

Persons, robots and responsibility. How an electronic personality matters

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Abstract. The recent debate raised from the motion that the Committee on Legal Affairs (Rapporteur Mady Delvaux) presented for a European Parliament resolution with recommendations to the Commission on Civil Law Rules on Robotics in order to establish rules to arrange the relationship between robots and human beings, anticipates the issue about the new kind of society in which the future generations will live in. The most relevant point of the motion is the concept of ‘electronic person’ to be ascribed to the robots. We will try to understand which concept of person should be used in order to define the ‘electronic person’, investigating the philosophical work of thinkers as Kelsen, Scarpelli, Radin, Wolff and Nèkam.³

Keywords. Legal entity, legal personality, electronic person, person, robot.

1

In “Alienable rights” [1], Minsky plays out a dialogue between two aliens speaking of the rights to be granted to the human beings. He wonders if we need to allow that the world is ‘pollute’ with ‘redundant intelligences’.

We are ever closer to the moment in which we must seriously respond to the crucial question on Artificial Intelligence: which features human beings and artificial beings share? Recently, Luciano Floridi has expressed his concern about this point: “the issue is not to decide whether the robots, as autonomous agents which are able to learn, are such a kind of person or not, but we should understand that the question is badly formulated” [2].

Actually, the question is particularly complex not only because we are considering the human being close to the artificial one, but because the term “person” is everything except that defined in univocal way. Our aim is to look for some hints in the facets of the debate on this notion in order to define the ontology of these entities which in the long run could make decisions or act autonomously.

This is the symmetrical case to the one which claims for the concepts of the extended mind and the electronic body, which have been made actual by the new technologies and have reshaped the borders of the old philosophical debate of the mind-body problem [3].

The semantic adventure of the term ‘person’ led the mask to what is essential: the *persona ficta* became what is essential of a subject.

The concept of the person has now entered the common language and it defines every individual in its unique peculiarity. Philosophically speaking the concept of the person has a long history which also crosses the religious tradition and particularly Christianity; today this concept has landed at the center of the discussion in bioethics, in cognitive sciences, passing through sociology, from Marcel Mauss onwards [4]. In this story, ‘individual’ and ‘person’ have been considered different concepts but only in relatively recent times they have been opposed one another: the first one has been managed such as a naturalistic category and the second one such as an ethical concept or a notion which can define a center of action.

The concept of the person, superimposed on the problem of subjectivity and strictly tied to the theme of the values and their intention acceptance, is not clear in its ethical and epistemological implications. We would mention the differences among the notion of person forged by Peter Singer or Martha Nussbaum and the role played by the ability to act, the biological nature and biography in defining those ideas.

The different notions of the person refer to different ontological levels and because of them we would like to consider here a concept of person drawn in legal field in order to verify whether this one, once opportunely adjusted, could be the right tool to define the status of robots and androids.

The crucial point of the question is to recollect a definition of the person suitable to the electronic personality with reference to the attempt of replicating human behavior, emotion and way of thinking [5], facing the issue of the imputation of liability, since the future could lead us in a dimension of co-working with robots.

2

In Roman law, the term ‘persona’ is equivalent to *homo*; then it evolves to an abstract meaning to designate who has a juridical role. This is a tendency which lead to the concept of the *persona ficta* or *rapraesentata* like the “fictum positum pro vero” [6, . D. 48, ii9, 16,10].

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A very long process of doctrinal elaboration, which is parallel to the history of the Western law, particularly but not only Roman juridical tradition⁴, lead to dissociate the concept of the juridical person from the legal entity, the imputation of liability from the conferring of the legal personality. The last concept does not necessarily refer anymore to the man but it's linked to the powers and the interests of the man, which are concentrated in accordance with predicative structures and normative schemes, or it refers to complex subjects to whom have been conferred features suitable to action both in the field of private law and public law.

This sort of persons are distinguished from natural elements, or rather the juridical person arises as opposed to the natural element as *persona ficta*, both with reference to a single individual and to a groups of persons. Law breaks down bodies and subjects to compose persons namely masks which could *personam sustinere o gerere, personam vicem gerere*. The same individual can be invested with different *personae*; many subjects can represent one unique *persona*, whose unity is not superimposed to the unity of a physical or psychological subject. Moreover, in some subjects there can be the rights in the absence of a dead physical or unborn person, and on the other hand the concept of physical person renames, for the purposes of the law, the biological bodies (e.g. let's consider bioethics).

The notion of legal person adapts to the definition of the artificial subjects which are allowed on a merely functional level and, then, to every artificial individual.

In his *Reine Rechtslehre* Hans Kelsen maintains that: "one might consider (...) not individuals such as, but only their actions and omissions set out in legal rules" [7] so that the physical person "is not a man but the personified unity of legal rules that give rights and duties to the same man. It is not a natural reality but a legal construction" in order to describe "legally relevant facts" [7]⁵.

This way Kelsen, who obviously in the time he wrote can apply law only to human beings, makes a legal person without biological constraints and he rejects the anthropomorphic view of the concept of the person.

Both the physical and the legal person are social realities such as the same law and this allow us to understand that whether "the law does not create the persons" [7]⁶, society can regulate a new reality described by technology using this kind of concept of person.

Uberto Scarpelli, who has introduced analytical philosophy in Italy, reached the thought of Kelsen; according to Scarpelli, the condition of use of the concept of the legal person "is in the normative forecast of a plurality of actual and possible facts, mere facts or actions, a connection among them, which consists in the reference to a same legal system and the attribution to

such facts of an in operation juridical importance of relationships among them intervening"[8]⁷.

We can use this "limitedly technical" [9]⁸ concept to regulate new experiences and new realities the way it arose to answer to the new situations in which "individual subjects finds multiplied and widened their limited life in a lot of new realities" [9]⁹.

Also in Anglo-saxon legal literature we find similar positions. According to Radin, legal personality is "a convenient symbol, a short-hand expression by which a great many factors can be designated by a single word or a single phrase" [10, p. 625, 643] and the concept of person is "a means of making reference to complex situations easy, and is only an inexperienced person that is deceived by it, or fancies that calling the series *a, b, c, ..., n*, by the name of *x*, add a new item to the series"[10, 665]. Wolff speaks about abbreviation and a formula of fiction. Starting from the natural extra-legal concept of personality and of entities considered such as persons despite the lack of human dignity[11, 494, 505].

Rules are a fundamental mechanism of connection between the social and the mental by the means of the so-called "multiagent structure" that expresses itself in the plurality of the recipient of the majority of legal rules. This structure allows an education which falls beyond the one imagined by Kant, for whom from the concept of legal entity emerges only and necessarily the relationship between free and equal people and for this reason, according to him, legality cannot connote neither our relationship with animals nor the one with God or, we can say today, with the androids. However, the process of de-psychologizing, abstraction, de-naturalization that features the rule of laws allows to them to refer to different models of social organization and it shows how they are semantically multipotent thanks to the ability to use natural elements in an artificial context, in which sometimes by the means of the rule "*x* counts as *y* in the context *c*"[12] it occurs the transition from the physical object to the social one.

According to Nèkàm the feature that makes a legal entity is the fact that the collectivity considers it as a unity which has interests that need or deserve social protection: "and it is completely irrelevant that such entity exist as an objective reality, that has its will, and that it possess or less a natural or artificial, imagined or proven personality"[13, 21]. Following this perspective, we can think to look for the theoretical grounds to reshape the new legal challenges that Artificial Intelligence begins to set.

3

⁴ The term 'person' is not present in the *Code Napoléon*, but one can find it in the *common law*, as it shows the *Judicial Dictionary* by Frederick Stroud [18].

⁵ Translation from the Italian: *La dottrina pura del diritto*, Torino, Einaudi, 1952, p. 193.

⁶ Translation from the Italian: *La dottrina pura del diritto*, Torino, Einaudi, 1952, p. 198.

⁷ Translation from the Italian: *Contributo alla semantica del linguaggio normativo*, Milano, Giuffrè, 1959, p. 142.

⁸ Translation from the Italian: *Il problema della scienza del diritto*, n. ed. ac. P. Piovani, Milano, Giuffrè, 1962, p. 81.

⁹ Translation from the Italian: *Il problema della scienza del diritto*, n. ed. ac. P. Piovani, Milano, Giuffrè, 1962, p. 82.

The recent developments in the field of Artificial Intelligence, particularly in robotics, claim for a philosophical approach to the newborn (and future) relationships between human beings and robots. The continuous online life we are experiencing is shaping our way of living in the information society asking – as Luciano Floridi [14] underlines – for a new ethical framework, in which we should ward off the anthropocentric view over robots allowing to accept them as co-workers, including the huge amount of legal, social and ethical issues at the stake.

Despite the fight between cyber-optimists and cyber-pessimists [15], it is no longer possible to image our life without Artificial Intelligence: algorithms follow and support us in a series of daily actions (withdraw from an ATM, watching a TV series on Netflix, booking a doctor's appointment, applying online at university and so on). Also if we accept these kinds of examples of Artificial Intelligence, generally speaking, we are skeptics about robots and androids. Because of science fictions films and TV series, one might conceive human world invaded by robots, condition which presupposes a fight for supremacy won by artificial systems created by the losers human beings. Obviously this is a naïve and false view on Artificial Intelligence, since we are not facing an invasion, but those artistic perspective could give us some hints in order to imagine the new challenges for the future infosphere [16].

Science fiction showed us the chance to have driverless cars (or any other transport). Now, the project of a driverless car is under construction: Google, Tesla, Uber and Nissan are testing their prototypes of driverless or autonomous car. Although there occurred little accidents, there are recent news about the capability of autonomous car to prevent bigger accidents, like the one prevented in December by a Tesla car running for testing along a Dutch highway¹⁰. Let's consider for a while that in the same situation, there occurred a malfunction of the 'Forward Collision Warning' onboard the Tesla car: instead of preventing the accident, the autonomous car provokes it, investing a car carrying three people, including a child. The result of the accident is little damages to the three people and huge damage to their car. Who is responsible for this accident? This is the real question at the point of the robotics revolution. There is no need to be afraid of robots, since they could help us with machine learning, overall in medicine for application in health systems for improvement in cancer and other rare diseases research.

The proposed example shows that we need to think the relationship we would like to experience with those artificial systems. Following this perspective, the Committee on Legal Affairs (Rapporteur Mady Delvaux) presented a motion for a European Parliament resolution with recommendations to the Commission on Civil Law Rules on Robotics¹¹ in order to begin to establish rules and a kind of ethical and legal code to arrange relationships between human beings and Artificial Intelligence artifacts. The main issue is to protect persons from the damages eventually provoked by Artificial Intelligence systems. Stressing the increasing production and use of Artificial Intelligence systems, the motion faces legal, ethical and social issues. Luciano Floridi [14] offers us a clear analysis of the motion, stating that its most relevant features are the issue of unemployment and liability. We could add to these issues that

developments in robotics and artificial intelligence can and should be designed in such a way that they preserve the dignity, autonomy and self-determination of the individual, especially in the fields of human care and companionship, and in the context of medical appliances, 'repairing' or enhancing human beings [17, p.5].

This idea covers the chance that developments in robotics and AI could be helpful to people but their application need to be constantly checked since one cannot ignore the users are not simply individual but persons which sometimes have a reduced autonomy but they have the right to preserve their dignity.

Back to the two features stressed by Floridi, we should recall the example of the driverless or autonomous car. Let's say, for example, that within a couple of years we could travel with a Google or Tesla car. It makes sense that taxi service companies might fire their drivers, just like bus and train companies since there is no more need to pay people for a job they don't do anymore. So that there might be a lot of unemployed. If this scenario should happen, this means that the social relapse will be dramatic, so that today there is already the need to think about an economic support for people who will lose their job because of robots and algorithms. Then, companies will save money and will reduce complaints, but the social systems of some Nations will be troubled by this new developing situation. The only solution is to tax robots, which means to tax the companies which use them and replace a lot of human workers with robots.

What if an autonomous car crashes against another car drawn by a human being? Who is legally liable for the accident? Apparently nobody or, at least, the company who has produced the car if there is a malfunction or the owner who made a mistake in running the system. However, the main question concerns whether our legal systems are ready to face these situations and what are the consequences on the notion of the person.

The previous paragraph showed that there is not a univocal notion of the person. Since concepts such as rights, responsibility, ethics, privacy have been ascribed to persons and not to material things such as robots, how to shape the concept of the person?

The motion proposed to the European Parliament seems to solve the problem creating the notion of 'electronic person', a new legal status to be given to autonomous robots:

creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or otherwise interact with third parties independently [17, p. 18].

Unfortunately, the term 'electronic person' appears only once in the whole motion (the last version is a document of 68 pages). This recommendation to the European Parliament is not deeply explained or investigated.

It seems that the legal commission, taking into account the difficulties in investigating the notion of the person as it is clear in the history of the philosophy of law, has proposed the notion

¹⁰ Link: <http://www.carscoops.com/2016/12/teslas-autopilot-anticipates-huge-crash.html>.

¹¹ Link: <http://www.europarl.europa.eu/committees/en/juri/subject-files.html?id=20170202CDT01121>.

of ‘electronic person’ in order to begin to think to the consequences of robots on human beings.

The purpose of the commission which uses the term ‘electronic person’ seems a mistake: since an ‘electronic person’ is a robot, then it is an artifact, which is sometimes, in particular, an Information Technology artifact, and it has to be considered an artificial system. Unfortunately, this artificial system could be invested of rights, duties, legal liability. If this should happen, then it will make sense to start thinking about robots such as Isaacs Asimov’s *Bicentennial Man*, ascribing to robots – in future – also emotions, according to the most wide meaning this word can cover.

The anthropomorphic view risks to make us think the problem of the relationship between robots and persons – the persons we are – following the path which sometimes we run thinking about the relationship between human beings and animals. However, there is a big question: animals are not artificial systems, but robots behavior is always governed by rules imposed by their creators.

We can say, agreeing with Luciano Floridi, that the relevance of the issue needs to be considered changing the point of view. So then, we need to reshape the notion of electronic person, giving sense to the terms electronic and person in a philosophical perspective. In particular, in the previous paragraphs, we showed that the philosophy of law of Scarpelli, Kelsen and Nèkàm, for example, ward off the biological constrain which generally is ascribed to the person, trying to describe a new kind of society in which there is a widespread co-working with robots and androids.

Civil Law Rules on Robotics: <http://www.europarl.europa.eu/committees/en/juri/subject-files.html?id=20170202CDT01121>.

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