

# Friend or Foe Legal Rights of Artificial Intelligence

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## I. Introduction

As technology develops around the world, various forms of artificial intelligence are beginning to appear in every aspect of our daily lives. Robotic technology, such as drones and driverless cars, assist us in the transportation, military, and security sectors. [1] Scientists predict that human jobs will be outsourced to machines and robots in the near future. [2] Consequently, certain questions have arisen about the legal status of robots and whether robots may require constitutional rights. If robots are given legal rights, should they also be held liable for any illegal acts that they commit? If not, then who should be held liable for their conduct? [3] In anticipation of these questions, certain countries have initiated the process of drafting and proposing legislation regarding robots and other types of artificial intelligence. It is likely advantageous for other countries to follow this lead because artificial intelligence, specifically robots, will be intertwined with humanity in the near future. [4]

## II. Background

Although there are several safety regulations and laws regarding robotic inventions, there are few pieces of legislation that mandate robots' liability and legal rights. Most robotic designs unofficially follow Isaac Asimov's three "laws" that state: "1) a robot cannot injure a human through act or omission of act; 2) a robot must follow orders given to it by humans except for when those orders violate the 1<sup>st</sup>

law; and 3) and a robot must protect itself when that protection does not conflict with the 1<sup>st</sup> and 2<sup>nd</sup> laws.” Countries will likely utilize these laws as a foundation when drafting pertinent robotic legislation. [5] Currently, the European Union recommends a plan of strict liability for injuries involving a causal link between the harmful robotic behavior and the injured party. [6] By suggesting strict liability, the Legal Affairs Committee of the European Parliament envisions a system where robot manufacturers purchase obligatory insurance to compensate the injured parties in addition to creating an extra compensatory fund for victims when insurance is inadequate. [7] The European Parliament’s Committee of Legal Affairs thereby pushes all the liability on the manufacturer of the robot rather than its users, or on the robots themselves. This type of liability plan is a significant predictor in what legal principles surrounding robotic liability will likely be used in the United States, due to its consistency with the Restatement 3<sup>rd</sup> product liability theory. [8] Product liability theory supports strict liability for manufacturers when the product is defective due to design errors and failure to include adequate instructions/warnings. [9] Thus, if the robot malfunctions due to a programming error, it is likely that American law will place liability on the manufacturer. [10] Unfortunately, controversy and confusion arise when using a strict liability scheme on fully autonomous robots as opposed to robots that are partially or fully controlled by humans. The primary concern is whether it is fair to assign liability of an independent entity to another.

In addition to organizing the legal system to assign liability for robots (autonomous and partially autonomous), robots' legal rights are also an issue due to the ambiguity of the robots' legal status. [11] The Transhumanist movement, which is an international and intellectual movement that aims to transform the human condition through sophisticated technologies, such as advanced robotics, has proposed a Transhumanist Bill of Rights. This Bill of Rights protects the rights of human beings and various forms of artificial intelligence. These rights include the right to act freely without harming others and the right to endure minimal suffering. [12] Countries like South Korea and Japan have begun to draft legislation such as Ethics Charters and rules for robots and humans to peacefully coexist. [13,14]

Ethical principles related to developing technology support a robot's legal status as human. Scientists aim to better integrate robots into society through the simulation of human thoughts, emotions, and responses into a robot's programming. So, if these robots are programmed to act like humans, should they not also get the constitutional liberties and protections that humans do? Or is it okay to deprive them of their rights because, according to current robotic liability models, they are treated as property and will not be held liable for inflicting injury on others? [15] It is necessary for future legislation about robots to specify their legal status and their potential liability implications in order to avoid judicial chaos and uncertainty.

### III. Liability Concerns

Strict liability for the manufacturers of robots is the general consensus when the robots are not fully autonomous. [16] Foreseeable situations involving robotic injuries are considered to be a part of the realm of product liability, where the manufacturers and distributors of the product rather than the users bear the burden of paying the victim any compensatory damages for product defects including failure to provide warnings / instructions for the product. [17] In *Mraceck v. Bryn Mawr Hospital*, Mraceck alleged that a Da Vinci robot, which assists a surgeon during a surgery, but which the surgeon has complete control over, suffered a malfunction and caused the patient immense pain. [18, 19] Since it was a strict product liability claim, Mraceck had to prove that the product was defective when it left the manufacturer's control, and that it was the causal link between the product and the plaintiff's injury. [20] Mraceck was unable to successfully eliminate secondary causes as the reason for his pain, and he therefore lost the suit. Although a strict liability claim for defective products is currently favored, it still requires at least circumstantial evidence of causation and damages to succeed. [21]

On the other hand, concerns may arise about forcing liability onto manufacturers when autonomous robots, which are modeled after humans, make their own decisions. [22] Currently, robots are being taught to feel pain so that their responses to problems, in terms of thought processes, mirror those of humans that make decisions based on pain and suffering. [23] This naturally leads to the question of when a robot is considered its own entity? When that occurs, will it be unjust to blame someone else for an entity's independent choices?

One suggestion for a liability policy regarding autonomous robots is treating them as children or animals, which would impose a duty of care on their users to reasonably supervise their conduct. [24] Shifting the burden of liability on a user instead of a manufacturer is a massive doctrinal change from strict liability onto a fault-based system. However, it is still significant that even a less traditional robotic liability policy suggestion does not recommend blaming the autonomous robots themselves, perhaps because the legal status of these entities is quite unclear. In order to determine liability for these autonomous robots, it is necessary to first ponder the question of whether robots deserve constitutional rights.

#### IV. Robots and the Second Amendment

Recently, an autonomous robot was arrested in Russia for peacefully protesting at a political rally partly because it was acting as a reporter and asking people their views on the political situation in Russia. [25] If an autonomous robot, that had the same legal status as a human, was peacefully protesting in America in accordance with its First Amendment rights, would it be arrested? Autonomous robots are also being employed as security guards for protection purposes in homes and businesses, and thus may utilize weapons. [26] In these cases, do these robots have the Second Amendment right to bear arms just as a human does?

Regarding the Second Amendment, one of the limiting principles of the Second Amendment is that the “arms” cannot be “dangerous or unusual.” Generally speaking, they cannot be weapons that a common citizen does not utilize. [27] *District of Columbia v. Heller* states that any arms a typical law-abiding citizen

uses in self-defense are protected. [28] Robotic weapons will likely currently fail the “common use” test, since they are too modern for enough typical law-abiding citizens to use them. However, if Congress does not ban them, then it is foreseeable that more citizens will purchase these robots that employ these weapons, which will therefore mean they will eventually satisfy the “common use” test. [29] It would be unwise for Congress to prohibit these robotic weapons. The robots should be thoroughly trained to respond to threats with a lawful and proportional amount of force. [30] Consequently, robots using robotic weapons are likely more efficient and harmless than humans who bear arms in self-defense without any training. [31] Therefore, there is a strong argument that the constitutional protection of the right to bear arms should extend to robotic security, especially if it will make society a safer place when compared to humans protecting themselves. [32]

Nonetheless, it is unlikely that Congress will extend the right to bear arms to robots using robotic weapons until it is certain that autonomous robots will not malfunction or get hacked. The consequences of malfunctions are extremely dire, such as robots responding to harmless threats by employing disproportionate and deadly amounts of force. Additionally, hackers and terrorists may manipulate robot programming to potentially commit crimes against society by remotely controlling their actions. Due to these grave threats, it is doubtful that Congress will extend the right to bear arms to autonomous robots in the near future without adequate solutions to the threats.

## V. Robots and the First Amendment

Free speech is also a right that may soon extend to autonomous robots. Under common law regarding the First Amendment, free speech is based on the speech itself rather than the speaker. [33] As a result, autonomous robots may get “derivative” free speech rights similar to corporations, which mean that a right to free speech exists when the communication is pertinent and helpful to humans’ daily lifestyles. [34] Free speech rights that have traditionally been granted to human have already been extended to unions, corporations, and other nonhuman speakers. Autonomous robots may also receive this form of constitutional protection. [35]

There are questions as to whether data that a robotic computer produces is free speech. [36] These controversial questions will become quite significant in light of court cases that will inevitably arise from data that is patentable and protected under corporate and intellectual property law. Corporations and autonomous robots will conflict when the robots produce marketable data that companies wish to keep private, but that robots are able to share with society according to their free speech rights. [37] Does the future include companies and autonomous robots contracting with non-disclosure agreements? Are these agreements valid if an autonomous robot is not considered legally human? Overall, even considering limitations on any data that autonomous robots produce, it is quite probable that First Amendment rights, namely free speech, will be conditionally extended to autonomous robots in the near future.

## V. Conclusion

As technology related to artificial intelligence further develops in society, a number of questions regarding the legal status of partially and fully autonomous robotic entities will arise. Issues ranging from liability when robots injure innocent humans to whether robots will have First and Second Amendment rights will predictably inundate court dockets. Preemptively, countries need to begin proposing legislation for the inevitable rise of robotic technology in society. This technology significantly improves the human standards for quality of life, and it will likely spread in a brief timespan. As use of artificial intelligence increases, we need not worry about “robots taking over the world,” but we need to take precautionary measures on practical scenarios.

## **SOURCES**



- [1]: Singh, Swarwant, *Robots In Our Homes And In Our Personal Lives*, Forbes.com (Apr. 15, 2015, 6:16 P.M.), <http://www.forbes.com/sites/sarwantsingh/2015/04/15/robots-in-our-homes-and-in-our-personal-lives/#50b9d2774e52>
- [2]: *Robots will take over most jobs within 30 years, experts warn*, Telegraph.co.uk (Feb. 13, 2016), <http://www.telegraph.co.uk/news/science/science-news/12155808/Robots-will-take-over-most-jobs-within-30-years-experts-warn.html>
- [3]: *ROBOTICS & THE LAW: LIABILITY FOR PERSONAL ROBOTS*, The Center for Internet and Society (Nov. 25, 2009), <http://cyberlaw.stanford.edu/blog/2009/11/robotics-law-liability-personal-robots>
- [4]: *Robot Law: A Global Perspective*, Robotics Business Review (Sept. 24, 2012), <https://www.roboticsbusinessreview.com/robot-law-a-global-perspective/>
- [5]: F. Patrick Hubbard, “*Sophisticated Robots*”: *Balancing Liability, Regulation, And Innovation*, 66 Fla. L. Rev. 1806, 1872 (2014).
- [6]: European Parliament: Committee on Legal Affairs Draft Report 13, 22.
- [7]: European Parliament: Committee on Legal Affairs Draft Report 13, 22.
- [8]: Restatement 3<sup>rd</sup> Product Liability  
[https://ius.unibas.ch/fileadmin/user\\_upload/fe/file/Vorlesung\\_vom\\_13.1.\\_Restatement\\_of\\_the\\_law\\_thirds\\_tords\\_Product\\_Liability.pdf](https://ius.unibas.ch/fileadmin/user_upload/fe/file/Vorlesung_vom_13.1._Restatement_of_the_law_thirds_tords_Product_Liability.pdf)
- [9]: Restatement on Product Liability
- [10]: Restatement on Product Liability
- [11]: European Parliament: Committee on Legal Affairs Draft Report 22, 22.
- [12]: *Welcome to the original & historic website of the Transhumanist Party*, (Jan. 2, 2017) <http://transhumanistparty.org/TranshumanistBillofRights.html>
- [13]: *South Korean Robot Ethics Charter 2012*, (Jan. 2, 2017), <https://akikok012um1.wordpress.com/south-korean-robot-ethics-charter-2012/>
- [14]: Bill Christensen, *Asimov’s First Law: Japan Sets Rules for Robots*, livescience.com (May 26, 2006, 5:17 A.M.), <http://www.livescience.com/10478-asimov-law-japan-sets-rules-robots.html>

[15]: Megan Ray Nichols, *Ethical, legal questions arise as scientists work to teach robots to feel pain*, IPWatchdog.com (Oct. 15, 2016), <http://www.ipwatchdog.com/2016/10/15/ethical-questions-teach-robots-feel-pain/id=73765/>

[16]: See F. Patrick Hubbard, “*Sophisticated Robots*”: *Balancing Liability, Regulation, And Innovation* at 1872.

[17]: *Id.* at 1808.

[18]: *da Vinci Surgery: Minimally Invasive Surgery*, davincisurgery.com (Nov. 2015), <http://www.davincisurgery.com/>

[19]: *Mracek v. Bryn Mawr Hosp.*, 363 Fed.Appx. 925, 926 (3<sup>rd</sup> Cir. 2010).

[20]: *Id.*

[21]: *Id.* at 927.

[22]: Christine M. Grant. *Robots, The Human Brain, and the Law*. 4 No. 3 ABA SciTech Law. 12, 2008.

[23]: Nichols, *supra* note 15.

[24]: See F. Patrick Hubbard, ‘*Sophisticated Robots*’: *Balancing Liability, Regulation, And Innovation*, 66 Fla. L. Rev. 1803, 1872 (2014).

[25]: Pete Dockrill, *A robot was just ‘arrested’ by Russian police*, Science alert (Sept. 20, 2016) <http://www.sciencealert.com/a-robot-was-just-arrested-by-russian-police>

[26]: Dan Terzian, *The Right to Bear (Robotic) Arms*, 117 Penn St. L. Rev. 756, 762 (2013).

[27]: *Id.* at 767-8.

[28]: *Id.* 766.

[29]: *Id.* at 770-1.

[30]: *Id.* at 771-2.

[31]: *Id.* at 771-2.

[32]: *Id.* at 772-3.

[33]: Toni M. Massaro & Helen Norton, *Siri-ously? Free Speech Rights and Artificial Intelligence*, 110 Nw. U. L. Rev. 1169, 1175 (2016).

[34]: *Id.* at 1175, 1177.

[35]: *Id.* at 1177, 1180.

[36]: *Id.* at 1187.

[37]: *See id.*