



Peter M. Asaro, PhD

Assistant Professor and Director of Graduate Programs, School of Media Studies, The New School

Visiting Fellow, Center for Information Technology Policy, Princeton University

Affiliate Scholar, Center for Internet and Society, Stanford Law School

***Jus nascendi*, Robotic Weapons & the Martens Clause**

In this paper I want to consider the motivations and sources for new law, *jus nascendi*. In particular, I want to consider the motivations and sources for new International Humanitarian Law (IHL) concerning the development and use of robotic autonomous weapons. Among the motivations for *jus nascendi* in IHL, the development of new military technologies is one of the most pressing. The legality and potential regulation of robotic and autonomous weapons, alongside and sometimes in conjunction with cyberwarfare, have raised serious questions and a growing debate in the international community. While we are considering the various reasons and means for regulating autonomous weapons, it is important to consider where new international law emanates from, especially in response to new technologies. In particular the Martens Clause ought to be viewed not only as a recognition that written law does not supplant customary law, but also as an invitation to moral reflection on the role of the principles of humanity and the dictates of public conscience in articulating and establishing new IHL. Its legacy as an explicit recognition of the role of moral consideration in the application of IHL, as well as in the formulation of new law should not be overlooked or underestimated. As an example of an emerging normative principle concerning the development and use of autonomous weapons, I present the principle of Meaningful Human Control over the use of violent force in armed conflict.