise among family or friends regarding the material stored on various platforms. Despite the existence of an unwritten industrial norm that prohibits the simple transfer of a deceased person’s account to their heirs for security reasons, it is crucial to establish a legal framework that allows for a more structured approach.

In addressing the legal challenges presented by these new technologies, it falls upon jurists and legal experts to fulfill their duty. This must be done with a practical mindset, capable of addressing the concrete problems that these technologies pose to society's daily life, while also acknowledging the theoretical problems that underlie these legal challenges. Amongst these issues, it is evident that the primary and most crucial problem is that of digital identity, as all other personality attributes stem from it. The right to an image becomes extinguished with physical death as it is considered a very personal right. Nonetheless, it may be possible to consider an action of protection to be bestowed upon the heirs or whoever is designated, which must deal not with the content of the extinct personal right, but with its "memory" or "remembrance". However, for this to be achievable, it is crucial to first establish the continuity of identity between the actual deceased subject, the digital agent, and the post-mortem re-presentation. This can ensure that the rights of the first will serve as the analogical basis for the attributes of the others.

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Identidad y resurrección digital: una aproximación jurídico-filosófica

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