

Il seguente contributo è estratto da un mio articolo in via di pubblicazione (*Artificial intelligence and legal capacity: An introduction to robotic subjectivity*) nella rivista *Diritto e Processo* e ritengo possa essere utile ai fini della consultazione in corso.

As affirmed by the EU Parliament in the 2017 resolution, «ultimately, the autonomy of robots raises the question of their nature in the light of the existing legal categories or whether a new category should be created, with its own specific features and implications»<sup>1</sup>.

Firstly, the scientific community will not deal with the problem of the definition and the status of artificial intelligence. Someone thinks that it is not useful to classify or give a specific definition of robots and artificial intelligence<sup>2</sup> since the continuous evolution of digital technologies and the multifunctional potential of each machine would render useless any classification attempt. Even if this approach could be sustained, it is still necessary to understand what is artificial intelligence, in order to create rules that can regulate its artificial life and guarantee the rights of the people that produce, use or interact with AIs.

Regarding the problem of defining AI, it is necessary to determine the border between strong and narrow artificial intelligence, because distinguishing these two categories will have a deep impact on the applicable legislation. This is because for the first group it may not be possible to apply existing rules, since their unpredictable human-like behaviour, still only hypothesised, while it is possible to do so for the second.

Thanks to the definitions and characteristics fixed by the European resolution on Civil law on robotics and the following EU Parliament Resolution, as well as the Commission's Communications, there is a good starting point. However, in order to completely solve the issue, lawmakers must take on the problem of the juridical personality for artificial intelligences. Is it possible to hypothesise a different and new kind of capacity, the robotic personality, or electronic personality, as proposed by the European Parliament? The main question is the same as that posed in 1960 by Putnam: can a robot have rights? And the next step is: All the robots must share the same rights or it is possible to have different levels of rights for different kinds of AI?

If strong and super artificial intelligence has intellectual processes similar to those of humans, there would be no ontological-quantitative difference between the human brain and the electronic brain, or between human intelligence and the artificial one, as theorised by Putnam and sustained by Freitas in 1985<sup>3</sup>. The only difference would be the physical support, the human head, that is biological, and the structure of a computer or robot, that is artificial. Assuming this as a fundamental condition for the existence of strong artificial intelligence, completely indistinguishable from human intelligence, should the law recognise the same rights as humans to artificial intelligence?

Honestly, this point of view, sustained by Putnam seems not acceptable. A solution could be the creation of a status that assign to IA some rights, rights that should not be the same as the human, but that will be able to completely regulate the interactions between AI and human beings, safeguarding the rights of the latter. Moreover, also weak AI should have their own personality, but circumscribed to the essential one to guarantee people that interact with them. This is the most urgent situation to regulate, because differently from strong AI we already use weak artificial intelligences.

The problem is understanding which rights should be accorded to artificial intelligence and how to protect them. Indeed, it will be necessary to create a system that could enforce violations related to those rights. Once such a system is created, it will be necessary to set the rules in order to activate it and to create appropriate defending procedures. Should strong and super artificial intelligence have the right to "live"? Should they have the right to own property? And about narrow artificial intelligence? Should they have a "peculium" to guarantee compensation to humans in case of damage? Are AI mere objects? Setting timely rules in order to address these and other questions will be the first purpose for all the scientific and juridical community involved in this field. Because of this, the proposal made by

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<sup>1</sup> European Parliament resolution on Civil Law Rules on Robotics, 2017, letter AC, p. 5.

<sup>2</sup> M. ALOVISIO AND OTHERS, *The law of service robots*, Naxa Center for Internet and Society, Politecnico di Torino, 2015.

<sup>3</sup> R.A. FREITAS, *The legal rights of robots*, Student lawyer, 1985: [rfreitas.com](http://rfreitas.com).

almost all the documents above considered<sup>4</sup> to create an Agency for Robotics and Artificial Intelligence is absolutely supportable and should be approved as soon as possible.

The last aspect is related to the other side of the issue. Where there are rights, there are also duties. For artificial intelligence, this element is easier to solve than the human one, because the duties of artificial intelligence can be written in the algorithms that govern their behaviours. Starting from Asimov's three laws of robotics, it is possible to create a global basis for the development of the artificial intelligence and it will be possible to insert other kinds of rules that AI must follow, codifying their duties.

In conclusion, it is absolutely clear that the regulation of artificial intelligence development is a primary issue for of the 21<sup>st</sup> century. It should be tackled with a global worldwide cooperation with the aim, on one hand, to create the right conditions to develop artificial intelligence and, on the other hand, to create the legal substrate related to all the questions arisen since the idea of AI took its first steps.

From this point of view, the European Parliament proposals related to both Electronic Personality, the creation of a Charter of robotics<sup>5</sup>, a code of ethical conduct in the field of robotics that will lay the groundwork for the identification, oversight and compliance with fundamental ethical principles from the design and development phase, and the creation of an European Agency for robotics and Artificial Intelligence would be two steps in the right direction.

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<sup>4</sup> The European Parliament resolution on Civil Law Rules on Robotics, the House of Commons' Science and Technology Committee report on Robotics and Artificial Intelligences and the China's State Council report on A Next Generation Artificial Intelligence Development Plan asked for the creation of an Agency for Robotics and Artificial Intelligence. Only the UK proposal had a follow up.

<sup>5</sup> European Parliament resolution on Civil Law Rules on Robotics, 2027, Charter on Robotics, p. 19.