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ARTIFICIAL INTELLIGENCE AND CRIMINAL LIABILITY: CAN ARTIFICIAL INTELLIGENCE SYSTEMS BE SUBJECTS OF A CRIME?

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ANNOTATION

This article examines criminal liability in connection with the increasing use of artificial intelligence systems. It discusses the applicability of traditional criminal law elements, including actus reus and mens rea, to autonomous technologies and considers whether AI should be recognized as a legal person. Particular attention is paid to the allocation of responsibility among developers, operators, users and corporations. Examples involving self-driving vehicles, predictive policing and autonomous military systems illustrate difficulties in identifying accountable actors. The article compares regulatory approaches in the European Union, China and Japan, and considers proposals for improving oversight, insurance, transparency and the protection of human rights while maintaining human responsibility for the use of AI.

Key words: artificial intelligence, criminal liability, autonomous systems, mens rea, legal personality, accountability, human rights.

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SUN’IY INTELLEKT VA JINOIY JAVOBGARLIK: SUN’IY INTELLEKT TIZIMLARI JINOYAT SUBYEKTI BO‘LA OLADIMI?

ANNOTATSIYA

Maqolada sun’iy intellekt tizimlaridan foydalanish sharoitida jinoiy javobgarlik masalasi tahlil qilinadi. Jinoyat tarkibining an’anaviy unsurlari, jumladan, actus reus va mens rea tushunchalarini avtonom texnologiyalarga tatbiq etish hamda sun’iy intellektni mustaqil huquq subyekti sifatida tan olish imkoniyati ko‘rib chiqiladi. Ishlab chiquvchilar, operatorlar, foydalanuvchilar va tashkilotlar o‘rtasida javobgarlikni taqsimlashga alohida e’tibor qaratiladi. Haydovchisiz transport, jinoyatchilikni bashorat qilish algoritmlari va avtonom harbiy tizimlar misolida aybdor shaxsni aniqlashdagi qiyinchiliklar yoritiladi. Yevropa Ittifoqi, Xitoy va Yaponiyaning tartibga solish yondashuvlari qiyoslanib, nazorat, sug‘urta, shaffoflik va inson huquqlarini himoya qilish mexanizmlarini takomillashtirish bo‘yicha takliflar beriladi.

Kalit so‘zlar: sun’iy intellekt, jinoiy javobgarlik, avtonom tizimlar, ayb, huquq subyektliligi, ishlab chiquvchilar, inson huquqlari.

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ИСКУССТВЕННЫЙ ИНТЕЛЛЕКТ И УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ: МОГУТ ЛИ СИСТЕМЫ ИСКУССТВЕННОГО ИНТЕЛЛЕКТА ВЫСТУПАТЬ СУБЪЕКТОМ ПРЕСТУПЛЕНИЯ?

АННОТАЦИЯ

В статье рассматривается проблема уголовной ответственности в условиях использования систем искусственного интеллекта. Анализируется применимость традиционных элементов состава преступления, включая actus reus и mens rea, к автономным технологиям, а также возможность признания искусственного интеллекта самостоятельным субъектом права. Особое внимание уделяется распределению ответственности между разработчиками, операторами, пользователями и организациями. На примере беспилотного транспорта, алгоритмов прогнозирования преступности и автономных военных систем рассматриваются практические трудности установления виновного лица. Сопоставляются подходы Европейского союза, Китая и Японии к регулированию искусственного интеллекта, а также предлагаются меры по совершенствованию механизмов контроля, страхования, прозрачности и защиты прав человека.

Ключевые слова: искусственный интеллект, уголовная ответственность, автономные системы, вина, правосубъектность, разработчики, права человека.

Introduction to AI and Criminal Law

Role and definition of Artificial Intelligence

Artificial Intelligence is defined in various ways. A machine that enables a more effective way to replace humans in the labor market is one way to define AI. Evaluating external inputs and using it to tackle specific tasks is another way to see AI. With the diversity of definitions, artificial intelligence is generally understood as a tool that helps solve problems, be it personal or professional. Several years ago, before the release of AI applications, people observed how AI worked via personal

assistants: Cortana, Siri etc. This is how AI was used at its early stages. Companies started to adopt AI to excel manufacturing and operational tasks, minimizing expenses for labor and excluding human factor at production. Some implement AI for demand and forecast purposes. Sectors of government use AI for their own needs. Healthcare sector with the help of AI improve accuracy of determining patients' diagnoses, massive data facilitates more appropriate personal treatment. In the education sector AI is limited, because it exposes students to losing critical thinking and autonomy. However, students are being taught how to use AI, their knowledge about the technology is being greatly expanded. Focusing on fundamental principles of AI facilitates student's involvement in AI-use. In manufacturing the technology has established its efficacy, through forecast tools, machine-deviation analysis in workflow. Given its moderate cost AI became primary tool not only within big companies, but also amongst small and medium-sized manufacturers.

AI challenges traditional concepts of criminal responsibility

Traditional definition of criminal liability is based on the idea that action is made by a human. Actus reus - physical implication (hit, murder or theft), or means rea - having an intention (conscious intent). This raises an issue of whether it is adequate to impose a burden of responsibility on AI or is it the “creators” that should carry the consequences. Traditional categorization is an inappropriate way to imply on machines, mainly due to the nature of defining culpability - main normative theory of punishment. With regard to criminal activities performed by AI systems, analysis reveals several theoretical challenges: AI is not “consciously aware” and is deprived from the ability of moral assessment - making AI responsible is illogical. Secondly, only morally accountable agents can be exposed to punishment. Having taken the aforementioned into account it is still not enough to establish culpability, also required capacity to carry responsibility, which is based on the ability to be a moral agent. Thirdly, the extent of the defendant's culpability is determined by the ability to sense “reasons-responsiveness”. Although culpability cannot be imposed, the law system is able to prevent threats implied by AI beforehand (ex-ante). For having prevention-methods functioning, shifting focus on rational abilities is required, rather than defining its moral abilities. Within the borders of traditional criminal law AI agents are incapable of carrying the burden of criminal commitment and it cannot be considered as a limitation of criminal law; it should be regarded as the law embodying the fundamental principle of culpability. [1]

Legal Personality and Criminal Liability

Fairness of considering AI-systems as legal persons under the criminal law

Traditionally not alive objects are perceived as “simple things”, people carry responsibility for. However, AI is unlike those "objects", due to the fact that it makes decisions autonomously and can adapt to new circumstances, change its behavior; learn based on previous “experience”. For example, a Vacuum Cleaner Robot, that works according to pre-installed settings is able to alter its “cleaning route”, changes in the code are not necessary. Autonomous skills oftentimes are exercised outside human control, in case AI is negotiating e.g. signing a contract, details of AI decisions remain unclear, this creates jurisdictional uncertainty – who bears responsibility. When something contains human traits, one should consider whether it deserves defense (from human stand point), if AI reaches cognitive parity, then refusing its culpability is unfair. The ability to be held legally accountable is one of the key elements to prove AI guilty, as EU-Parliament stated. This shows the real issues in accountability mechanisms that should be fulfilled. However, in practice, the scope of such liability gaps is exaggerated. There is another reason to be cautious regarding this approach: recognizing AI as a legal entity would inevitably lead to shifting responsibility from natural subjects to artificial. This creates stimuli to transfer culpability on “artificial entities”. Recognizing AI as a legal person presents a delicate matter. From one perspective, autonomy, ability to learn and adapt differ AI from other “simple things”. However, granting AI legal status weakens the principles of justice and accountability. Before considering expanding the borders of legal capacity, determining clear criteria assessing autonomous deeds warrant legal recognition is required, in order that real culprits (humans) do not evade prosecution. [2]

Comparing with corporate criminal liability as an existing legal analogy

When corporations develop AI-powered Systems in an effort to delegate certain corporate decisions a new relationship between liability and accountability arises. Such systems handle a wide range of tasks e.g. investment analysis, credit risk assessment, smart contract. The efficiency of delegation is reasonable and justified, however there is an ethical aspect of such delegation: who is responsible for a mistake by an AI or company? With AI sophistication companies are given room to lean towards blaming AI. Corporate criminal liability terminology exists due to the fact that humans take operational control over corporations, in case of serious damage inflicted to clients - the workers carry direct responsibility for the ability to prevent incidents. AI, on the other hand, is highly autonomous: they make independent decisions, even though it entails liability and causes harm. Corporate liability shows that law may impose moral and jurisdictional responsibility on “simple things”, however, with regard to AI the question remains unsolved, because of its complexity and autonomy, which a priori implies the exclusion of human influence.

Mens Rea and Actus Reus in the Context of AI

Analysis of whether AI can form intent (mens rea) or perform a guilty act (actus reus).

Actus Reus refers to a person’s action or absence of action. Oftentimes when capturing culpability (the person’s behavior is excluded), certain external elements and circumstances are considered too. Different psychological state presence is a requirement of mens rea, on the other hand. The greatest degree of means rea is “knowledge”, and the intention of a person; negligence can be determined as lower level of mens rea. Actus Reus shows how criminal deeds are expressed externally. It may be qualified as a deliberate act or it can manifest itself in non-performance of an obligation. In order to establish liability of suspects or real criminals, justification of the elements (mens rea and actus reus) are utmost required. In the context of Artificial Intelligence, there is no possibility AI can form both. The machine can be conscious of certain things or objects; however, human consciousness extends far beyond any programs or data input. Emotions, intentions (within human sense) are not attributes of machines. Instead, the internal mechanism of thinking, reflecting and assessing is solely based on algorithmic computation. Actus Reus and Mens Rea are considered fundamental principles of criminal liability, although Artificial Intelligence may perform complex tasks, adapt to external circumstances it still lacks elements to completely form mens rea. Artificial Intelligence performs mens rea and actus reus, but internal processes cannot be equal to human intelligence in the context of bearing liability. It should be seen as a critical issue in legal accountability and to solve this, scientists work on alternative means of imposing responsibility on developers, operators or even companies - or gradually turning into corporate liability.

How these elements might apply differently to autonomous systems

Due to the sophistication of AI-powered systems it is exceedingly difficult to gauge and replicate the intentions of such machines. Human senses/reasoning, intention forming, are not applicable to them. Therefore, scientists split into two groups: the first group - thinks that AI should not be imposed liability for criminal activities, stating that they are deprived from awareness and the idea of such machines possessing the requirements of mens rea is illogical. Explaining this by the fact that in the ordinary sense self-awareness, reasoning and sensing implies with understanding and forecasting self-behavior. Developers or creators of cognitive systems should take responsibility for the actions of their creations, in case the creators could/must/should have seen the potential risk and take no measures to prevent it. The second group of scientists suggests that ideas such as “forecasting risks or inflicted damages” are not enough to impose responsibility on the creators, as the latter may not know how exactly the harm is going to be inflicted.

Human Responsibility and Accountability

Examining the role of developers, operators, and users in AI-related crimes.

What should developers expect in more rigorous liability framework grounded in negligence? Two possible scenarios can be discerned and they are closely connected with insurance agreement. The first scenario assumes keeping AI-systems as ordinary employees. Employers bear responsibility

for reckless actions of the workers; this creates a stimulus for companies to sign policy agreements and defend their workers. This raises a question of whether companies could evade punishment, in case the part of specialists (doing risk assessment) would be classified as independent contractors. Another issue is that modern AI-systems are not developed from scratch, but rather on the basis of existing libraries. The libraries are open-sourced, for example a company may use different open-source libraries and modify their system, the boundaries between open-source and close-source are blurred. In other words, one system may contain a variety of libraries and modifications made by different independent developers, monitoring responsibilities is beyond reach. Second scenario – labeling AI developers as professionals equaling them to socially important professions. As these systems may affect society and inflict real harm, insurance agreement plays a vital role in their duty. In this case it means limiting their professional mistakes and uncertified or underqualified specialists. This could on the other hand result in labor market shortage, bureaucracy and companies may relocate to a country without the limitations. As a way of addressing the problem, the "Diploma Privilege" method is suggested, balancing between quality control and entry level of profession. The extent of safety and responsibility is directly affected by the degree of professionalism of the people that develop such systems. The starting point of regulating AI should be accountability of people. [3]

Should liability shift from machines to humans?

Advanced Technologies are never complete - updates, modifications keep the system running. The amount of data users input in technologies such as e.g. Chatgpt, Grok, Copilot etc. helps them to further process the data and learn on the basis of it. Input data defines the "behavior" of such Systems. This also means the one who embodies and uses sophisticated systems contributes to projects' development. This gives a distinct level of inter-accountability between AI and the Developer – shared responsibility. Another involved party is users and their contribution expresses in adequate data input or giving correct information. Oftentimes "Law of Responsibility" focuses solely on the question "can a legal person may carry responsibility?". Cooperation between the parties can vary and be flexible, control over programs may be spread across them, but the latter (spreading) does not always mean transferring the responsibility. In case the party does not have control, establishing responsibility might be problematic. It is justified to state the developers of such systems and the users have shared accountability of running and exploiting, given its "uncompletedness". If the technology functions without clear boundaries so shall the other party – accountability implies on a group of people. However, shared accountability within AI systems presupposes differentiable or proportional liability across the actors/executors. E.g. a militarized system decides to hit civilian targets breaching the norms of international law, it is unreasonable to hold officials accountable. The most feasible method of transferring responsibility could be reverse burden of proof, meaning it is required to prove that the actor/executor did not have and could not have control over specific tasks. The new method should shift from the traditional way of imposing accountability to the spread accountability form, where extent of responsibility is the primary hallmark when determining guiltiness.

Case Studies and Real-World Examples

Cases involving self-driving cars, algorithmic bias in law enforcement, or malfunctioning autonomous drones

The first case regarding self-driving cars happened in Arizona. An UBER self-driving vehicle hit a pedestrian, while being in autopilot, later it was confirmed by the company itself. During the investigation, prosecution claimed there was no grounds for criminal liability, although the court had been held against the operator that was sitting in the car. She later pleaded guilty for endangerment and was sentenced to three years of probation. [4] As a result, Uber ceased testing autopilots in vehicles, first in Arizona, later in the other states. Predpol – system helps reveal forecasts of criminal activities in certain districts, resulting in active patrolling. The system is used in police departments and in courts, and contains prejudice. Directing police officers solely to underprivileged neighborhoods was common practice, though full of bias. Terminating the system completely is likely not to happen, but further development can be made eradicating prejudice and bias. Another example

of system malfunctioning happened during the Libyan civil conflict. Using drones was part of an effective plan against enemies, the drones were chosen due to their capacity to function without communication with the center. The drones attacked a logistics convoy of allies and killed a few squads of soldiers and illuminated the supply. These cases show substantial flaws in the systems not controlled by humans. Legal frames should consider the blurry boundaries of responsibilities between two parties (machines and humans), whether it is a fatal accident that happened during the test auto-pilot, prejudice in the law enforcement system or within military context.

How courts or legal scholars have approached these cases

Lawyers and scientists view such cases as an alert to change the traditional legal frameworks in the era of emerging new autonomous, "self-reflective/learning", adaptive systems. Regarding the first case happened in Arizona, no direct accusations were brought against the company itself, explaining this by autonomy of system. Instead, operator carried the burden of punishment of this incident. The operator neglected the safety rules and should have predicted the incident beforehand, ultimately, she was given three years of probation. Predpol system developers did not face court, however some lawyers-scientists like Andrew Selbst and Daniel Sitron state prejudice and bias algorithms recreate system discrimination. [5] This ruins the fundamentals of the justice system.

Likewise, in case of the drones, there is no direct court precedents or international tribunals. However, wide and well-known ethical discussions have been made, led by world-wide leading academic community. For example, UN Panel Experts of Libya, stated the drones could have been controlled by humans, however, no mechanisms to recognize the producers or users as guilty is available. [6] Rebecca Crootof in her journal "The Killer Robots are Here" stated that under international law the burden of responsibility should carry the government or the party that exploits AI-powered systems. Heather Roff and Noel Sharkey point out that the auto pilot drones undermine primary fundamentals of humanitarian laws in terms of proportionality, as they (machines) are deprived from moral reasoning. The accidents demonstrate that modern legal mechanisms have significant drawbacks. This is reflected in errors while assessing the environment, demographic status quo of certain areas. A hybrid model of spreading responsibility and punishment necessity emerges, and the incidents are the real reasons to start developing a spreading mechanism.

Ethical and Moral Considerations

Fairness of punishing humans for actions taken by autonomous systems

Responsibility for the actions of AI-systems are widely discussed; scientists, lawyers, theoreticians do not have common opinion. The model of proportional spread of responsibility reflects the principles of adequacy, justice and fairness. There are three parties involved in using AI-powered systems, those are: developers, specialists (those who monitor systems), users. Each entity should have its own frame of responsibility. For example: developers' responsibility may be in assessing or foreseeing risks program can perform; AI-specialists could send alert notifications to the users or embed two-step request processing; and users should follow strict rules using AI, to which they should sign before entering the program. Three-stage responsibility mitigate the risks of using AI to inflict harm to anyone or cause serious damage. However, this only applies to civil use of AI, in military context it is still unclear, due to its political difficulties.

Reflecting on ethical frameworks guiding criminal justice in the age of AI.

Use of AI by criminals increased for the last couple of years, it now poses a serious societal issue. AI algorithms are exploited to commit complex criminal cyber offenses. Detection of such commitments is challenging, on top of that, blurred and unclear status of AI in crimes make the issue more complicated to solve. Personal data and safety are in vulnerable position with the rise of AI use Defining ethical framework of AI is highly significant. Developing framework prevents misuse and may help hold developers accountable and operators for intentional misuse of AI. Ethical guidelines suggested by Dr. Kamshad Mohsin and Dr. Vikas Sharma in their article suggests that ethical guidelines should include: bias mitigation, transparency, privacy protection. Bias in this context means examining the algorithms for prejudice, using different representative data for equaling people for the algorithm. Privacy protection should mean following the laws depending on a country in which

the system functions, using verified encryption technologies and strengthening the safety part log-in process (merging two-step verification or identity verification). It creates a solid background and basis for the ethical side of AI and following the guidelines creates a foundation for balancing between technology efficiency and human rights protection. [7]

Comparative Legal Prospectives

Emerging legislation and/or policy proposals

Council of the European Union approved the act on Artificial Intelligence in May 2024. The law facilitates the direction of AI advancement, framing the algorithms working within certain boundaries. By adopting this law European Union draws attention to the trust and transparency. The key principle of this Law is regulating AI-systems on the basis of risk assessment, it discerns the systems on four categories: Minimal risk – used in gaming, spam filtering; limited risk – notifying the user; high risk – used in justice systems, medicine and other socially important sectors; restricted practice – AI that capable of controlling people's/mass behavior or violating human rights. [8] In August 2023, China passed law regulating the use of technology, the purpose of the document was similar to the one of European Union, however with some distinctions. The law

Applies to all AI-systems that offering computing services, however, the law does not extend to the internal use of AI e.g. for the purposes of researching. AI-services providers must comply with values and conventions of China, exclude discrimination and notify authorities or respond upon the first demand. The document establishes strict and systematic regulation over the AI-providers. Such regulations provide staying within the ethical boundaries, protection of human rights and obeying internal politics of the country. Both regulators have taken important measures with regard to the use of AI across their country. Whereas EU is focusing on general boundaries, grouping the systems by risk assessment method, China, on the other hand, sets out clear, strict and non-ambiguous rules, requiring the service providers to take into account national and cultural traits. [9]

Analysis of different jurisdictions addressing/preventing AI related crime

The method of dealing with AI related crimes differs depending on countries legislation. Within legislation of EU, the law does not entail criminal liability for the AI systems, but rather focuses on service providers and/or users holding them accountable for the malfunction of the system. Likewise, the legislation passed in China, service providers and/or users are responsible for crimes committed by the AI or/and with the help of AI. Breaching the law entails bearing responsibility according to the laws (e.g. Law on Personal Data). Japan legislation system took the elements of both legal frameworks (EU and China), while trying to set out general boundaries for users and service providers, Japan law on regulating AI stipulates criminal liability for breaching the use of AI for unlawful purposes both for "creators" and users. Governments recognize the necessity of regulating AI, because the tool may be used to commit socially harmful acts.

Conclusion and Personal Reflection

Summarizing main arguments

AI became integral part of daily technology use in various fields ranging from industry to state governance. AI simplifies routine tasks, reserving human efficiency capacity for other important tasks. At the same time, AI presents a major challenge for traditional criminal law, blurring the boundaries in determining responsibility. Insufficiency of Actus Reus and Mens Rea reveals that traditional understanding of criminal liability should be reseen. Acknowledging AI as a legal person tends to shift focus from the real perpetrators upon the systems. The cases mentioned show a critical issue – responsibility gap between humans and AI. Technology functions without human control, but its actions affect human rights and public safety. Legislations of different countries reflect various methods to deal with the problem. In the EU the law is risk-assessing oriented, while China focuses on strict regulation for AI providers; Japan combines the traits of those two, including the possibility of holding criminal liability for the creators and the users.

The implementation of AI in the public depends not only on technical capacity, but also on legal framework, that incorporates following ethical principles, human rights protection. Effective

system should take into account shared proportional responsibility of actors/parties involved in developing and exploiting. Only forming these elements is the key condition for effective use of AI in variety of circumstances and sectors.

Recommendations for how criminal law should evolve to address AI responsibility in the future

Modern criminal legislation stumbles upon unique issue of regulating risks connected with AI-powered machines. As AI conscious, morally and ethically deprived it cannot be seen as legal entity. Responsibility of people: developers and users should be gradually embedded in criminal law framework. Developers of high-risk system carry strict liability for foreseen dangerous implementation of their system, including “explanation” logs, emergency mechanisms of shutting down. Companies that embed are responsible for negligence in the absence of controlling and oversight. Instead of granting full legal personhood, it suggested to categorize as “autonomous functional agent”. This status gives AI limited legal liability, defining it as an instrument for inflicting harm without rights and moral responsibility. Technical measures such as “black boxes” merging tamper-proof logs and creating national expertise will restore the action chain of the program which in turn may contribute to error-free functioning of AI-powered systems. [10] Corporation and people should carry responsibility as the former creates it, the latter uses at its own needs. Mandatory insurance and creating compensation mechanism by third party cover damage inflicted by systems. The mechanisms are inherited by aviation sector and protects victims of AI-fraud, spam, scam. Every high-risk system should be re-certified every 36 months, outdated systems should lose their permission to function. Creating national or international registers AI-incidents in which all the errors, harms are fixated will help define systematic problems and develop standards of preventing of such events. International integration registers allow monitor national regulation and provide experience exchange worldwide. Professional licensing of AI providers should be implemented, due to its socially importance likewise doctors, lawyers/attorney at law, engineers. Mandatory periodic training, license revocation guaranties the influx of professionals. Restricting autonomy in critical sectors where the errors may lead to death or massive human rights violation, e.g. military sector, at courts or regulating transport traffic, in such cases human enclose the control-chain. Criminal law should not pretend that AI is a legal entity, instead extent of human and corporate responsibility should be expanded, by using existing methods of controlling the other sectors. Illogical would be to claim AI does the challenge the idea that only conscious creatures can and should be guilty, it is an urgent message to be more cautious by using highly advanced technology Keeping people responsible protects and compensates potential victims more effectively, rather than making the system accountable. The analysis and recommendations are logical, reasonable, objective and based on the latest analysis of AI-technology, scientists, lawyers and philosophers withing the context of determining the liability by breaching the law.

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