Essays – *peer-reviewed* i-lex – Rivista di Scienze Giuridiche, Scienze Cognitive ed Intelligenza Artificiale. Vol. 17 n. 1 (2024)
https://doi.org/10.6092/issn.1825-1927/20678 ISSN 1825-1927

Introduction to a Theory of Legal Monsters
From Greco Roman Teratology to the EU Artificial Intelligence Act

Ugo Pagallo [1]

[1] Università di Torino (Italia)

Abstract: The paper distinguishes two kinds of 'legal monster' — i.e. either legal monsters as the object of legal regulations, or legal monsters as a source of criticism. The claim is, on the one hand, that drawing on the Roman law's notion of 'monstrum vel prodigium' the formula can be considered legally dead nowadays; on the other hand, the formula can still represent a powerful metaphor of legal criticism insofar as it is supported by a strong philosophical framework and robust arguments of positive law. By providing such framework and making it operational with the case study of the AI Act, the aim is to illustrate eight kinds of monster that contradict requirements of positive law, or its functions, i.e., what positive law is supposed to do. The formula 'legal monster' is indeed a powerful tool of criticism that, handed down by a thousand-year-old tradition, deserves to be used even today: there is no shortage of such legal cases.

Keywords: Artificial Intelligence Act; European Union; Legal Monster; Legal Positivism; Natural Law; Teratology.

1 Introduction

Western legal history is full of monsters. Over the centuries, scholars and philosophers have illustrated their ideas through metaphors and images of monsters to stress what the law is supposed to be, its requirements; and what the law is meant to do, its functions. In the book IX of the *Republic*, for example, Plato examines the ideas of justice and injustice, and the reasons why justice is superior to injustice, so that tyrants are the worst men.[1] To clarify this difference, once "we have agreed on the essential nature of injustice and just conduct", Socrates refers to "a symbolic image of the soul"; in particular, "one of those natures that the ancient fables tell of," such as the monsters of Chimaera, Scylla, or Cerberus.[2] Although the parallelism between monsters and tyrants can be traced back to previous generations of Greek tragedians —- from Aeschylus to Euripides —- Socrates adds a psychological touch to his arguments. There is no hope for kingmakers to control the youth in other ways than engendering desires and idle and prodigal appetites in their soul as a "monstrous winged drone": "Or do you think the spirit of desire in such men is aught else?"[3].

Reference to images of monsters is not exclusive to the natural law tradition. It is not other than Thomas Hobbes —- according to some scholars, the father of modern political and legal thought[4] —- to sum up his ideas

ugo.pagallo@unito.it (Ugo Pagallo);
https://orcid.org/0000-0001-7981-8849 (Ugo Pagallo);

1. Plato, *Republic*, translated by Paul Shorey, Cambridge, MA, Harvard University Press; London, William Heinemann Ltd., 1969.
2. Plato, Republic, above note 1, at 588d.
3. *Op. cit.*, at 573a.
4. See N. Bobbio, *Thomas Hobbes and the Natural Law Tradition*, Chicago, University of Chicago Press, 1993.

Copyright © 2024 Ugo Pagallo
This work is licensed under the Creative Commons BY License.
https://creativecommons.org/licenses/by/4.0/

on just and unjust, despotism and political order, with the biblical monsters of Leviathan and Behemoth. In *Leviathan* from 1651, Hobbes makes clear the tenets of his philosophy; in *Behemoth* from 1668 (but published posthumously in 1681), focus is on the causes of the English civil wars from 1640 to 1660. In the introduction of *Leviathan*, Hobbes explains that the biblical monster stands for any commonwealth, state, or Roman civitas, the crucial difference with the natural law tradition being that such body politic is an "artificial man".[5] In the second part of *Leviathan*, Hobbes illustrates how this commonwealth is generated, so that it is "that great Leviathan, or rather (to speake more reverently)… that Mortall God, to which wee owe under the Immortall God, our peace and defence".[6] It is not by chance that among the epithets of his contemporaries and critics, Hobbes was also dubbed as 'the monster of Malmesbury' (where he was born in 1588).

In addition to images and metaphors, monsters have thus to do with legal concepts. Ancient Roman law provided both archetypes and benchmarks of human monsters as the object of legal regulation. Since the foundation of Roman law with the Twelve Tables from 449 BC, deformity was deemed a discriminating element between monsters and humans: in the phrasing of the first paragraph of Table IV on paternal power, "a notably deformed child shall be killed immediately." This rule was developed and refined, so to speak, in later documents. The Digest of Justinian provides examples of such refinement with the remarks of Paulus (D. 1.5.14); and Ulpian (D. 50.16.38; D. 50.16.135); among others.[7] The legal issues revolved around the status of such beings; the patrimonial conditions and inheritance relationships; whether such beings could ever have been free (*ius liberorum*); and their burial. The concepts which were at stake were summarized with the formula *monstrum vel prodigium*, monster or prodigy, to indicate "whenever something contrary to nature is born, perhaps in the three hands or feet, or in some other part of the body, which is contrary to nature" or "when something prodigious appears, which the Greeks call phantasmata".[8]

Against this backdrop of images and metaphors, of legal concepts and different schools of philosophy, the claim of this paper is that scholars should be attentive to both sides of the same coin. On the one hand, the formula 'legal monsters' has to do with the object of certain legal regulations, for example, the *monstrum vel prodigium* handed down from the tradition; on the other hand, drawing on the ancient equalization of monsters and tyranny, the formula represents a source of legal criticism and even of resistance and rebellion. Every legal teratology —- from the Greek words τέρας "monster" and λόγος "account" or "reason" —- must consider both. A theory of legal monsters shall strike a balance between what is alive and what is dead with the formula handed down since ancient times. To strike this balance, the paper is divided into five parts.

Section 2 deals with the notion of 'legal monster' as the object of legal regulations. Section 3 examines the formula in connection with that which should or should not be done against current legislation, or in spite of it. Section 4 deepens the theoretical grounds of the formula and the reasons why scholars still refer to the notion of 'legal monsters' today, for example, in the jargon of the Italian Court of Cassation, every act that presents "incomprehensible legal solutions that defy the logic of the system". Section 5 provides a case study. Whereas EU legislation has been a generous source of legal monsters over the past years, the focus is restricted to the exam of the Artificial Intelligence (AI) Act, and whether and to what extent Reg. (EU) 2024/1689 can be deemed as a monster. The analysis provides the theoretical framework to determine requirements of legal monstrosity on the basis of positive law, in particular, considering some blatant contradictions of the AI Act. They regard the protection of fundamental rights, such as equality before the law or the right to environmental protection, and obsolescence threats of the Regulation. The overall claim is that the formula 'legal monster' can still represent a powerful metaphor of criticism today if, and only if supported by a strong philosophical framework and robust arguments of positive law.

5. Th. Hobbes, *Leviathan*, Seattle, Pacific Publishing Studio, 2011.

6. Hobbes, Leviathan, above note 5, chapter XVII.

7. See A. Watson (ed), *The Digest of Justinian*, Philadelphia, University of Pennsylvania Press, 1997.

8. Watson, The Digest, above note 7, at 50.16.38.

2 The rise and fall of a legal formula

Generation of experts in Roman law have dissected the clauses on legal monsters and prodigies.[9] Remarkably, it is possible to find such notions even in legal traditions not directly influenced by Roman law, such as the English common law. For example, Alex Sharpe has inspected legal precedents on human monsters spanning six centuries, from Henry de Bracton's *On The Laws and Customs of England 1240-1260*, to Edward Coke's *The Institutes of the Laws of England 1628-1644*, down to William Blackstone's *Commentaries on the Laws of England*.[10] In light of the judicial disavowal of the notion of monster in a recent case of medical separation of conjoined twins, that is, *Re A (Children)* from 2000, the conclusion of this assessment of legal history is pretty clear: "It would seem that in English law the concept of the monster is now, if it was not already, legally dead".[11] The same holds for the multiple variants of the civil law tradition in continental Europe.

From a philosophical viewpoint, the reasons for this dismissal and repudiation can be traced back to the 1700s with the advancement of rationalism and the Enlightenment. The opinion of Gottfried W. Leibniz is particularly instructive. According to the great German polymath, there is no such a thing as a monster and even more so, as a human monster. The claim rests on the metaphysical assumption that *nihil est sine ratione*, that is, nothing is without reason in the best of all possible worlds. In *Theodicy* (1710), for example, dealing with "the justice of God and the freedom of man in the origin of evil" in Part III of the work, Leibniz explains the reasons for his claim.[12] The argument goes as follows:

One must believe that even sufferings and monstrosities are part of order; and it is well to bear in mind not only that it was better to admit these defects and these monstrosities than to violate general laws, as Father Malebranche sometimes argues, but also that these very monstrosities are in the rules, and are in conformity with general acts of will, though we be not capable of discerning this conformity.[13]

Later on, Leibniz clarifies this view with a mathematical similarity: "It is just as sometimes there are appearances of irregularity in mathematics which issue finally in a great order when one has finally got to the bottom of them".[14] As a result, the existence of monsters does not depend only on popular credulity or the necessary subjective viewpoint of our species, "the workmanship of the understanding" in the phrasing of John Locke.[15] Also, we shall take into account the confusion of philosophers in the face of the complex fabric of our world, between the will of God and human freedom:

Those who have confused this determination with necessity have fabricated monsters in order to fight them. To avoid a reasonable thing which they had disguised under a hideous shape, they have fallen into great absurdities.[16]

Leibniz's theses had a certain impact among his contemporaries and the enlightened, for example, Diderot.[17] As a matter of fact, it would have taken decades and even centuries for the idea that monsters do not actually exist to gain traction in the legal field. To make a long story short, a turning point materialized in the aftermath of World War II with the Universal Declaration on Human Rights from 1948. The Preamble of this Declaration enshrines the principle "of the inherent dignity and of the equal and inalienable rights of all members of the human family" as "the foundation of freedom, justice and peace in the world." The Universal Declaration

9. See E.J.H. Schrage, Capable of Containing a Reasonable Soul, in R. Feenstra, A.S. Hartkamp, J.E. Spruit, P.J. Sijpesteijn & L.C. Winkel (eds), *Colatio Iuris Romani*, vol. 2, pp. 469-488, Amsterdam, J.C. Gieben, 1995.

10. A. Sharpe, Structured Like a Monster: Understanding Human Difference Through a Legal Category, *Law and Critique*, 2007, 18(2): 207-228.

11. Sharpe, Structured Like a Monster, above note 10, at 208.

12. G.W. Leibniz, *Theodicy: Essays on the Goodness of God, the Freedom of Man and the Origin of Evil*, translated by E.M. Huggard, La Salle, Ill., Open Court, 1995.

13. Leibniz, Theodicy, above note 12, at § 241.

14. *Op. cit.*, at § 277.

15. See J. Locke, *Essay Concerning Human Understanding*, ed. P. Nidditch, Oxford, Oxford University Press, 1975, at III.iii.14.

16. Leibniz, Theodicy, above note 12, at § 362.

17. See C.T. Wolfe, The Materialist Denial of Monsters, in C.T. Wolfe (ed), *Monsters and Philosophy*, pp. 187-204, London, College Publications, 2005.

paved the way for further specialized declarations and principles of protection for the achievement of human dignity in healthcare regarding people with birth defects, mental illness, and disabilities, among others. As concerns birth defects, scholars have examined this achievement over the past seven decades "through the insight, hard work and dedication of a select group of people and organisations," especially the World Health Organization.[18] Although scholars have time and again stressed the limits of such human rights legal framework, either regarding the design of the declarations, or the problematic enforcement of the rights,[19] it seems fair to admit a change of paradigm. Instead of 'legal monsters' as the object of legal regulations, humans with birth defects, anomalies, disabilities or physical deformations shall be deemed as subjects with legal rights of their own. Some years after the legal turning point began in the mid 1900s, scholars, such as David W. Smith and James Wilson, laid down the basis for a new field, medical teratology, namely, the study of the abnormalities of physiological development in organisms as a sub-field of medical genetics.[20] In this sort of ideal handover, or metaphorical changing of the guard, the law became ancillary to the medical-scientific research on what was regarded once upon a time as a prodigy, or monster.[21]

However, according to certain scholars, the dismissal of old formulas on monsters and prodigies of ancient Roman law, or of the tradition of common law in England, is deceptive. We should be attentive to the persistence of such regrettable ideas, formulas, categories, and legal concepts in disguise. Drawing on work by Georges Canguilhem,[22] and moreover Michel Foucault,[23] it is contended that the monster is still a category of the law, something with a persisting legal life.[24] According to this view, the law creates and represents bodies and human desires as something "unnatural" so that "at least some constructions or representations of human difference, both legal and non-legal, are informed by the monster category".[25] This narrative on legal monsters has increasingly drawn the attention of sociologists, criminologists, philosophers, and experts of aesthetics, among others. Therefore, what are the ingredients of this category that jurists and lawyers consider simply dead?

In his Lectures on the "abnormal" at the College de France in 1974-1975, Foucault summed up the notion of monster as "a juridico-natural complex" insofar as "the monster appears and functions precisely at the point where nature and law are joined".[26] According to this interpretation of monsters —- which revolves around the physical dimension of bodies —- the formula entails a twin breach or transgression, namely, a breach of nature and a breach of law which "comes up against, overturns, or disturbs civil, canon, or religious law".[27] The monster, in fact, "combines the impossible and the forbidden"[28]; it "is the casuistry that is introduced into law by the confusion of nature".[29] The legal sources would confirm this hermeneutical approach. In the phrasing of Foucault:

For medieval thought, and definitely for seventeenth- and eighteenth-century thought, the breach of natural law is not enough to constitute monstrosity. Monstrosity requires a transgression of the natural limit, of the law-table, to fall under, or at any rate challenge, an interdiction of civil and religious or divine law. There

18. A.L. Christianson, Attaining Human Dignity for People with Birth Defects: A Historical Perspective, *South African Medical Journal*, 2013, 103(12:1): 1014-1019.

19. E. Cadava, The Monstrosity of Human Rights, *PMLA*, 2006, 121(5): 1558–65.

20. See R.H. Finnell, Teratology: General Considerations and Principles, *Journal of Allergy and Clinical Immunology*, 1999, 103(2), S337-S342; also, J.E. Polifka and J.M. Friedman, Medical Genetics: 1. Clinical Teratology in the Age of Genomics, *Canadian Medical Association Journal*, 2002, 167(3): 265-273.

21. R. L. Brent, Medicolegal Aspects of Teratology, *The Journal of Pediatrics*, 1967, 71(2): 288-298.

22. G. Canguilhem, Monstrosity and the Monstrous, *Diogenes*, 1964, 40, 27-42.

23. M. Foucault, *Abnormal: Lectures at the College de France 1974-1975*, London, Verso, 2003.

24. A.N. Sharpe, *Foucault's Monsters and the Challenges of Law*, Abingdon, Routledge, 2010.

25. Sharpe, Structured Like a Monster, above note 10. Also, along the same lines, see M. Tedeschini, Il mostro è un paradosso, *Studi di estetica*, 2021, XLIX, IV (2): 240-259.

26. M. Foucault, Abnormal, above note 23, at 65.

27. *Op. cit.*, at 63.

28. *Op. cit.*, at 56.

29. *Op. cit.*, at 64.

is monstrosity only when the confusion comes up against, overturns, or disturbs civil, canon, or religious law. The difference between disability and monstrosity is revealed at the meeting point, the point of friction, between a breach of the natural law-table and a breach of the law instituted by God or by society, at the point where these two breaches of law come together.[30]

We return to this biopolitical interpretation of the old monsters of the tradition below in Section 4. And yet, just the legal sources of modern political thought in the 1600s and 1700s, which Foucault mentions in his analysis, suggest a far more complex normative framework. As a matter of fact, the formula 'legal monster' does not only concern objects, but also, subjects of regulation; not only physical bodies, but also, the body politic; not only the convergence of nature and the law, but also, the discrepancy and even clash between natural law and positive law. A legal monster may regard the constitution of a state or political community as much as its normative acts, and this is how generations of scholars have understood the formula, especially within the ancient and modern schools of natural law.

The next section aims to explore this other side of the coin on 'legal monsters' that Foucault and his followers simply overlooked.

3 The eclipse of a legal concept

We noted above in the introduction that the formula 'legal monster' can be understood as a source of legal criticism, political resistance, and even rebellion. The *Vindiciae contra tyrannos* corroborates this assumption.[31] The famous Huguenot essay was published in Basel in 1579, under the pseudonym of "Stephen Junius Brutus." Scholars still debate whether the authors of the pamphlet were Hubert Languet and Philippe de Mornay. In any event, the *Vindiciae* revolves around whether the commands of the King are binding in case they contradict the law of God. In the phrasing of the pamphlet:

Briefly, if man becomes a wolf to man, who hinders that man (according to the proverb), may not be instead of God to the needy? And therefore the ancients have ranked Hercules amongst the gods, because he punished and tamed Procrustes, Busiris, and other tyrants, the plagues of mankind, and monsters of the earth.[32]

The author(s) of the *Vindiciae* did know the classics of Greek and Roman culture, referring to an audience familiar with those sources. Elsewhere, I explored the adventures of the formula *homo homini lupus* popularized by Erasmus in the *Adagia* since the early 1500s.[33] Therefore, the fact that the author(s) of the 1579 Huguenot tract used the image several decades before Thomas Hobbes in *Leviathan* is not surprising. The proverb which is mentioned in the *Vindiciae* must be traced back to the Roman playwright Plautus in the *Asinaria*: "*Lupus est homo homini, non homo, quom qualis sit non novit"*, namely,"man is no man, but wolf, to strangers."[34]

On the other hand, there is only the embarrassment of choice regarding the origin of the parallelism between monsters and tyrants, "the plagues of mankind." The author(s) of the *Vindiciae* did know Plato's *Republic* and the Greek tragedies. Many of these tragedies present tyrants as monsters before their own people. For example, in the *Eumenides*, Aeschylus makes Apollo say:

Oh, monsters utterly loathed and detested by the gods! Zeus could undo fetters, there is a remedy for that, and many means of release. But when the dust has drawn up the blood of a man, once he is dead, there is no return to life.[35]

---

30. *Op. cit.*, at 63-64.

31. S.J. Brutus, *Vindiciae Contra Tyrannos. A Defense of Liberty Against Tyrants*, translated by Ch. H. McIlwain, London, Bell & Sons, 1924, available at https://www.yorku.ca/comninel/courses/3020pdf/vindiciae.pdf.

32. S.J. Brutus, Vindiciae, above note 31, at p. 104 (online).

33. See U. Pagallo, *Homo homini deus: Per un'introduzione al pensiero giuridico di Francis Bacon*, Padua, Cedam, 1995.

34. Plautus, *The Comedies*, translated by H.T. Riley, London, Bell & Sons, 1912, Act II, at 495.

35. Aeschylus, *Eumenides*, translated by A.J. Podlecki, Liverpool, Aris & Philips, 1989. The translation of E. D. A. Morshead is available online at http://classics.mit.edu/Aeschylus/eumendides.html, at 644.

In addition to the parallelism between legal monsters and tyranny men, monsters may refer to either institutions or normative acts. Although the concept remains the same —- since law makers, nations, or edicts become monstrous when they contradict their natural essence —- their legal typology must be differentiated. Regarding institutions, one of the most famous examples is Samuel Pufendorf's *De statu imperii Germanici*, or *The present state of Germany* from 1667.[36] In this work, examining the political structure, or constitution, of the German Holy Roman Empire, the jurist finds it so arbitrary and irregular to liken it to a monster. Almost a century later, in 1756, Voltaire would comment with his usual wit that the German Holy Roman Empire was in fact "neither holy nor Roman nor an empire."[37] In the phrasing of Pufendorf:

There is now nothing left for us to say, but that Germany is an Irregular Body, and like some misshapen Monster, if, at least, it be measured by the common Rules of Politicks and Civil Prudence, and that nothing similar to it, in my opinion, exists anywhere else on the whole globe.[38]

Complementing the very idea of a body politic as an institutional monster, it was a popular trope of that era to similarly present the anomaly and abhorrence of normative acts as a monster. For example, in 1736, the Royal Order of 10 July regulating the appointment of Deans to the University of Valencia is keen to inform readers that "quorum utrumque monstruum arti, & naturæ contrarium esse, dubium non extitit" —- that is to say, "there was no doubt that both of these monsters were contrary to art and nature".[39] Three years later, in 1739, it is time again for a German scholar to protest against the monstrosity of certain acts: the title of a work by Gottlieb Samuel Treuer is eloquent, *Monstrvm Arbitrarii Iuris Territorialis A Legibvs Imperii E Germania Profligatum*, namely, "a monster of arbitrary territorial law unleashed by the laws of the empire from Germany".[40]

Later on, in 1758, Emer de Vettel published *The Law of Nations*, which soon became a renowned treatise of international law.[41] The volume is particularly relevant in this context because it is not only crowded by monsters but, more importantly, by different kinds of legal monster. In Book I of *The Law of Nations*, the analysis deals with the classic notion of tyrants as monsters, for example, in § 121, "the monster who does not love his people is no better than an odious usurper, and deserves, no doubt, to be hurled from the throne." This monstrous usurpation, to be sure, does not authorize any regicide as carefully explained in §§ 50 and 51, in which focus is on "the monstrous and absurd doctrine, that a private person is permitted to kill a bad prince".[42] However, that which applies to the relationship between people and rulers dramatically changes if it regards the relations among sovereign states. The shift is from 'legal monsters' as authors or subjects of abhorrent institutions and legal regulations to the notion of 'legal monsters' as objects or addressees, so to speak, of legal commands.[43] This is the case of § 56 of Book II —- "Of a Nation considered in its Relations to others" —- in which Vettel argues, "As to those monsters who, under the title of sovereigns, render themselves the scourges and horror of the human race, they are savage beasts, whom every brave man may justly exterminate from the face of the earth." This very idea of legal monster is again under the lens of Book III, "Of War":

Nations that are always ready to take up arms on any prospect of advantage, are lawless robbers: but those who seem to delight in the ravages of war, who spread it on all sides, without reasons or pretexts, and even

36. S. Pufendorf, *The Present State of Germany*, translated by E. Bohun, Indianapolis, Liberty Fund, 2007.

37. Voltaire, *An Essay On Universal History, The Manners, And Spirit Of Nations*, translated by Nugent, London, Nurse (Ulan Press, 2012), at I, 683.

38. Pufendorf, The Present State, above note 36, at IV, § 9.

39. The document is available online at https://crowd.loc.gov/campaigns/herencia-centuries-of-spanish-legal-documents/laws-statutes-governance-administration/2018751508/2018751508-60/ (the quote is at p. 116, section 92).

40. G.S. Treuer, *Monstrvm Arbitrarii Iuris Territorialis A Legibvs Imperii E Germania Profligatum*, Schroeter, 1739, available at https://books.google.it/books?id=PXUHvwEACAAJ.

41. E. de Vettel, *The Law of Nations, Or, Principles of the Law of Nature*, edited by B. Kapossy and R. Whatmore, Indianapolis, Liberty Fund, 2008.

42. Vettel, The Law of Nations, above note 41, at II, § 50.

43. See P. Piirimäe, Men, Monsters and the History of Mankind in Vattel's *Law of Nations*, in S. Zurbuchen (ed), *The Law of Nations and Natural Law 1625-1800*, pp. 159-185, Leiden, Brill, 2019.

without any other motive than their own ferocity, are monsters, unworthy the name of men. They should be considered as enemies to the human race.[44]

The very idea of 'legal monsters' as 'enemies to humankind' was not new at all, since this is the claim of the German philosopher Christian Wolff in § 6.627 of the *Jus Gentium Methodo Scientifica Pertractum*, or *The Law of Nations According to the Scientific Method* from 1749.[45] According to Wolff, nothing could be "too harsh… against those who plainly show that they are enemies of the whole human race." By seeking war as an end in itself, thus threatening the security of all nations, such "robbers whose malice extends to the farthest limit" should be properly understood as *humani generis monstrae*, "monsters of the human race". Correspondingly, "the right to punish them belongs to all nations, and by this right they can remove from their midst those fierce monsters of the human species".[46]

The formula 'enemy of humanity' —- which has become extremely popular in the current age of terrorism[47] —- can be traced back to ancient Roman times, in particular, to Cicero.[48] In *De Officiis*, or *On Duties*, Cicero argues that "a pirate is not included in the number of lawful enemies, but is the common enemy of all [*communis hostis omnium*]".[49] Moreover, it is a recurring trope of Cicero's work to refer to his political enemies, chief adversaries, or simple colleagues, as beasts or inhuman monsters.[50] For example Verres, the corrupt governor of Sicily, becomes an "importunum animal," a "portentum," even more dangerous than Scylla or Charybdis, a second Cyclops; in a nutshell, a "novum monstrum".[51] Such cultural and lexical convergences of old and new monsters stress the basic difference, however, between two kinds of 'legal monster'. The first kind is the object or target of legal regulations, or of criminal proceedings. The legal regulations include the *monstrum vel prodigium* in Roman law and the enemies of humankind according to the interpretations and recommendations of Wolff or Vettel. The criminal proceedings can be illustrated with Cicero's eloquence in the most important case during his rise to the consulship, namely, the corruption and extortion trial of Gaius Verres in 70 BC. Centuries later, in 1961, covering the Eichmann trial in Jerusalem, Hannah Arendt's claim was that "everybody could see that this man was not a 'monster,' but it was difficult indeed not to suspect that he was a clown".[52] In all these cases, we are dealing with the meaning of the formula 'legal monster' that we saw dying, so to speak, in the previous section of this paper. Although some scholars claim that this first meaning of the formula is still alive, for example, following Foucault's category of monster, or discussing today's "terrorists as monsters",[53] the concept may be fruitful in such fields as rhetoric and politics, sociology and aesthetics, but has no proper use in current positive law.

The second type of 'legal monster' concerns the criticism of positive law, rather than its enforcement. It is the contention of this paper that this second meaning of 'legal monster' as a source of criticism, resistance and even rebellion —- from ancient Greek tragedies to the ideas of Brutus and Pufendorf, among others —- is still meaningful from a legal point of view. However, either the formula has fallen into disuse, or those who use it use it fleetingly. The theoretical meaning of the formula has been lost vis-à-vis, say, Singapore's 2021 foreign

44. Vettel, The Law of Nations, above note 41, at III, § 34.

45. Ch. Wolff, *The Law of Nations According to the Scientific Method*, translated by J. H. Drake, Oxford, Clarendon Press, 1934.

46. Wolff, The Law of Nations, above note 45, at 6.627.

47. I. Land (ed.), *Enemies of Humanity: The Nineteenth-Century War on Terrorism*, New York, Palgrave Macmillan, 2008.

48. See D. Luban, The Enemy of All Humanity, *Netherlands Journal of Legal Philosophy*, 2018, 47(2): 112-137; also, M. de Wilde, Enemy of All Humanity: The Dehumanizing Effects of a Dangerous Concept, *Netherlands Journal of Legal Philosophy*, 2018, 47(2):158-175.

49. M. T. Cicero, *On Duties*, translated by W. Miller, Cambridge, MA, Harvard University Press, 1913, at 3.29.107.

50. J. M. May, Cicero and the Beasts, *Syllecta Classica*, 1996, 7, 143-153.

51. M. T. Cicero, *The Verrine Orations*, translated by L.H.G. Greenwood, Cambridge MA, Harvard university press, 1966-1967, at 2.1.42, 2.1.40, 2.5.146, and 2.5.145, respectively.

52. H. Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, New York, Viking Press, 1963, available at https://platypus1917.org/wp-content/uploads/2014/01/arendt_eichmanninjerusalem.pdf, at 28 (online version).

53. M. Pinfari, *Terrorists as Monsters: The Unmanageable Other from the French Revolution to the Islamic State*, New York, Oxford Academic, 2019 (online edition).

interference bill[54]; the 2022 reform of international trade agreement[55]; Italy's 2024 right to image of cultural property[56]; and so forth. Therefore, the next section aims to illustrate the reasons for this state of affairs, and how to overcome it. We should be able to point out legal monsters properly.

4 The philosophical gist

The second meaning of 'legal monster' has habitually rested on the grounds of the natural law tradition. Tyrants and despots have been deposed and even killed, just as scholars have criticized and even mocked laws and institutions, on the basis of the essence or nature of the legal phenomenon, a law superior to positive law. The reason why this tradition of legal criticism has eclipsed seems to depend essentially on the crisis of natural law, which goes hand-in-hand with the triumph of legal positivism, the vengeance of Hobbes's monster Behemoth against Plato's Chimaera, Scylla, or Cerberus. Even when certain authors still refer today to certain laws or institutions as 'legal monsters', they are either reluctant to refer to the natural law tradition or simply ignore such theoretical basis.

To corroborate this conjecture, the famous debate between Lon Fuller and Herbert L.A. Hart is particularly fruitful. The debate sheds light on both the institutional and normative sides of the second meaning of the formula, that is, the claim that either some legal systems should be considered monstrous, or that such monstrosity regards certain acts, statutes, and edicts of the legislator. Next subsections dwell on each of these issues separately.

4.1 The institutional monster

The opening act of the debate between the champions of legal positivism (Hart) and of the natural law tradition (Fuller) regards the essays that both scholars published in the "Harvard Law Review" in 1958; first, Hart's *Positivism and the Separation of Law and Morals*;[57] then, Fuller's *Positivism and Fidelity to Law: A Reply to Professor Hart*.[58]

One of the key issues under scrutiny in the debate has to do with a classic problem of legal philosophy, namely, whether an unjust law is still law. Hart endorsed the idea that even a Nazi 1934 statute, discussed in his paper, should be considered to have the force of law. The wisdom of the Court of Appeal in post-Nazi West Germany, which held that the statute "was contrary to the sound conscience and sense of justice of all decent human beings" must be doubted; as much as many similar cases and rulings that "have been hailed as a triumph of the doctrines of natural law and as signaling the overthrow of positivism. The unqualified satisfaction with this result seems to me to be hysteria."[59]

Fuller endorsed the opposite view with a familiar claim: the Nazi 1934 statute simply was a "legislative monstrosity."[60] Moreover, the secret Nazi act enacting the wholesale killings in concentration camps should be deemed as the greatest "legal monstrosity",[61] whereas the improvement of planning authorities lowering the marked value of the land on which a house is built is "an unmortgageable monstrosity."[62] All these monsters don't deserve to be called law. To think otherwise, as Hart intends, rather suggests arrogance and conceit: "Throughout his discussion Professor Hart seems to assume that the only difference between Nazi law and,

54. See https://rsf.org/en/singapore-s-foreign-interference-bill-legal-monstrosity-totalitarian-leanings.

55. R. Neufeld, Investment Law's Monstrous Reform, in D. Bethlehem et al. (eds), *The Oxford Handbook of International Trade Law (2e)*, 2nd edition, Oxford, Oxford University Press, 2022.

56. See https://www.finestresullarte.info/en/opinions/a-legal-monster-roams-italy-the-right-to-the-image-of-cultural-property.

57. H.L.A. Hart, Positivism and the Separation of Law and Morals, *Harvard Law Review*, 1958, 71(4): 593–629.

58. L.L. Fuller, Positivism and Fidelity to Law: a Reply to Professor Hart, *Harvard Law Review*, 1958, 71(4): 630–672.

59. Hart, Positivism, above note 57, at 619.

60. Fuller, Positivism and Fidelity, above note 58, at 654.

61. *Op. cit.*, at 651.

62. *Op. cit.*, at 665.

say, English law is that the Nazis used their laws to achieve ends that are odious to an Englishman."[63] On the contrary, according to Fuller:

When a system calling itself law … habitually cures its legal irregularities, even the grossest, by retroactive statutes, when it has only to resort to forays of terror in the streets, which no one dares challenge, in order to escape even those scant restraints imposed by the pretense of legality — when all these things have become true of a dictatorship, it is not hard for me, at least, to deny to it the name of law.[64]

Fuller's arguments, however, raise a critical problem, either dealing with monstrous tyrants and dictators in the exercise of their power, or afterwards, once such monsters have been deposed or killed, by declaring their legal acts void. It would seem we could fix issues of justice and legal validity on the basis of this natural law precept, when these problems are not solved. It is not by chance that the ancient Greek culture forged the parallelism of tyrants and monsters in the context of their tragedies, in which whatever outcome was fated to be painful and excruciating, full of "fear and pity" in the wording of Aristotle.[65] The tragedy of the legal monster —- dealing with tyrants, dictators, and their evil institutions —- has to do with the fact that they are both, i.e. monsters are evil, and even Hart is ready to concede this point;[66] but monsters are also legal, pace Fuller, because they execute the force of the law. This "monstrosity" is exposed not only with the case of Nazism debated by Hart and Fuller, but it returns to the fore with current examples of monstrous institutions, such as Kim Jong-un's North Korea, or Maduro's Venezuela. In the phrasing of Hart:

The vice of this use of the principle that, at certain limiting points, what is utterly immoral cannot be law or lawful is that it will serve to cloak the true nature of the problems with which we are faced and will encourage the romantic optimism that all the values we cherish ultimately will fit into a single system, that no one of them has to be sacrificed or compromised to accommodate another.[67]

To be fair, Fuller admitted another feasible way-out to the evil acts of monstrous institutions, namely, a retroactive law. However, even this choice has its costs since it sacrifices "a very precious principle of morality endorsed by most legal systems."[68] Fuller concedes that such an option of a retroactive law could be under certain circumstances desirable to make the break with the past evident.[69] Yet, Fuller does not think he contradicts himself on this basis because, in his view, there is not such an alternative as in Hart's choice "between two evils" —- that is, between leaving people unpunished or punishing them on the basis of a retrospective legislation. Instead, a retroactive law should be deemed as complementary to declaring monstrous statutes not to have the force of the law. In Fuller's phrasing:

I, like Professors Hart and Radbruch, would have preferred a retroactive statute. My reason for this preference is not that this is the most nearly lawful way of making unlawful what was once law. Rather I would see such a statute as a way of symbolizing a sharp break with the past, as a means of isolating a kind of cleanup operation from the normal functioning of the judicial process.[70]

The conclusion we can draw from this part of the debate between Hart and Fuller is threefold. First, even advocates of legal positivism, in addition to supporters of the natural law tradition, can deem institutions and their legislation as utterly immoral and therefore, "monstrous". Second, the lesser evil is given in these cases by frank retroactive laws. Third, the idea of denying the force of law to monstrous legislations and institutions is problematic because the patch it provides is worse than the hole it aims to address. The drawbacks of every tight separation between law and morals are not fixed by simply subordinating the former to the latter, and hence, overruling the former with the latter. Attention should be drawn to the balance that the (institutional

63. *Op. cit.*, at 650.

64. *Op. cit.*, at 660.

65. Aristotle, *Poetics*, translated by M. Heath, London, Penguin, 1997, chapter XIV.

66. Hart, Positivism, above note 57, at 629.

67. *Op. cit.*, at 620.

68. *Op. cit.*, at 619.

69. Fuller, Positivism and Fidelity, above note 58, at 661.

70. *Ibidem*.

fora of the) law must strike among instances of multiple regulatory systems in society, which includes the ideal and highly unlikely scenario of unanimous moral opinions and ethical doctrines.[71] In Hart's phrasing, "the most important single lesson to be learned from this form of the denial of the Utilitarian distinction [between law and morals] is the one that the Utilitarians were most concerned to teach: when we have the ample resources of plain speech we must not present the moral criticism of institutions as propositions of a disputable philosophy."[72]

Next, focus is on a variable of this moral criticism.

4.2 Monstrous normative acts

Institutional monsters are not a necessary condition for monstrous normative acts, such as statutes and edicts of lawmakers. Also, decent institutions can endorse normative monsters. The second part of the debate between Fuller and Hart helps make this point clear with both the monograph Fuller published in 1964, that is, *The Morality of Law*,[73] and a year later, Hart's review of this book in the "Harvard Law Review".[74] In *The Morality of Law*, Fuller illustrates his ideas on natural law with the image of a fictional king, Rex. The aim is to show that every attempt to govern a society would be impossible when departing from eight minimal conditions of law. In Fuller's view, such conditions represent that which turns legal rules into genuine laws. This perspective can be reversed, however, to show eight cases in which the law simply looks like a legal monster. The observables of the analysis regard (i) a normative act which is particular, i.e. *ad personam* or laid down on individual basis, rather than for general purposes; (ii) a normative act which is secret, rather than public; (iii) a normative act which is retroactive, rather than prospective; (iv) a normative act which is unintelligible, rather than decently clear; (v) a normative act which is incongruous, or inconsistent, rather than non-contradictory; (vi) a normative act which is subject to over-frequent revision, rather than resistant to changing circumstances; (vii) a normative act which defies human nature, rather than feasible to obey; and, (viii) a normative act which is randomly dispensed, rather than coherently administered as regards the obvious meaning of the law.

There are myriad possible examples to illustrate the claim of this section. Consider the first of Fuller's minimal conditions of the law vis-à-vis such acts of the Italian Parliament as Act no. 140 from 2003; Act no. 46 from 2006; and Act no. 124 from 2008; all under Silvio Berlusconi's governments.[75] The aim of those acts was to protect the particular interests of the boss under the guise of a general legislative act. The Italian constitutional court declared such acts void with rulings no. 13 from 2004; no. 26 from 2007; and no. 262 from 2009, respectively. (These cases raise the further issue of whether rulings of courts, in addition to acts of lawmakers, can be monstrous. It seems obvious that regardless of different legal traditions and jurisdictions, for example, between civil law and common law, case law and doctrines of courts can be monstrous as much as acts of parliaments can now and then be.)

However, from a philosophical viewpoint, Fuller's conditions on what turns legal rules into genuine laws raise a problem. All Fuller's conditions can be endorsed by a monstrous institution that pursues its evil ends through general, overt, and clear regulations that do not change over time and moreover, are coherently administered. In his review of Fuller's book, Hart asked in what sense Fuller's legal conditions could ever be called a "morality" since they seem to be more like means for effective legislation, and appear only as moral as the enterprise they make possible.[76] Fuller could respond that the role of these conditions is not simply instrumental because such conditions represent a morality of respect for the freedom and dignity of the agents addressed by

71. See U. Pagallo, Even Angels Need the Rules: AI, Roboethics, and the Law, in *ECAI 2016: Frontiers in Artificial Intelligence and Applications*, vol. 285, pp. 209-215, Amsterdam, IOS Press, 2016.

72. Hart, Positivism, above note 57, at 620-621.

73. L.L. Fuller, *The Morality of Law*, revised edition, New Haven, CT, Yale University Press, 1964.

74. H.L.A. Hart, Book Review: Lon Fuller, The Morality of Law, *Harvard Law Review*, 1965, 78: 1281–96.

75. U. Pagallo, *Il diritto nell'età dell'informazione*, Turin, Giappichelli, 2015, at 39-40.

76. H.L.A. Hart, Book Review: Lon Fuller, above note 72.

the law.[77] Regardless of whether we buy into Fuller's arguments, what is relevant here to stress is the final convergence according to which a normative act can be reasonably understood as monstrous. Going back to the example of normative acts built to fit a single case or individual interest, the monstrosity of the act may either depend on substantial reasons (Fuller), or on instrumental arguments (Hart), and still, that act remains a monster. In most Western legal systems, such practical convergence is strengthened by the fact that many principles of the natural law tradition have been incorporated into post-WW II constitutions. Be that as it may be, it seems fair to conclude that from time to time, even respectable institutions can give birth to monsters. Next section intends to deepen this claim with a vast repertoire, that of EU law.

5 A case study

Scholars have now and then referred to the EU law as a "monster". In accordance with the distinctions of this paper, these scholars can be divided into two groups: those referring to EU law as a monstrous institution, and those discussing this or that normative act of EU law as a monster. In the first group, a prominent place must certainly be given to Philip Allott.[78] His idea of EU law as a monstrous institution draws on Pufendorf's remarks on the Holy Roman Empire (see above Section 3); and the famous aquatint *The Sleep of Reason Produces Monsters* by Francisco Goya in 1799. The intent is to stress the struggle between reason and imagination, although missing Goya's satirical spirit:

The European Union is a waking dream of the bulimic political imagination, offering … only the dream of all politico-bulimic dreams, a dream which is no longer merely a dream.[79]

Goya's satirical spirit is gone also with reviewers: "Philip Allott may be today's Pufendorf, except that is yet unclear whether the idea of reason he believes in is, like that of his predecessor, on the rise; in these late-modern or even post-modern times, he may well fight a losing battle."[80] In any event, rumors on the monstrosity of the EU seem greatly exaggerated, especially considering what is the alternative that Allott was proposing, namely, a well-ordered and coherent structure of the EU institutions that the European society would set up through a 'self-constituting' act.[81]

A variant of this debate appeared years later, in 2011, with the publication of Hans Magnus Enzensberger's *Brussels, the Gentle Monster*.[82] The author was a poet and costume critic. This may explain the mocking, ironic, and even melancholic tone of this European denunciation. In fact, we are far away from the monstrous institutions under scrutiny in the previous section of this paper either with the debate between Fuller and Hart, or with some of today's despicable regimes. And yet, some criticisms of *The Gentle Monster* remind us of Fuller's conditions for sound legislation and how the often bizarre rules of EU law —- together with the opaque and even labyrinthine bureaucracy of the European Commission —- put those very conditions under stress. In the wording of Enzensberger:

Even the Treaty of Lisbon, a substitute constitution which serves as the legal basis of the Union, is distinguished by the fact that merely reading it presents even the most willing European citizen with insuperable difficulties … It cannot be by chance that even constitutional lawyers have difficulty understanding this prose. Unfortunately, we can assume that this was indeed the intention of the authors.[83]

Regardless of the exaggerations in *Brussels, the Gentle Monster* —- an oxymoron, after all —- Enzensberger has a point: also decent institutions can produce monsters, and the EU is no exception. This finding recom-

77. Fuller, The Morality of Law, above note 73.

78. See P. Allott, The Concept of European Union, *Cambridge Yearbook of European Legal Studies*, 1999, 2, 31-59; also, P. Allott, Epilogue: Europe and the Dream of Reason, in J.H.H. Weiler and M. Wind (eds), *European Constitutionalism beyond the State*, pp. 202-225, Cambridge, Cambridge University Press, 2003.

79. Allott, The Concept of European Union, above note 78.

80. N. Krisch, Europe's Constitutional Monstrosity, *Oxford Journal of Legal Studies*, 2005, 25(2): 321-334, at 321.

81. Allott, Epilogue, above note 78.

82. H. M. Enzensberger, *Brussels, the Gentle Monster: or the Disenfranchisement of Europe*, London, Seagull, 2011.

83. Enzensberger, Brussels, the Gentle Monster, above note 82, at 7-8.

mends restricting the focus of the analysis to certain monstrous acts of EU law, rather than the EU institutions as such. Drawing on work of jurists and experts in positive law, the claim does not intend to rest on any assumption of natural law, such as legal essences or minimal conditions of the law; instead, the claim shall be supported by the analysis of the means that make legislations effective, and arguments of constitutional law, which includes the Charter of Fundamental Rights in EU law.[84] Even against these constraints, there is no shortage of legal cases.

Consider the 2012 debate at the European University Institute on the Fiscal Compact Treaty, or FCT, signed in March of that year.[85] That international treaty, in fact, raised a host of tricky issues concerning its compatibility with EU law, national sovereignty, institutional balance and democratic accountability. These problems were summarized, albeit in interrogative form, with a well-known formula: *Another legal monster?*

More than a decade later, in 2024, it was the turn of the EPP, the largest political group in the European Parliament, to oppose a proposal of the Commission on the so-called "Deforestation Law." Although the new set of rules intend to stop the clearing of forests for the production of soy, coffee, cattle, and other products, the risk, according to the EPP Group Spokesmen in the Parliament's Agriculture and Environment Committees, is to create enormous bureaucracy for European businesses. The overall claim of the protest is once again summarized with the well-known formula of a bureaucratic (rather than normative) monster. As the EPP website is keen to inform us:

Farmers, retailers, small and large businesses and Member State governments are deeply concerned about the jungle of implementing rules that will apply to several production sectors. The bureaucratic monster threatens the supply of animal feed and the trade of many consumer goods. The Commission must take enough time to fix the many problems with the legislation.[86]

It is against this backdrop that the next subparagraphs of this section draw attention to a new regulation of EU law, that is, the Artificial Intelligence (AI) Act, or Reg. (EU) 2024/1689. The Regulation represents a pillar of the EU digital strategy and data policies over the 2020s. Since the legislation will be at full speed only on 2 August 2026 (Art. 113 of the AI Act), it is unclear how many aspects of the legislation will be implemented especially considering that the text is open to divergent but legitimate interpretations. A meta-regulatory approach to the legislation can help us understand why many facets of the AI Act look like a legal monster. The aim is not to cover the full repertoire of dead ends and contradictions in the regulation, but rather, to appreciate the reasons why the new EU Act appears so problematic in certain cases. To corroborate this claim, focus is next on the design of the legislation, the future proofing of the law, and the protection of certain fundamental rights. The sources of EU law shall be appreciated against conditions that make normative acts monstrous, such as acts that are unclear or inconsistent; or acts that play a cat-and-mouse game with technological advancement and innovation: Fuller's fourth, fifth, and sixth requirements of legal monstrosity enshrined in current positive law. The preliminary step is to put a new legal monster into perspective.

5.1 Framing the AI Act

The AI Act includes 180 recitals, 68+ definitions, 113 articles, and 13 annexes. At times, the complexity of the legal text is such that the examples of Enzensberger's *Brussels, the Gentle Monster* seem like child's play. Such intricacy does not mean that it is impossible to extract any clear or coherent meaning from the text, just like squaring circles through stochastic methods in the legal domain. It is certain however that the addressees of the regulation cannot be ordinary citizens but rather super experts in EU law. Be that as it may, the overall design of the regulation is a source of concern. Since the proposal of the European Commission in April 2021, the AI Act was presented as a risk-based regulation. The final version of the Act still distinguishes between unacceptable risks, high-risk uses of AI systems, other than high-risk uses of AI systems, and AI systems in between such high-risk and low-risk deployments. On top of that, having discovered further models of

84. See U. Pagallo, Dismantling Four Myths in AI & EU Law through Legal Information 'about' Reality, in H. Sousa Antunes et al. (eds), *Multidisciplinary Perspectives on Artificial Intelligence and the Law*, pp. 251-260, Cham, Springer, 2023.

85. A. Kocharov (ed), *Another Legal Monster?: An EUI debate on the Fiscal Compact Treaty*, EUI LAW, September, Fiesole, Italy, 2012, available at https://hdl.handle.net/1814/21496.

86. See the press release at https://www.eppgroup.eu/newsroom/deforestation-law-a-bureaucratic-monster-must-be-delayed.

AI in 2023, namely, the general-purpose AI models —- that include large language models, such as Chat GPT, generative AI, and foundation AI —- the Brussels lawmakers added a further kind of risk to the original quadripartition of the regulation, that is, the notion of "systemic risk" under Art. 3 no. 65 of the definitions enshrined in the Act. Notwithstanding this panoply of different levels of risk, one can reasonably doubt that the AI Act really is a risk-based regulation.[87]

The notion of risk is arguably complex and may generate monsters. Risk entails an empirical analysis on the probabilities of events, their consequences, and costs, to determine the level of risk on which forms of accountability and responsibility may hinge. Despite the definition of risk in Art 3 no. 2 of the AI Act, however, for better or worse, what shall be deemed risky in the AI Act rests on the apodictic wording of Art. 5 (unacceptable risk) and Art. 6 (high risk) of the Act. In particular, Art. 6 refers to the lists of Annex I and Annex III. Annex I covers a set of twenty "harmonised" directives and regulations; whilst Annex III details the areas of high risk under Art. 6(2) of the Act. As occurs with speed limits, or the processing of personal data under Reg. (EU) 2016/679, i.e. the 'GDPR', there is the presumption that uses of AI under Art. 6 of Reg. (EU) 2024/1679 are highly dangerous. The same holds for the legal presumption that all LLMs, such as GPT-4 have 'high impact capabilities' pursuant to Art. 51(1) of the legislation, since the pre-training for GPT-4 just required about 10^25 FLOPS in 2024.

However, from the point of view on how to design laws that can achieve their purpose, this approach raises a twofold problem. On one hand, the distinction between high-risk and other than high-risk uses of AI, once detached from empirical evidence, exposes itself to the threat that certain uses of technology may fall within the loopholes of such political distinction; on the other hand, every risk-based approach of EU law has traditionally been linked with futureproofing techniques, as occurs in the GDPR with the principle of technological neutrality pursuant to Recital 15 and Art. 2 of the Regulation. Although the first proposal of the AI Act endorsed the principle of technological neutrality,[88] any futureproofing technique vanished from the final text of the Act. The result can be disconcerting.

We noted a ruling from 2009, in which the Court of Cassation in Italy defines a legal monster as every act that presents "incomprehensible legal solutions that defy the logic of the system".[89] The next parts of the analysis examine this troubling possibility as regards the protection of certain rights enshrined in EU law and the resilience of the AI Act. The assessment can be summed up in accordance with Fuller's ingredients (iv), (v) and (vi) of the list on what makes legal acts monstrous. Such requirements of monstrosity suggest a complex legal framework on principles (e.g., the fundamental rights of the EU Charter, of CFR); and the secondary legislation of the AI Act. The overall aim is to illustrate what a normative monster may look like.

5.2 A monstrous discrimination

The protection of fundamental rights is a mantra of the AI Act. Such protection regards Fuller's ingredient (v) of what makes legal acts monstrous: congruence and consistency vis-à-vis such fundamental rights of the EU Charter as those enshrined in Art. 20 (equality) and Art. 37 (a high level of environmental protection). The protection of fundamental rights in the AI Act is conceived of as follows: Chapter II of the legislation bans a number of AI practices; Chapter III with its five sections establishes an intricate set of duties and obligations for high-risk uses of the technology, including a fundamental rights impact assessment for certain high-risk uses under Art. 27; Chapter IV lays down transparency obligations for providers and deployers of certain AI systems, for example, chatbots; and Chapter X sets up codes of conduct for other than high-risk uses of AI with the voluntary application of specific requirements.

However, a problem with the design of the Act has to do with the fact that even other than high-risk uses of AI, in the jargon of the legislation, may entail a high-risk impact on society and the protection of fundamental rights. This is a critical issue. Consider the carbon footprint and energy requirements of the technology vis-à-vis the right to a high level of environmental protection enshrined in EU law with Art. 37 CFR. Scholars have

87. See R. Gellert, *The risk-based approach to data protection*, Oxford, Oxford University Press, 2020.

88. U. Pagallo, LLMs Meet the AI Act: Who's the Sorcerer's Apprentice?, *Cambridge Forum on AI: Law and Governance*, forthcoming.

89. Cassazione penale (Italy), sez. I, 3 March 2009, no. 17854.

time and again stressed that the development of AI systems and AI models can imperil crucial environmental resources for current and future generations.[90] Furthermore, the pressure on rare-earth elements generated by the computing industry, together with the increasing volume of e-waste, may have important socio-political implications for developing countries and vulnerable populations;[91] especially considering threats of dependency from private actors who own and operate AI models and infrastructures.[92] The AI Act only covers a part of the environmental issues brought forth by uses of AI under the high-risk management procedures of Art. 9 and the fundamental rights impact assessment of Art. 27. This latter assessment refers to such deployers of AI as public law bodies, private entities providing public services, and deployers of AI systems for the evaluation of the creditworthiness of individuals and the risk assessment and pricing related to life and health insurance. As a result, several environmental issues of AI are up to the voluntary application of the codes of conduct pursuant to Art. 95.[93]

To prevent misapprehensions on the claim of this section, it should be clear that self-regulation and codes of conduct do not represent a sort of legal monster per se. Further, it must be admitted that, under Art. 112(7) and Recital 174 of the AI Act, the final goal of the Codes of conduct of Art. 95 is to progressively expand the set of standards and the level of protection established for high-risk uses of AI to other than high-risk uses of the technology. In addition, should something go wrong despite such provisions of the Regulation, there is always the set of rules on ‘serious incident’ of Art. 73. According to the definitions of the AI Act, the formula of serious incident covers “incident or malfunctioning of an AI system that directly or indirectly leads to… serious harm to… the environment” (Art. 3(49)(d)). Moreover, the environmental provisions of the AI Act are often complemented with further fields of regulation in EU law, for example, with Art. 8 of Reg. (EU) 2023/588 on environmental and space sustainability, which includes the legal assessment of the uses of AI in outer space,[94] or with the environmental impact assessment of green labels and green claims pursuant to Art. 3 of the proposed Green Claims directive, which complements directive (EU) 2024/825 on the empowerment of consumers in the green transition.[95]

How Art. 9, 27, 73, 95, and 122 of the AI Act will be interpreted —- together with Art. 37 CFR and other pieces of EU legislation —- remains to be seen. However, what is a source of concern is the political choice to leave the environmental sustainability of the technology mostly to voluntary initiatives put in place by providers of other than high-risk AI systems through the formation of codes of conduct.[96] This decision can spawn monsters considering the principle of equality before the law under Art. 20 CFR. The AI Act’s framework, for example, should be confronted with that which the European Commission pretends from scholars when they present their Horizon Europe projects under Reg. (EU) 2021/695. In all these cases, EU law establishes a compulsory self-assessment of the environmental implications of the project to be funded (Art. 19 of the Regulation), which includes, (i) the description of uses of AI in the project with their power consumption and carbon footprint; (ii) the list of legal sources, including regulations and the ethical guidelines for trustworthy AI that AI systems of the project shall abide by; (iii) the ways in which the project intends to minimise, or prevent negative impacts on the environment; (iv) risk mitigation plans. To say the least, the AI Act could have imposed a similar compulsory environmental self-assessment for other than high-risk uses of AI. By

90. C. Wilson and M. van der Velden, Sustainable AI: An Integrated Model to Guide Public Sector Decision-making, *Technology in Society*, 2022, 68, 101926.

91. M. Heacock et al., E-waste and Harm to Vulnerable Populations: A Growing Global Problem, *Environmental Health Perspectives*, 2016, 124(5), 550-555.

92. See M. Bolton, R. Raven and M. Mintrom, Can AI Transform Public Decision-making for Sustainable Development? An Exploration of Critical Earth System Governance Questions, *Earth System Governance*, 2021, 9, 100116; also, A. Zuiderwijk, Y-C. Chen and F. Salem, Implications of the Use of Artificial Intelligence in Public Governance: A Systematic Literature Review and a Research Agenda, *Government Information Quarterly*, 2021, 38, 101577.

93. The European Parliament opposed this solution with only partial success. See P. Gailhofer et al., *The Role of Artificial Intelligence in the European Green Deal*, Study for the special committee on Artificial Intelligence in a Digital Age (AIDA), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

94. U. Pagallo, *The New Laws of Outer Space: Ethics, Legislation and Governance in the Age of Artificial Intelligence,* Oxford-New York, Hart, 2024.

95. See the European Commission’s proposal COM/2023/166 final.

96. See Gailhofer et al., The Role of Artificial Intelligence, above note 92.

endorsing the voluntary clauses of Art. 95, the threat of the Act is that scholars will deal with more legal burdens and environmental responsibilities for their EU projects than those of heavyweight companies for their other than high-risk AI systems in the EU market.

Of course, we can hope that the green factor will be determinant in the risk management of Art. 9, the impact assessments of Art. 27, and the safeguard clauses of Art. 95, whereas the governance mechanisms of the Act will hopefully be able to detect and tackle the environmental impacts of AI that may fall within the loopholes of the Regulation. Yet, it should be clear that the set of uses of AI under Art. 9 and 27 is limited; the Codes of Art. 95 are voluntary; and the criteria for the environmental assessment under Art. 37 CFR are open to divergent interpretations, i.e. between the environmental sustainability and the sustainable development of AI uses.[97] The contrast between the compulsory environmental self-assessment of scholars under the Horizon Europe programs and the self-regulation of Art. 95 of the Regulation reflects this uncertain state of legal affairs and is even strident considering the principle of equality before the law enshrined in Art. 20 CFR. Only a complex legal combination of convergent hermeneutical solutions can avert this final outcome. It seems fair to admit that it is this bet of the legislator what has the particular form of a legal monster.

5.3 The sorcerer's apprentice

One critical threat of technological regulation is the over-frequent revision of the law to cope with the pace of technological innovation. At times, normative efforts of legislators are doomed to fail simply because lawmakers ignore the subject they intend to discipline. Although the statement on legislative failures may seem obvious, contrary examples of ignorance abound; for example, the EU e-money directive 46 from 2000 that aimed to apply traditional forms of centralisation to online interaction. Soon after the implementation of the directive, new forms of payment, such as PayPal, made the legal regulation obsolete, forcing the EU legislators in Brussels to amend themselves with a new directive, n. 110 from 2009.[98] We may say that the 2000 e-money directive was a bad law, but still, not yet a legal monster.[99]

However, the field of civil aviation with the regulation of drones provides another cautionary tale about the risk of over-frequent revision of the law, in accordance with Fuller's ingredient (vi) on what makes legal acts monstrous. In fact, Reg. (EU) 2008/216 established a highly decentralised network for the governance and regulation of "unmanned aerial" vehicles (UAV) and systems (UAS), by hinging on the powers of the member states and of their national civil aviation authorities. The approach soon led to the fragmentation of the EU legal system and a wave of extremely detailed regulations and prohibitions on the use of drones by such authorities, as the Italian Civil Aviation Authority, i.e. 'ENAC'.[100] The EU law makers had to intervene with Reg. (EU) 2018/1139 on common rules for drones in the field of civil aviation.[101] Notwithstanding the centralisation of this new legal framework, also dubbed as the General Regulation, threats of fragmentation and over-frequent revision of legal texts were not prevented, but rather, are still in the making, as shown by the full array of delegated and implementing regulations of the European Commission (EC). This is the case of Reg. 2019/945 and the so-called Drones Regulation (Reg. 2019/947); the U-space regulatory package (Reg. 2021/664, Reg. 2021/665 and Reg. 2021/666); the EC Implementing Regulation 2023/203; down to new five EC regulations, i.e., from Delegated Reg. (EU) 2024/1107 to the Implementing Regulation (EU) 2024/1111. On top of that, focus should be on the set of opinions, guidance materials, and technical standards released by the European

97. See S. Abalansa, B. El Mahrad, J. Icely and A. Newton, Electronic Waste, an Environmental Problem Exported to Developing Countries: The GOOD, the BAD and the UGLY, *Sustainability*, 2021, 13(9), 5302; also, U. Pagallo, J. Ciani Sciolla and M. Durante, The Environmental Challenges of AI in EU law: Lessons Learned from the Artificial Intelligence Act (AIA) with its Drawbacks, *Transforming Government: People, Process and Policy*, 2022, 16(3), 359-376.

98. U. Pagallo, P. Casanovas and R. Madelin, The Middle-out Approach: Assessing Models of Legal Governance in Data Protection, Artificial Intelligence, and the Web of Data, *The Theory and Practice of Legislation*, 2019, 7, 1–25.

99. See Ch. Reed, *Making Laws for Cyberspace*, Oxford, Oxford University Press, 2012.

100. U. Pagallo, From Automation to Autonomous Systems: A Legal Phenomenology with Problems of Accountability, *International Joint Conferences on Artificial Intelligence Organization (IJCAI-17)*, Melbourne, 2017, 17-23.

101. E. Bassi, European Drones Regulation: Today's Legal Challenges, *International Conference on Unmanned Aircraft Systems (ICUAS)*, Atlanta, GA, USA, 2019, 443-450.

Aviation Security Agency, or 'EASA'. At the time of writing, we are still waiting for the first use of air-taxis for commuters, or for package delivery in urban centres.

The AI Act threatens a similar fate.[102] A warning sign was given by certain contradictory provisions of the first draft of the Act that simply required what is technically impossible, i.e., a monster in accordance with Fuller's ingredient (vii). For example, pursuant to Art. 10(3) of the 2021 Proposal, the request of AI data training to be "free of errors" is either impossible to obey or defies human nature. Two years later, in 2023, the lawmakers in Brussels discovered a new world of AI models to be disciplined in addition to the original material scope of the regulation. Whereas the final version of Art. 3(1) intends AI as a "machine-based system" that can operate with "varying levels of autonomy" and eventually adapt itself after deployment, the material scope of the legislation is complemented with the further definitions of 'general purpose AI model' (Art. 3(63)); 'high-impact capabilities' (no. 64); 'systemic risk' (no. 65); and 'general purpose AI system' (no. 66). A highly complex set of provisions has determined bans of technology (Chapter II of the Act); high-risk uses of AI (Chapter III); transparency obligations for certain AI systems (Chapter IV); GPAI (Chapter V); and codes of conduct for other than high-risk uses of technology (Chapter X). However, this complexity is only part of the problem. Leaving aside Fuller's ingredient (iv) on legal intelligibility, attention should be drawn to the birth of a new legal monster in accordance with Fuller's ingredient (vi).

Scholars have examined threats of legal obsolescence and methods for futureproofing in other fields of the law.[103] The problems of the AI Act with its own normative resilience can be illustrated, on the one hand, with the Commission's delegated powers of Art. 58, 60, 68, 72, 92, and 101 of the Regulation; on the other hand, with the seven fronts of Art. 112 on the evaluation and review of the AI Act. Every year the Commission will have to assess whether the list of Annex III and that related to Art. 5 should be amended (Art. 112(1)). Every four years, by the end of this decade, lawmakers shall discuss, among other things, whether "extending existing area headings or adding new area headings in Annex III" (no. 2). Reports should include the assessment of national competent authorities, state of penalties, harmonised standards, and "the number of undertakings that enter the market after the entry into application of this Regulation, and how many of them are SMEs" (no. 4). 2 August 2028 will be particularly relevant because that's the first deadline for the Commission's reports on the functioning of the AI Office, progress on the development of standards, and the impact and effectiveness of the Codes of conduct (no. 5, 6 and 7).

The overall picture of the AI Act is frightening as much as monsters usually are. The threat of over-frequent revision of this legal text is real even before the Act comes info force. The conjecture rests on the exponential growth of innovation, from computing power to data availability for further AI models, systems, and approaches that shall be expected over the next few years, or even months. It is a paradox that Recital 4 of the Act shall remind us of how "AI is a fast evolving family of technologies that contributes to a wide array of economic, environmental and societal benefits across the entire spectrum of industries and social activities." We can give legislators credit for being aware of the high risk of legal obsolescence. The AI Act establishes several legal mechanisms to tackle both the known-unknowns and even the unknown-unknowns of the legislation. Yet, the problem is not solved by devolving powers back to the Commission, complementing the definitions of the Act, integrating the lists of its Annexes, or checking the effectiveness of a myriad provisions. The problem is even more serious than that, and regards the original aim of the legislation, its risk-based approach.[104] Whether or not the AI Act has to be considered a risk-based regulation, a straight risk assessment of the uses of AI remains problematic because of the uncertainties associated with the notion of risk and the corresponding protection of rights; the difficulty to assess all risks raised by specific uses of AI; the costs related to such

102. For warning signs of the AI Act, see M. Veale and F. Zuiderveen Borgesius, Demystifying the Draft EU Artificial Intelligence Act — Analysing the Good, the Bad, and the Unclear Elements of the Proposed Approach, *Computer Law Review International*, 2021, 22(4): 97-112; also, V. Papakonstantinou and P. De Hert, The Regulation of Digital Technologies in the EU: The Law-Making Phenomena of 'Act-ification', 'GDPR Mimesis' and 'EU Law Brutality', *Technology and Regulation Journal*, 2022, May.

103. See B-J. Koops and R. Leenes, Privacy Regulation Cannot Be Hardcoded: A Critical Comment on the "Privacy by Design" Provision in Data Protection Law, *International Review of Law, Computers & Technology*, 2014, 28: 159-171; also, M. Durante, *Computational Power: The Impact of ICT on Law, Society, and Knowledge*, New York-London, Routledge, 2021.

104. See M. Ebers, Truly Risk-Based Regulation of Artificial Intelligence How to Implement the EU's AI Act, *European Journal of Risk Regulation*, 2024, 1-20; also, C. Novelli, F. Casolari, A. Rotolo, M. Taddeo and L. Floridi, Taking AI Risks Seriously: A New Assessment Model for the AI Act, *AI & Society*, 2024, 39(5), pp.2493-249.

assessment; and the futureproofing of the law. It is a terrible mistake to address the obsolescence of the law through the continuous revision of the legal texts. Such means would exacerbate the troubles with the ends of the entire legislation: a legal monster.

6 Conclusions

The paper dwelt on 2500 years of Western thought by distinguishing two kinds of ‘legal monster’ —- that is, either legal monsters as the object of legal regulation, or legal monsters as a source of criticism.

Drawing on the ancient Roman law’s notion of ‘monstrum vel prodigium’, Section 2 examined the formula as the object of legal regulation, illustrating the reasons why it should be considered as legally dead nowadays. Every legal system or law maker still referring to any human being as a legal monster would be the only one that should be conceived of as a human monster today. The formula —- which was the object of analysis by scholars and experts of positive law throughout the centuries —- may present some points of interest for other fields of contemporary research, such as criminology and sociology, rhetoric and politics, philosophy and aesthetics. Still, even in this case, what is at stake with the formula does not concern the notion of monster as the object of legal regulations, but rather, monsters as a source of criticism. Which brings us back to the second meaning of ‘legal monster’ with its variables.

Section 3 distinguished two forms of legal criticism, i.e. between the institutional and normative sides of the second meaning of the formula. Accordingly, either some legal systems can be considered as monstrous, or such monstrosity regards certain acts, statutes, and edicts of the legislator. Those are the meanings of the formula that are still ‘alive’ today. To substantiate the claim, Section 4 provided its philosophical foundations. Against every strict separation of law and morals, as occurs with certain variants of legal positivism, it seems fair to admit that legal institutions can be evil as much as normative acts can be monstrous. And yet, the drawbacks of every tight separation between law and morals are not fixed by simply subordinating the former to the latter, and hence, overruling the former with the latter, as occurs with several variants of the natural law tradition. Instead, focus should be on the institutional side of the law and how the law must strike a balance between multiple regulatory systems in society. By reversing the Kantian idea, according to which a nation of devils can establish a state of good citizens, if they “have understanding,”[105] we can say that even a nation of angels would need the law to make their coordination and collaboration possible through the “secondary rules” of the law, that is, the rules that allow the creation, modification, and suppression of the “primary rules” that govern people’s conduct.[106]

On the other hand, as regards the primary rules of the law, we can deem some of them monstrous on the basis of a means-ends efficacy perspective, not a substantial viewpoint on the essence of the law. Since principles of the natural law tradition have been endorsed by most Western legal systems in their post WW II constitutions, this contrast between legal instrumentalism and essences of the law has lost relevance in considering this or that normative act as monstrous. Such convergence of different and even opposite legal traditions may explain why the formula ‘legal monsters’ is often employed today with a certain theoretical leniency; however, the formula can still represent a powerful metaphor of legal criticism to the extent that it is also supported by a strong philosophical framework and robust arguments of positive law.[107] The paper provided this framework by summing up claims of scholars and obiter dicta of courts, such as the Italian Court of Cassation, according to eight requirements of monstrosity, that is, acts that protect personal interests; or that are secret; retroactive; unintelligible; contradictory; ever changing or incoherently administered; or unfeasible to obey.

Section 5 illustrated this threshold on monster laws with some blatant inconsistencies of Reg. (EU) 2024/1689, the AI Act. A normative act, ruling, or provision looks monstrous because it contradicts what positive law is supposed to be, or the ways in which we expect the law functions. By focusing on the environmental shortcomings of the AI Act and the threat of its over-frequent revision, the intent was not to exhaust the

105. I. Kant, *Perpetual Peace*, The Cambridge Edition of the Works of Immanuel Kant: Practical Philosophy, translated by M. Gregor, vol. 8, Cambridge University Press, Cambridge, 1999.

106. U. Pagallo, When Morals Ain’t Enough: Robots, Ethics, and the Rules of the Law, *Minds and machines*, 2017, 27(4): 625-638.

107. P. Crofts, The Corporate Monster Metaphor, *Law Text Culture*, 2022, 26, 73-96.

analysis of possible contradictions of the AI Act, but rather, to focus on what makes hard-to-read legal texts monstrous. The paper dwelt on requirements (iv), (v), and (vi) of Fuller's legal monstrosity to stress blatant drawbacks in the protection of fundamental rights, such as equality before the law (Art. 20 CFR), or the right to environmental protection (Art. 37 CFR), which add to the problems that the AI Act has with another pillar of the rule of law, i.e., legal certainty, given the threats of obsolescence in the EU regulation of technology, from drones to AI systems. Although rumors on the monstrosity of EU institutions are clearly exaggerated, techniques of legislation and insensibility for green arguments —- according to the claims of scholars and institutions, including parts of the European Parliament —- make some provisions of the AI Act hard to defend.

The threshold for the monstrosity of normative acts was thus sorted out according to eight different kinds of monster with which jurists and citizens may deal. The analysis on the means for effective legislation and constitutional soundness can be extended to all claims about, say, the monstrosity of Singapore's 2021 foreign interference bill[108]; the 2022 reform of international trade agreement[109]; or Italy's 2024 right to image of cultural property.[110] The formula sets standards on whether acts are not only bad, but monstrous, representing a potent source of criticism against every legislation that contradicts basic conditions on what the law is supposed to do. On this basis, the formula 'legal monsters', handed down by a thousand-year-old tradition, deserves to be used today: there is no shortage of legal cases.

Bibliography

Abalansa, S., El Mahrad, B., Icely, J., & Newton, Electronic Waste, an Environmental Problem Exported to Developing Countries: The GOOD, the BAD and the UGLY, *Sustainability*, 2021, 13(9), 5302.

Allott P., The Concept of European Union, *Cambridge Yearbook of European Legal Studies*, 1999, 2, 31-59.

Allott P., Epilogue: Europe and the Dream of Reason, in J.H.H. Weiler and M. Wind (eds), *European Constitutionalism beyond the State*, pp. 202-225, Cambridge, Cambridge University Press, 2003.

Aeschylus, *Eumenides*, translated by A. J. Podlecki, Liverpool, Aris & Philips, 1989.

Arendt H., *Eichmann in Jerusalem: A Report on the Banality of Evil*, New York, Viking Press, 1963.

Aristotle, *Poetics*, translated by M. Heath, London, Penguin, 1997.

Bassi E., European Drones Regulation: Today's Legal Challenges, *International Conference on Unmanned Aircraft Systems (ICUAS)*, Atlanta, GA, USA, 2019, 443-450.

Bobbio N., *Thomas Hobbes and the Natural Law Tradition*, Chicago, University of Chicago Press, 1993.

Bolton, M., Raven, R. and M. Mintrom, Can AI Transform Public Decision-making for Sustainable Development? An Exploration of Critical Earth System Governance Questions, *Earth System Governance*, 2021, 9, 100116.

Brent R.L., Medicolegal Aspects of Teratology, *The Journal of Pediatrics*, 1967, 71(2): 288-298.

Brutus S.J., *Vindiciae Contra Tyrannos. A Defense of Liberty Against Tyrants*, translated by Ch. H. McIlwain, London, Bell & Sons, 1924.

Cadava E., The Monstrosity of Human Rights, *PMLA*, 2006, 121(5): 1558–65.

Canguilhem G., Monstrosity and the Monstrous, *Diogenes*, 1964, 40, 27-42.

Christianson A.L., Attaining Human Dignity for People with Birth Defects: A Historical Perspective, *South African Medical Journal*, 2013, 103(12:1): 1014-1019.

Cicero M. T., *On Duties*, translated by W. Miller, Cambridge, MA, Harvard University Press, 1913.

108. See above note 54.

109. Neufeld, Investment Law's Monstruous Reform, above note 55.

110. See above note 56.

Cicero M. T., *The Verrine Orations*, translated by L.H.G. Greenwood, Cambridge MA, Harvard university press, 1966-1967.

Crofts P., The Corporate Monster Metaphor, *Law Text Culture*, 2022, 26, 73-96.

De Vettel E., *The Law of Nations, Or, Principles of the Law of Nature*, edited by B. Kapossy and R. Whatmore, Indianapolis, Liberty Fund, 2008.

De Wilde M., Enemy of All Humanity: The Dehumanizing Effects of a Dangerous Concept, *Netherlands Journal of Legal Philosophy*, 2018, 47(2):158-175.

Durante, M, *Computational Power: The Impact of ICT on Law, Society, and Knowledge*, New York-London, Routledge, 2021.

Ebers M., Truly Risk-Based Regulation of Artificial Intelligence How to Implement the EU's AI Act, *European Journal of Risk Regulation*, 2024, 1-20.

Enzensberger H. M., *Brussels, the Gentle Monster: or the Disenfranchisement of Europe*, London, Seagull, 2011.

Finnell R. H., Teratology: General Considerations and Principles, *Journal of Allergy and Clinical Immunology*, 1999, 103(2), S337-S342.

Foucault M., *Abnormal: Lectures at the College de France 1974-1975*, London, Verso, 2003.

Fuller L.L., Positivism and Fidelity to Law: a Reply to Professor Hart, *Harvard Law Review*, 1958, 71(4): 630–672.

Fuller, L.L. *The Morality of Law*, revised edition, New Haven, CT, Yale University Press, 1964.

Gailhofer, P. et al., *The role of Artificial Intelligence in the European Green Deal*, Study for the special committee on Artificial Intelligence in a Digital Age (AIDA), Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2021.

Gellert R., *The Risk-based Approach to Data Protection*, Oxford, Oxford University Press, 2020.

Hart H.L.A., Positivism and the Separation of Law and Morals, *Harvard Law Review*, 1958, 71(4): 593–629.

Hart H.L.A., Book Review: Lon Fuller, The Morality of Law, *Harvard Law Review*, 1965, 78: 1281–96.

Heacock M. et al., E-waste and Harm to Vulnerable Populations: A Growing Global Problem, *Environmental Health Perspectives*, 2016, 124(5), 550-555.

Hobbes Th., *Leviathan*, Seattle, Pacific Publishing Studio, 2011.

Kant I., *Perpetual Peace*, The Cambridge Edition of the Works of Immanuel Kant: Practical Philosophy, translated by M. Gregor, vol. 8, Cambridge University Press, Cambridge, 1999.

Kocharov A. (ed), *Another Legal Monster? : An EUI debate on the Fiscal Compact Treaty*, EUI LAW, September, Fiesole, Italy, 2012.

Koops, B.-J. and R. Leenes, Privacy Regulation Cannot Be Hardcoded: A Critical Comment on the "Privacy by Design" Provision in Data Protection Law, *International Review of Law, Computers & Technology*, 2014, 28: 159-171.

Krisch N., Europe's Constitutional Monstrosity, *Oxford Journal of Legal Studies*, 2005, 25(2): 321-334.

Land I. (ed.), *Enemies of Humanity: The Nineteenth-Century War on Terrorism*, New York, Palgrave Macmillan, 2008.

Leibniz G.W., *Theodicy: Essays on the Goodness of God, the Freedom of Man and the Origin of Evil*, translated by E.M. Huggard, La Salle, Ill., Open Court, 1995.

Locke J., *Essay Concerning Human Understanding*, ed. P. Nidditch, Oxford, Oxford University Press, 1975.

Luban D., The Enemy of All Humanity, *Netherlands Journal of Legal Philosophy*, 2018, 47(2): 112-137.

May J. M., Cicero and the Beasts, *Syllecta Classica*, 1996, 7, 143-153.

Neufeld R., Investment Law's Monstrous Reform, in D. Bethlehem et al. (eds), *The Oxford Handbook of International Trade Law (2e)*, 2nd edition, Oxford, Oxford University Press, 2022.

Novelli, C., Casolari, F., Rotolo, A., Taddeo, M. and L. Floridi, Taking AI Risks Seriously: A New Assessment Model for the AI Act, *AI & Society*, 2024, *39*(5): 2493-2497.

Pagallo U., *Homo homini deus: Per un'introduzione al pensiero giuridico di Francis Bacon*, Padua, Cedam, 1995.

Pagallo U., *Il diritto nell'età dell'informazione*, Turin, Giappichelli, 2015.

Pagallo U., Even Angels Need the Rules: AI, Roboethics, and the Law, in *ECAI 2016: Frontiers in Artificial Intelligence and Applications*, vol. 285, pp. 209-215, Amsterdam, IOS Press, 2016.

Pagallo U., From Automation to Autonomous Systems: A Legal Phenomenology with Problems of Accountability, *International Joint Conferences on Artificial Intelligence Organization (IJCAI-17)*, Melbourne, 2017, 17-23.

Pagallo U., When Morals Ain't Enough: Robots, Ethics, and the Rules of the Law, *Minds and machines*, 2017, 27(4): 625-638.

Pagallo U., Dismantling Four Myths in AI & EU Law through Legal Information 'about' Reality, in H. Sousa Antunes et al. (eds), *Multidisciplinary Perspectives on Artificial Intelligence and the Law*, pp. 251-260, Cham, Springer, 2023.

Pagallo U., *The New Laws of Outer Space: Ethics, Legislation and Governance in the Age of Artificial Intelligence,* Oxford-New York, Hart, 2024.

Pagallo U., LLMs Meet the AI Act: Who's the Sorcerer's Apprentice?, *Cambridge Forum on AI: Law and Governance*, forthcoming.

Pagallo U., Casanovas P. and R. Madelin, The Middle-out Approach: Assessing Models of Legal Governance in Data Protection, Artificial Intelligence, and the Web of Data, The Theory and Practice of Legislation, 2019, 7, 1–25.

Pagallo U., Ciani Sciolla J. and M. Durante, The Environmental Challenges of AI in EU law: Lessons Learned from the Artificial Intelligence Act (AIA) with its Drawbacks,*Transforming Government: People, Process and Policy*, 2022, 16(3), 359-376.

Papakonstantinou, V. and P. De Hert. The Regulation of Digital Technologies in the EU: The Law-Making Phenomena of 'Act-ification', 'GDPR Mimesis' and 'EU Law Brutality', *Technology and Regulation Journal*, 2022, May.

Piirimäe P., Men, Monsters and the History of Mankind in Vattel's *Law of Nations*, in S. Zurbuchen (ed.), *The Law of Nations and Natural Law 1625-1800*, pp. 159-185, Leiden, Brill, 2019.

Pinfari M., *Terrorists as Monsters: The Unmanageable Other from the French Revolution to the Islamic State*, New York, Oxford Academic, 2019 (online edition).

Plautus, *The Comedies*, translated by H. T. Riley, London, Bell & Sons, 1912.

Plato, *Republic*, translated by P. Shorey, Cambridge, MA, Harvard University Press; London, William Heinemann Ltd., 1969.

Polifka J. E., & Friedman, J. M., Medical Genetics: 1. Clinical Teratology in the Age of Genomics, *Canadian Medical Association Journal*, 2002, 167(3): 265-273.

Pufendorf S., *The Present State of Germany*, translated by E. Bohun, Indianapolis, Liberty Fund, 2007.

Reed Ch., *Making Laws for Cyberspace*, Oxford, Oxford University Press, 2012.

Sharpe A., Structured Like a Monster: Understanding Human Difference Through a Legal Category, *Law and Critique*, 2007, 18(2): 207-228.

Sharpe A.N., *Foucault's Monsters and the Challenges of Law*, Abingdon, Routledge, 2010.

Schrage E.J.H., Capable of Containing a Reasonable Soul, in R. Feenstra, A.S. Hartkamp, J.E. Spruit, P.J. Sijpesteijn & L.C. Winkel (eds), *Colatio Iuris Romani*, vol. 2, pp. 469-488, Amsterdam, J.C. Gieben, 1995.

Tedeschini M., Il mostro è un paradosso, *Studi di estetica*, 2021, XLIX, IV (2): 240-259.

Treuer G.S., *Monstrvm Arbitrarii Iuris Territorialis A Legibvs Imperii E Germania Profligatum*, Schroeter, 1739.

Veale, M. and F. Zuiderveen Borgesius, Demystifying the Draft EU Artificial Intelligence Act — Analysing the Good, the Bad, and the Unclear Elements of the Proposed Approach, *Computer Law Review International*, 2021, 22(4): 97-112.

Voltaire, *An Essay On Universal History, The Manners, And Spirit Of Nations*, translated by Nugent, London, Nurse (Ulan Press, 2012).

Watson A. (ed), *The Digest of Justinian*, Philadelphia, University of Pennsylvania Press, 1997.

Wilson C. and M. van der Velden, Sustainable AI: An Integrated Model to Guide Public Sector Decision-making, *Technology in Society*, 2022, 68, 101926.

Wolfe C.T., The Materialist Denial of Monsters, in C.T. Wolfe (ed), *Monsters and Philosophy*, pp. 187-204, London, College Publications, 2005.

Wolff Ch., *The Law of Nations According to the Scientific Method*, translated by J. H. Drake, Oxford, Clarendon Press, 1934.

Zuiderwijk A., Chen Y-C. and F. Salem, Implications of the Use of Artificial Intelligence in Public Governance: A Systematic Literature Review and a Research Agenda, *Government Information Quarterly*, 2021, 38, 101577.