

# We Hold These Truths to Be Self-Evident, That All Robots Are Created Equal

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## Abstract

*In February 2017, the European Union Parliament voted in favor of a report destined to create a legal framework around artificial intelligence. One of the report's most controversial proposals is the suggestion to grant electronic personality to robots, thereby making them legal agents. Some commentators have stated that this amounts to giving robots the ability to possess human rights. In this paper, I will argue that the EU's decision is not only sound, but warranted. I will discuss the possibility of conferring human rights through legal personality by using corporations and animals as case studies. Further, I will look at the human rights theories that could make this a prospect. Finally, I will address why human rights for robots are an inevitability that we need to ready ourselves for due to evolving social, political and economic realities. I will end by noting the importance of discussing robotic rights in view of future scenarios that could rock the foundation of human right theory.*

**Keywords:** Robots, Artificial intelligence, Artefacts, Human rights, Legal personality.

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## Introduction

Tom is in the throes of a lawsuit against his former employer, a structural steel manufacturing company based in Southern Australia. When he was hired two years ago, he replaced five employees who were let go to fulfil the company's need to increase productivity levels. Tom's long hours and his lack of remuneration became a problem when he sought to use time away from the plant to develop his own line of end products with the techniques learned during his training. The company denied his request. Tom struck back by filing a suit claiming that his employee rights were threatened and that the plant's working conditions violated his right of freedom from slavery. The claim seems to have merit, but the claimant on the other hand raises eyebrows: Tom is a robot. This is not material extracted from a science fiction novel, but rather the future envisioned by the lawmakers of the European ("EU") Parliament.

In February 2017, the Parliament's legal affairs committee voted in a report erecting a framework for the regulation of robotics and artificial intelligence. The EU report makes numerous ambitious proposals. The propositions range from the requirement to equip all automatons with kill "switches" and to create a mandatory insurance scheme for companies causing damages with their robots, to the establishment of an electronic

personhood that would grant rights and responsibilities to the most advanced androids (Hern, 2017). Some of the criticism lodged at the Parliament postulates that “a law of the nature proposed in this resolution would grant human rights to robots” (Hern, 2017).

Imagining robots with human rights is an affront to many because such rights are considered at the top of the hierarchy of the rights we possess. Human rights evoke an entitlement: they imply that even the governmental power faces limits, and that the individual’s wellbeing will be protected from the needs of the majority (Henkin, 1989, p.11). While robots are omnipresent in all aspects of our lives today, they are still viewed as inanimate objects. Our common understanding is that inanimate objects cannot bear rights, least of all rights of the highest order. Advances in the field of artificial intelligence, however, seem to imply that such possibility is not so farfetched. While the robots of today are restricted in terms of mobility, propensity for rational thoughts or even agency, the robots of tomorrow are sophisticated machines that could reach sentience and ultimately be considered alive (McNally & Inayatullah, 1988, p.120). Could they be entitled to human rights?

This paper will discuss the hypothetical genesis of ‘human rights for robots and the repercussions it will have on our legal and social understanding of such rights, and ultimately their implementation. In part II, the EU Parliament Report’s key implications will be summarized. In part III, the link between legal personhood and human rights will be examined. Corporate personality and animal rights will be used to assess the potential implications of electronic personhood. In part IV, the natural theory of human rights will be dissected to analyze its relevance to robotic human rights. Lastly, in part V I will argue that it is important to discuss human rights for robots due to the imminent paradigm shift forecasted by the increasing developments of the field of artificial intelligence (“AI”). I will also raise the potential consequences that could result from the conferral of human rights to robots.

## **Report with Recommendations to the Commission on Civil Law Rules on Robotics**

The EU report with recommendations to the Commission on Civil Law Rules on Robotics, written by Rapporteur Mady Delvaux, seeks to make the regime of liability responsive to the realities of the 21st century. The two main policy goals highlighted in the report are the creation of ethical guidelines in the development and use of artificial intelligence, and the implementation of liability rules directly applicable to robots (European Committee on Legal Affairs [JURI], 2017, p.6). At the outset, the report states that robots are becoming more self-directed and forewarns that “the more autonomous robots are, the less they can be considered simple tools in the hands of other actors (such as the manufacturer, the owner, the user, etc.)” In the face of this, Delvaux concludes that the EU apparatus is inapt to deal with current technological advancements, and calls for a new delimitation of legal responsibility within the field of robotics (JURI, 2017, p.7). For this purpose, a number of targeted legislative measures are suggested.

The report makes five critical recommendations to help canvass the new liability scheme. (i) The creation of a legal definition of “smart autonomous robots”. The common European definition would take into consideration the machine’s different characteristics, notably the robot’s ability to learn through experience and to adapt its behaviour to the environment (JURI, 2017, p.20). This would enable the EU to proceed with a common understanding of which robots fall under the regulations. (ii) Based on the criteria listed for the classification of robots, the erection of a central register for robots that would be accessible to members of the public (JURI, 2017, p.20). (iii) The establishment of a European agency for robotics in order to “provide the technical, ethical and regulatory expertise needed to support the relevant public actors” (JURI, 2017, p.28). (iv) The creation of a Charter on Robotics in compliance with the EU Charter of Fundamental Rights. The

Charter would consist of a Code of Ethical Conduct for Robotics Engineers, a Code for Research Ethics Committees and Licenses for Designers and Users (JURI, 2017, p.28). (v) Finally, the reimagining of the system of civil responsibility for robots. In this new system, the authors suggest an attribution of responsibility to all parties involved in the “life” of the robot (the robot, the manufacturer and the software engineer) on a continuum. Responsibility would be allocated in proportion to the level of instructions given to the robot and to its autonomy. The greater the agency, the more the responsibility should be placed on the machine itself instead of a third party (JURI, 2017, p.17). More importantly, the report suggests creating a new legal status for robots, that of “electronic persons”. As “electronic persons”, robots would be included in the civil liability regime. They would be responsible by law to compensate third parties for any damage they may cause (JURI, 2017, p.18). Compensation would be effected through a new mandatory insurance scheme that every robot would have to subscribe to (JURI, 2017, p.20).

In the following, I will touch on the implications of the last recommendation considered by the report. While the redesigning of the European Union liability apparatus has numerous implications, I will limit the discussion to the authors’ proposition to create a new legal status for robots.

## **Electronic Personhood As A Vector For Human Rights**

One of the most controversial proposals of the Report is the recommendation to create an electronic legal personality for robots. The commission claims that through the prism of legal personality, robots will be able to face legal consequences when they start making autonomous decisions and independently interacting with third parties (JURI, 2017, p.12). Many have argued that granting legal personality to robots could give them the ability to act like natural persons in a legal setting. Indeed, the hypothesis that granting a legal personality to robots could be a gateway to the conferral of human rights in the future seems to find support within the literature.

A legal person, in the eyes of the law, is defined as the subject of legal rights and duties (Solaiman, 2016). While the recognition of legal personality is a mechanism used to enforce a person’s rights, it is also one which implements legal control against any breaches of corresponding duties (Solaiman, 2016). In addition, an element of agency seems to implicitly flow from legal personality. The holder of rights needs to be aware of his own claims and of others’ obligations of performance, otherwise they would be unable to engage in actions of juridical significance and the personality would be null (Solaiman, 2016). It has thus been postulated that the attributes of legal personhood are that (1) a ‘person’ is capable of being a subject of law; and as such (2) has the ability to exercise rights and to perform duties; in a way that (3) reflects awareness and choice (Solaiman, 2016).

Human rights, or rights in any form, are derivatives of legal personality. They are framed as claims to something that the person is able to vocalize by virtue of his role as a legal actor. The individual that advocates for his right of free speech does so because he understands that he is entitled to such right. He is also aware that it is his duty not to abuse that right by engaging in hate speech from which legal consequences would arise. In this optic, it is hard to imagine robots with some form of legal personhood because robots do not exercise claims to things that they are not programmed to claim. They will not create needs that they have not been designed to possess. A robot’s behavior is determined by humans, no matter how complex or autonomous that behavior is. However, as robots and their algorithms become more advanced, they could acquire human characteristics such as the capacity for independent thought, a sense of humor and even an understanding of complex legal concepts (UNESCO, 2016). It is in anticipation of this sophistication that the report preemptively places the robot as an agent within the law.

## 1. Corporate personality

To see how this might play out, we can turn to the use of corporate personhood. It has often been said that the rights derived from corporate personality possess a “human” element. In her Report, Delvaux states that the legal status of robots would be akin to the status of corporations. Businesses can take part in legal proceedings as both plaintiffs and defendants, and robots would be able to do so as well (Hern, 2017). Today, the separate personality of corporations is universally recognized (Solaiman, 2016). In addition to contractual and proprietary rights, businesses increasingly appeal to the language of ‘human’ rights to safeguard their corporate interests (Gear, 2017, p.513). For instance, when a tobacco company claimed that a law regulating advertising interfered with its right to freedom of expression under the Charter of Rights and Freedoms, the Supreme Court of Canada concurred (*Canada (Attorney General) v. JTI-Macdonald Corp*, 2007). In the same vein, the polarizing US decision *Citizens United v. FEC*, recognized that First Amendment Rights also applied to corporations almost a decade ago (2010). While the corporate claim to such freedom is made less explicit in some jurisdictions, such as Australia, cases such as *Theophanous v The Herald & Weekly Times Ltd* imply that corporations can evoke an implied freedom of political speech as a defense to actions for defamation (1994).

Corporate personality is not without its critics. Many are uncomfortable with the fact that when corporations make claims rooted in human rights they seem to claim the exclusive moral standing of human beings (Gear, 2007, p.513). Further, justifications for the need and existence of corporate personality are contested. Legal theorists have had difficulties rationalizing the notion that to sustain their legal personality, corporations perform legal duties in exchange for their legal rights, when it is essentially the owners and managers that engage in the performances (Solaiman, 2016). In contrast, advocates for corporate personhood have used the human element as an argument in favor granting human rights to corporations. The argument goes that corporations are appropriate beneficiaries of human rights because they represent individual human interests (Gear, 2007, p.517). The corporation’s artificial judicial existence is used to express the desires of humans who themselves possess human rights. Therefore, the corporation is used as a vector for the enforcement of such rights (Gear, 2007, p.524). Where this theory seems to unravel is when the continuity between the business and the human actor breaks. For example, when the corporation owns property in its own name, that property has no attachment to its managers; they have no claim to it. Hence, the existence of human interests is not always evident (Gear, 2007, p.517).

All in all, there seems to be a consensus when it comes to the conclusion that a corporation will always have an attachment to human agents. Humans will always need to pull its strings to elicit performance. This fact is made even more palpable when you invoke the possibility of lifting the corporate veil of a corporation. Courts can sometimes decide to ignore corporate personality and hold a corporation’s shareholders or directors personally liable for its actions or debts. It is common in the realm of criminal law (Solaiman, 2016). This reality makes the existence of a legal personality for robots difficult to conceptualize. While advanced robots may possess extensive artificial knowledge, they would be devoid of the unspoken human element that has been central in the recognition of personhood. Once a robot is fully autonomous, it will become difficult to hold his creator responsible for its actions. The advent of artefacts, defined as “artificially intelligent personalities with knowledge and reasoning capacities greater than humans” (Suda, 2001, p.65) brings this conclusion into sharp focus. It has been said that artefacts would be the perfect criminals: when it comes to cybercrimes, they would be able to encrypt their communications and perform seamless conspiracies in a way that humans never could (Suda, 2001, p.65). Yet imagining criminal responsibility without legal personhood, and the rights and responsibility that emerge from such characterization, appears absurd. Because such hypothetical is legally flawed, defining the constitutional rights and more importantly responsibilities of robots is not a matter of convenience, but necessity.

Parliament has also tried to justify ‘electronic personhood’ by comparing it to ‘corporate personhood’ and claiming that it could be used to protect society from harmful developments in the field of artificial intelligence. However, this theory also rests on shaky grounds. In general, corporate personality has allowed companies to further their own interests to the detriment of societal interests (Griseri, 2017). It has not been used to protect society. Reserving a different fate to the creation of electronic personality seems optimistic.

## **2. Animal rights**

Another category of rights that is often mentioned in the discussion of robotic personhood is animal rights. Many statutes render acts of cruelty against animals punishable by the state. This seems to be attributable to the rise in household pets. Pet owners often have the tendency to ascribe human attributes to their pets and to use that as a justification for rights (McNally & Inayatullah, 1988, p.126). A similar future could be envisioned for robots that become household companions. It remains important to note that animal rights have been distinguished from human rights on the basis of their lack of commonality. For instance, it is possible to ensure that humans have access to food and are free from torture, but it seems unmanageable to ensure that every bird has a nest (Pringle, 2017).

Legal personality in relation to animals has been visited several times by the courts. Chimpanzees have the same attributes that are recognized in robots; they can be self-aware, have cognitive functioning similar to humans, feel empathy and even behave in ways that show moral compasses (People ex rel. Nonhuman Rights Project, Inc. v. Lavery, 2013). Nevertheless, the existence of an animal personality has repeatedly been denied mainly due to chimpanzees’ inability to perform duties (Solaiman, 2016). In Lavery, the New York Court held that “animals, unlike human persons, corporations, and municipal entities, could not bear any legal duties, submit to societal responsibilities, or be held legally accountable for their actions; the incapability to bear any legal responsibilities and societal duties rendered it inappropriate to confer upon chimpanzees legal rights” (Solaiman, 2016) Yet, the Court noted that chimpanzees and humans share 99% of the same DNA (Solaiman, 2016)!

While animals have not attained legal status yet, decisions in this regard could help delineate electronic personhood. It is no secret that the push for animal personhood has been driven by a desire to protect animals against human abuse or violence. Animal rights advocates seek to instill in animals a sense of dignity that seems to only be derived from human-like qualifications. Personhood is a way of using the force of the law against human violations (Pringle, 2017). This is where the analogy between animals and robots is hard to prolong. The argument for robot rights is more about protecting us from robots, than protecting robots from human destruction (Pringle, 2017).

## **Challenging The Natural Theory of Human Rights**

### **1. The natural theory**

Another legal blockade in the way of granting human rights to robots is our conception of how human rights operate. Our current general understanding of human rights implies that they are the rights that one simply enjoys by virtue of being human. Human rights are inalienable rights, because being human is seen as an unchanging fact of nature, not something that can be earned or lost. The universality of human rights means that all human beings hold the rights equally (Donnelly, 2007, p.282-283). The Council of Europe (CoE), the continent’s leading human rights organization, declares unequivocally that “An acceptance of human rights means accepting that everyone is entitled to make these claims: I have these rights, no matter what you say or do, because I am a

human being, just like you. Human rights are inherent to all human beings as a birthright (Council of Europe [CoE], 2017).” This interpretation is the natural theory of human rights, the most common and acknowledged definition used to describe them.

Some commentators have defended this theory by contending that human rights are grounded in human suffering, which justifies the need for a human embodiment (Gear, 2007, p.539). It follows from this line of reasoning that the rights to immunity from torture and slavery, or the rights to food and shelter, serve to protect human beings from the pain of being affected by or deprived of such things (Gear, 2007, p.539). Human rights only make sense when envisioning a vulnerable living body. As such, granting human rights to robots is unimaginable. In their most advanced state, it is highly possible that robots would be able to identify situations that would lead to their personal turmoil or disadvantage. Nevertheless, while they might be able to emulate suffering, they will still not be experiencing it.

The natural theory has also not been shielded from criticism. A common reproach is that it is disproportionately concerned with the origins of rights instead of their content. It clings to archaic philosophical inclinations such as the ‘state of nature’, the ‘social contract’, and the ‘inherent nature of man’ (Jenkins, 2014, p.246). In doing so, it seeks to establish that the rights belonged to the individual in his most primitive state, prior to any form of social or political ordering, and that therefore they must be afforded respect (Jenkins, 2014, p.246). Even when the CoE defines the ‘right to life’, it can only root it in a presumed consensus that such right is inviolable because it goes to the root of who we are (CoE, 2017).

The theory safeguards most civil and political rights that are necessary to ensure the man’s survival and independence, but discounts many social and economic rights. It would surely justify the rights to safety and integrity, but would crumble when it came to advocating for the rights to education or adequate standards of living. It is also stated that the natural school paints human rights as frail. Human rights are used in call to actions to motivate people to unite against their violation (Jenkins, 2014, p.250), but it seems impossible to justify them without engaging in circular reasoning. One seems to fall in a tautological trap by stating: “humans must be protected from man-made atrocities, because we are humans and cannot let other humans suffer.” The conclusion seems to be that they are born out of desperation and dedicated to action (Jenkins, 2014, p.250), but supported by a weak infrastructure.

Further, if human beings have rights by virtue of their common humanity, there is also the implication that there are common standards of morality that can be universally applied. These standards should be understood and acknowledged by everyone (Brown, 1987, p.45). This reasoning is heavily contentious. It is now recognized that struggles for human rights have both domestic and international dimensions, because they “are embedded in local normative orders and yet are caught within webs of power and meaning which extend to the international arena” (Donnelly, 2007, p.299). Stating that they are reflected in the same way in all cultures would be falling prey to Western idealism. Lastly, I must add that qualifying suffering as ‘human’ seems to discount the reality that other living beings experience suffering as well. This seems to imply that an animal’s inability to rationalize suffering is sufficient grounds for the denial of human rights.

## 2. Alternative theories

In her article “What Are Human Rights? Four Schools of Thought”, Dembour introduces the three alternative discourses surrounding human rights (2010). Such discourses could find more relevance in a discussion about human rights for robots than the natural rights theory. One of them, the protest theory, suggests that human rights articulate rightful claims made on behalf of the oppressed or marginalized groups. Human rights are identified as claims that help challenge the status quo. Hence, protest scholars do not explicitly qualify these rights as entitlements, but as means to fight injustice (Dembour, 2010, p.3). Another school of thought, the discourse school,

suggests that human rights exist only because they are continuously discussed. The discourse theory rejects the premise that human rights are given or that they are an adequate response to the ‘ills of the world’, but recognizes that the language of human rights is a powerful tool for the expression of claims (Dembour, 2010, p.4). Finally, the deliberative theory frames human rights as political values that societies choose to endorse. Deliberative theorists usually reject the natural theorists’ conclusion that human rights are divine rights. They postulate that human rights are generated through societal agreement (Dembour, 2010, p.3). Liberal, democratic, and fair processes resulting from good political governance lead to human rights, and nothing else (Dembour, 2010, p.8).

The general understanding of human rights is moving away from the natural to the deliberative school of thought (Dembour, 2010, p.3). The deliberative school is particularly interesting when discussing human rights for androids, in fact the EU Parliament seems to endorse it. By proposing to give rights and responsibilities to robots in order to regulate them, the EU suggests that democratically voting-in potential human rights for robots is sufficient for their creation. Thus, instead of giving a mythical status to such rights, it suggests that a social understanding of the rights of robots will bring these rights to life. The rights will then be used to create a social order. While the report does not explicitly mention human rights, the framing of the rights is very telling.

Using law or the conferral of rights, to regulate the way power is distributed in society is not a new concept. Rights become tools of social ordering insofar as they tell actors what they can or cannot do in a specific framework. By giving the robots of tomorrow a place within such legal framework, we hope that they will then help maintain the norms and laws we created instead of try to sidestep or destroy them (Jenkins, 2014, p.214).

## **Why Should We Discuss Human Rights For Robots?**

It is undeniable that the rise of AI will change the fabric of our society. Robots already run every aspect of our lives; they power our cars, our televisions, our kitchen instruments, our telephone systems, and even our toilets in some parts of the world. By letting in advanced robotics into our daily routines, we also link the plight of robots to our own destiny. Such interdependence could come at a cost if we fail to make our social institutions responsive to their presence. Despite the limitations of using direct replicas of corporate and animal rights and transposing them unto robots, the rise of new forms of electronic rights remains probable. In failing to create a legal framework around AI, we make ourselves vulnerable to the ramifications that the potential emergence of rights for robots could have on our legal system (McNally & Inayatullah, 1988, p.120). The EU’s decision to regulate AI before it outgrows our current laws and regulations shows foresight.

### **1. The Rise of Human Rights for Robots**

Since the EU is telling us that the idea that robots will one day have rights is not frivolous, the question becomes if such rights will one day be framed in a way similar to human rights. All signs point to the affirmative. Today, the current structure of dominance identifies the robot as a slave. If we follow the example of Tom in the introduction, androids embody the standard definition of slaves: they work tirelessly without pay, for long hours, according to the commands of their owner. We fail to see them as slaves and they fail to see themselves as such because they are not self-aware of their condition. Yet, this state of affairs is not static. Historical shifts in perceptions of humanity seem to foreshadow a change in paradigm. Humans have continuously defined social groups as less than human to deny them rights: Africans, women, the stateless, etc. (McNally & Inayatullah, 1988, p.123). Our perceptions of life are bound to change in step with changing technology and realities.

What constitutes ‘humanity’ is already an ambiguous concept. If humanity is not defined as the ability to experience suffering, is it the ability to engage in language exchanges? Is it the ability to rationalize, make decisions, reflect, and learn? Is it the capacity to ask the questions: “Do I exist?”

or: “Who am I?” (McNally & Inayatullah, 1988, p.125) We do not engage in clear enunciations of what humanity is because we do not have to. Without the advent of robots (or perhaps extra-territorial beings), we simply state that humanity just is. Defining it in restrictive terms puts us at risk of excluding certain societal groups such as the mentally impaired or individuals with cognitive disabilities. It follows that if we were to change our notions of what humanity entails, robotic human rights could be recognized (McNally & Inayatullah, 1988, p.126).

Rights for robots may also arise due to changing economic realities. As AI technology develops, it is very likely that robots will be used to increase humanity’s collective wealth. Incidentally, they will also increase the gap between the haves and have-nots (McNally & Inayatullah, 1988, p.127). When robots become able to self-reproduce (self-program another version of themselves), as predicted, it will become difficult to determine who will reap the associated benefits. What if a commercial competitor qualifies the reproduction as unfair competition? Would a robot be prevented from reaching its full potential? As McNally and Inayatullah hypothesize in their article, you may find lawyers defending the civil rights of self-aware robots in order “to protect the super-robot from total and irreversible loss of power (LIFE); to free the robot from slave labor (LIBERTY); and to allow it to choose how it spends its time (THE PURSUIT OF HAPPINESS)” (McNally & Inayatullah, 1988, p.129).

Conversely, corporations might also advocate for legal personhood, and correlated rights, in order to limit their liability. A robot’s status as an item of personal property is a double-edged sword. On the one hand, when androids create or successfully perform services for financial rewards their owners are able to reap the benefits. On the other hand, when they commit torts or – in the worst case – crimes, their owners can be held liable for their actions. In the case of autonomous systems, it is very likely that corporations who employ hundreds of robots will want to reduce their liability. Therefore, if the law humanizes robots by giving them their own legal personality, businesses will likely opt to employ robots as independent contractors. Corporations would highly benefit from such arrangements. Indeed, as independent contractors, robots could be held personally liable for their actions thereby shielding their employers from any liability.

Finally, it is very likely that political unpredictability will incite us to give human rights to robots. As Kofi Annan explains in his press release, possessors of human rights are more tempted to respect and uphold such rights in others (Annan, 1997). This explains why the creation of human rights has often been preceded by blood baths or upheavals: they are used to appease certain social groups. We therefore cannot discount the possibility that technology will one day reach a stage where it will demand rights recognition. Alternatively, the fear that such demands are on their way may prompt us to act.

We also cannot overlook the possibility that human rights could be undermined due to parallel technological advancements. The advent of transhumanism, just like the advent of robots, puts the future of human rights in serious jeopardy. By definition, transhumanism is the theory that human beings should use technology in order to overcome the limitations of biology and the human body (Porter, 2017, p.237). Today, many individuals subscribe to this broad characterization: amputees dotting bionic arms could be placed at one end of the spectrum while myopic people wearing prescription lenses would be at the other end. At the core of the transhumanist thesis, is the hypothesis that humans may eventually be able to alter themselves with abilities so greatly evolved from the natural condition that they would no longer be classified as humans (Bostrom, 2005). The human body combined with integrated technological advancements such as mind uploading or genetic engineering (Porter, 2017, p.237)<sup>1</sup> should form a novel entity; a post-human.

What seems to emerge from the Transhumanist School is that for the post-human, the notion of humanity would fall short if strictly defined in biological terms. It would no longer be clear whether the cyborg would be justified in claiming the values of “human dignity”, and ultimately human rights. Many core ideas of human rights seem in conflict with transhumanism. For instance, one



of the transhumanist's main pursuits, eternal life, undermines the notion that the human claims his transcendental status from a 'vulnerable body'. It also exposes the limitations of humanity's duty to preserve life (Jotterand, 2010). Further, while the concept of human dignity is prefaced by the idea that human beings are unique and irreplaceable, transhumanism implies that certain aspects of the human experience such as our memories (Cabrera, 2011)<sup>2</sup> could be readily replaced with technologies.

The outcome of the rise of the post-human might be either the disregard of the theory of human rights due to the limitations or the reframing of many of the core concepts that constitute the foundation of the theory. In the former scenario, robots would have no incentive to claim rights that are rendered obsolete. In the latter scenario, androids could benefit from a broader definition of human rights if it inadvertently included them.

## **2. A Societal Response to Robotic 'Human Rights'**

Further, if we welcome robots into our communities, we cannot let ourselves forget that the rights they possess will be a reflection of our society. To isolate human rights from their social context potentially undermines the very factors that lead to the respect or enforcement of such rights (Brown, 1987, p.58-59). We let our rights shape our understanding of how our environment and society operate. In this context, we can better explain the public sympathy garnered by the robotic dog whose creator continuously kicked to test its mobility (Parke, 2015), or the renewed postulation that sex robots teach men all the wrong things about consent (Ehrenkranz, 2017). We are already in the process of redefining our moral boundaries. When AI technology reaches the stage of creating rational actors, the possibility that human companions demand rights for their robots is even more plausible. Will the 'basic human rights of life, friendship and caring' be claimed (McNally & Inayatullah, 1988, p.128)? If so, what kind of society would we be if we denied them?

Incidentally, the recognition of human rights in robots could spearhead a wave of change. Currently, it is said that human rights refer to changes in circumstances of human existence. Human rights seek to change the realities of the citizen who is denied clean water in Flint, Michigan, the Vietnamese child who is lost in the cycle of sex trafficking or the political prisoner in Burma. They also want to inwardly change the individual that is able to justify, legitimate and perpetuate abuses of these rights (Chesterman, 2008, p.118). With this interpretation, the protest and discourse schools of human rights seem to emerge. This reading also supports the contention that human rights help make and rewrite our futures (Baxi, 2012, p.110). When we claim 'Women's Rights are Human Rights' we declare that it is historically necessary and feasible the overthrow universal patriarchy in all of its pervasive forms (Baxi, 2012, p.110). Granting human rights to robots may help rewrite our future as well. It may open the door for a future where specism is curtailed and human beings reevaluate the assumption that the world revolves around them. The expansion of rights to robots would invite a new appreciation and understanding of the intersecting rights and responsibilities of humans and machines (McNally & Inayatullah, 1988) On the flip side, it may also make human beings slaves to the rights they have ceded, or collateral damage in the new social order they have created. While change is a certainty, its contours are not.

## **3. Three possible resulting conflicts**

Once human rights for robots become a reality, we cannot deny that this could lead to three difficult possibilities. First, it would make a scenario where certain AI have human rights recognized before actual humans have such rights acknowledged. It is no secret that for all its pronouncements about the inalienable and inherent nature of human rights, society will often turn a blind eye to human rights violations when they are experienced by certain segments of our population. One must ask if a right can still be considered a right if it cannot be used as a claim of some sort.

When we recognize that the Australian Northern Territory's "paperless arrest" powers that allow police to detain individuals up to four hours for minor offenses are in violation of the freedom from arbitrary detention, it would seem conflicting to endow robots with the right to liberty and freedom of movement. In other words, it seems antithetical to anticipate the granting of human rights to creations born out of the human mind when actual humans are being denied those rights. This hypothesis is not so farfetched if we consider that long before the abolishment of slavery, corporations had obtained rights to personhood by claiming due process rights for property. At that time, such rights were being denied to human beings—slaves (Baxi, 2012, p.263).

Second, it exposes us to the prospect of conflicting claims of human rights violations between humans and robots. If a robot's continuous self-programming continues to replace workers in an assembly line, would those workers allege that their right to an adequate standard of living is compromised because they are being edged further and further away from the market? Would the robot counteract by stating that it is exercising its right to reproduce? The recent launch of the first robot sex brothel in Barcelona, for instance, seems to foreshadow the beginning of such discourse. While the brothel brought different issues to the surface, including a discussion on its impact on sex trafficking and the demise of human relationships, the central question remained whether sexual robots were putting sex workers out of a job (Opray, 2017). In the case of conflicting human rights claims, the language of the EU Report seems to imply that humans would likely prevail in this scenario. However, once again, it forces us to wonder the relevance of ascribing human rights to robots if this outcome is sought. It could be argued that such rights would be used to protect robots from each other at the very least.

Third, associating human rights with robots may render such rights obsolete. A few commentators have implied that the opportunistic use of the human rights language by corporations threatens to diminish their moral standing (McNally & Inayatullah, 1988, p.125). The same could definitely be true for robots. While their usage of human rights might not be opportunistic, it would be pertinent to inquire whether the increasing legal entitlements to those rights by divergent groups undermine their fundamental nature. For some reason, a robot claiming the 'right to protection from unwarranted search and seizure of its memory bank' (McNally & Inayatullah, 1988, p.125) seems to make a mockery of the individual who is beaten and ransacked during a routine traffic stop without a warrant only because he "looked like a suspect"—meaning African-American.

## Conclusion

We have yet to reach a point where granting human rights to robots is a serious possibility. We are not even at a place where robots can attain consciousness. As of now, the mechanism of action that enables the brain to experience spectrum consciousness has not been pinpointed and therefore cannot be replicated (Allen, 2016, p.5624). Further, another difficulty in developing a freethinking computer is the complexity of 'converting the holistic process of thought into the linear description of written language' (McNally & Inayatullah, 1988, p.124). Yet, today's robots can reflect complex human emotions, communicate using external world knowledge, have an awareness of their needs and can even act in view of achieving certain goals (Solaiman, 2016). UNESCO has stated that we should not exclude the possibility that current research will generate robots that experience sentience, emotions and moral status (UNESCO, 2016). Whether we have to reach that point before robots are considered 'alive' and worthy of human rights is debatable. AI enthusiasts argue that robots have the theoretical possibility of life, and that they could already be perceived as alive (Allen, 2016, p.5659). We fail to see it because we define life mainly from a human perspective.

While discussions on the conferral of human rights to robots could have worrying implications, they also have broader meaning. Scholars have forewarned that human rights could very well be "alienated in a not too distant future for financial, social, economic or organizational reasons"

(TEREC-VLAD, 2014, p.69). When we continue to negotiate which segments of our population are worthy of these rights, we imply that they have yet to be alienated, and that they still matter. Hence, while some might lament a future where the debate may occur, they should find solace in the fact that by maintaining a discourse around human rights, we seem to reaffirm our belief in the promises of moral fortitude and righteousness that these rights embody.

While this paper has looked at human rights for androids using their existent human formulation, it is highly likely that human rights as we know them would have to be redefined in order to make sense of electronic realities. The ‘human rights’ terminology was used to better illustrate rights that typically reflect human realities. At the outset, I addressed how grounding human rights in legal personality shows the difficulty of directly transposing notions of corporate and animal rights to robots without adapting them. Subsequently, I looked at the frailty of the natural theory of human rights in relation to the rights of robots and how the discourse theory would be better suited to explain the EU’s conferral of rights to machines. I ended by discussing the importance of discussing human rights to robots in terms of their potential paradigm-shifting effect, the inevitability of their arrival, their ability to spearhead change and the difficulties such change might bring. This paper does not stand for the propositions that robots should either be granted or denied human rights; it seeks to address the topic of human rights for robots at its infancy. It is aimed at opening a dialogue. This paper stands for the assertion that human rights of robots are upon us.

As mentioned, they could be championed by a variety of actors including average citizens seeking to safeguard the interests of their future robotic companions, corporate entities or even the government as a response to economic shifts. The EU’s move to pre-emptively create a legal framework for the most advanced AI is therefore very forward-thinking and defensible. By spearheading the initiative, they get to decide how they will limit and curtail the rights that robots will inevitably possess and shape the discourse around robotic rights in a way that benefits them. Whether it is in this lifetime or the next, we will see androids “mutually pledge to each other [their] Lives, [their] Fortunes and [their] sacred Honor” (United States Declaration of Independence, 1776). We can only hope that it will be through our own design.

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## Endnotes

1. Genetic engineering and ‘mind uploading’ are two of many biotransformative technologies that fall within the realm of transhumanism. The former alludes to gene alteration in embryos and the second refers to uploading one’s mind to a computer in the hopes of immortalization. For more discussion on biotransformative technologies see: Porter, Allen. (2017). Bioethics and Transhumanism. *Journal of Medicine and Philosophy*, 42(3), 237-260.
2. The process of enhancing one’s memory through computer interfaces or augmented reality is often referred to as “memory editing” by transhumanist scholars. For a more comprehensive explanation, see Cabrera, Laura. (2011). Memory Enhancement: The Issues We Should Not Forget About. *Journal of Evolution and Technology*, 22(1), 97-109.

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