

Research on the Subject of Criminal Responsibility of AI

Yixuan Li

Qingdao University of science and technology, Qingdao, China.

Abstract

The rapid development of artificial intelligence has brought challenges to the society. In criminal law, it is a huge controversy whether AI should be given the subject of criminal responsibility. The author thinks that AI does not have independent subjective will. The objective behavior of AI is just the expression of programming. And AI cannot afford criminal punishment. AI is incompatible with the present criminal punishment system. Therefore, there is no need to regard AI as the subject of criminal responsibility. We can realize the regulation of criminal law by strengthening the responsibility of producers and users with the application of judicial interpretation and legislative interpretation.

Keywords

AI; Subject of Criminal Responsibility; Regulation of Criminal Law.

1. Raising of the problem

The concept of "Artificial Intelligence" was first proposed at the Dartmouth conference in 1956. In recent years, AI has developed rapidly, which has brought great changes to people's study, work and life habits. In May 2016, when the owner of a Tesla Model s car was using the automatic driving function, Tesla suddenly rushed to the vehicle, causing the owner's death. Similarly, in July 2015, the production robot in Volkswagen factory suddenly grabbed and threw the technical staff into the production area, causing the death of the staff. Now, the topic of AI is not a simple scientific and technological issue, but an ethical and legal issue. The development of AI improves the production efficiency and reduces the production cost, but it also brings endless hidden dangers and challenges. Many industries have taken measures to adapt. Although it is still in the period of weak AI, it is controlled by human beings. However, some scholars believe that the criminal law is difficult to regulate the crime of AI.

In criminal law, the development of AI may bring some challenges to criminal law. Therefore, some scholars suggest that AI can be given the subject status of criminal responsibility when they have the ability of identification. There are many controversies about whether AI can become the subject of criminal responsibility. The subject of criminal responsibility of AI is a real issue with important academic value, not a fake issue.

The author will discuss whether AI can become the subject of criminal responsibility based on experts' views and the development status of AI.

2. The negation of AI criminal responsibility subject in crime theory

Not all AI machines can be the subject of criminal responsibility. There are many categories of AI.

Some scholars argue that artificial agent can be divided into Action Intelligence Entity, Autonomous Intelligence Entity and Human -Based Intelligence Entity. Human -Based Intelligence Entity is also called AI Robot or "machina sapiens", which is opposite to human being [1].

In most views, AI is divided into weak AI and strong AI. Weak AI refers to the intelligent machine that does not have the ability of self-control and self-consciousness. They cannot analyze and

judge by themselves. At present, AI is still in the weak AI period, and it works according to the preset program.

Strong AI refers to intelligent machines with self-control ability and self-consciousness, which can judge according to their own thinking.

The difference between strong AI and weak AI is whether they have the ability of deep learning and independent consciousness and will.

Weak AI machine is still a tool to assist human to deal with affairs in essence. Therefore, scholars generally believe that weak AI does not have the ability of criminal responsibility and the possibility of becoming the subject of criminal responsibility.

Whether strong AI can become the subject of criminal responsibility is controversial. It can be divided into support theory and opposition theory. Among the supportive scholars, they think that the subject of criminal law is constantly changing. Historically, slaves, blacks and animals had been the subjects of criminal responsibility. Professor Susanne beck of Germany thinks that the AI should be compared with the company legal person system and given a specific legal status. [2] Some scholars believe that strong AI can act according to their own will outside of programming, and they have independent identification and control ability, so they can become the subject of criminal responsibility. However, negative scholars believe that strong AI cannot be the subject of criminal responsibility. At present, the disputes about the criminal subject status of AI are mainly concentrated in the following aspects: first, whether AI has subjective will; Second, whether AI has objective behavior in the sense of criminal law; Third, whether AI has the ability of criminal responsibility.

2.1. The negation of AI's subjective will

Whether AI has independent consciousness and will is the key to judge whether it can become the subject of criminal responsibility. The scholars of positive theory believe that strong AI can go beyond programming and form independent consciousness and will, and can act under the control of independent consciousness, so it can become an independent subject of criminal responsibility. Negative scholars believe that strong artificial agents do not have the subjective will beyond programming. The author thinks that, first of all, there are essential differences between the control center of human and AI. The control center of human is a complex nervous system connected by countless biological nerves - human brain, which can affect and control people's mood, physiology and action; The control center of AI is composed of chips, which is an imitation of the human brain nervous system. It can use algorithms to produce will activities similar to human beings. However, no matter how intelligent the AI is, it still lacks moral sense, so it cannot make subjective value judgment. Secondly, strong artificial agents can only act within the scope of programming and do not have free will. Third, even if AI does something other than programming, it doesn't mean that AI has independent will. I think it should be regarded as a loophole of programming algorithm rather than an independent will of AI. Only human is the master of AI programming, and the will of AI is based on human. Fourth, some scholars believe that the thinking and learning ability of AI is based on the programming of designers, not their independent subjective will. Therefore, AI does not have the will to go beyond programming, and even if it does, it is not a real sense of freedom of will.

Because AI is not real intelligence, its production, experiment and operation need the company of human beings. AI and human beings are symbiotic rather than antagonistic. Only in this way can AI be convinced and accepted by human beings. [3]

2.2. Negation of AI's objective behavior

In the first part, the author has listed two accidents of AI. In these two accidents, the two AI machines have done objective injury behavior on the appearance, and produced damage consequences. Support theory scholars believe that behavior beyond the scope of programming

is an objective behavior in the sense of criminal law. The author thinks that the action of AI is only a kind of physical action based on programming, not a legal action under the control of free will, so it is not a criminal act. Secondly, the objective behavior of AI lacks the subjective elements stipulated by law. Because the behavior of AI is based on programming, AI is performing the objective action required by the established procedure. Therefore, AI does not know the behavior itself and its consequences, which is not a criminal act in the sense of criminal law, and the objective behavior of AI is not a response of its subjective will.

3. The negation of AI accepting criminal punishment

Penalty is a negative evaluation in law and a negative consequence imposed on the offender. Penalty can make the offender regret, and has a deterrent and educational effect on other members of society. The first problem is to confirm what kind of rights AI has. Only when the rights it has are confirmed, then the restriction or even deprivation of the rights can have the effect of punishment. However, because AI does not have the right to life, property rights and other rights, therefore, fixed-term imprisonment, life imprisonment and so on have no deterrent effect on it.

The author believes that the implementation of penalty for AI make no sense. AI has no emotional and no strong desire for freedom and life. Even if it is sentenced, it can not pay the corresponding price, and can not sincerely repent.

4. On the criminal regulation of crimes involving AI

Human beings have known that AI will get rid of human control and act as the subject of criminal responsibility to harm human society. So, instead of waiting for it to appear, it is better to take measures now to prevent it.

There is still a long way to go for the criminal law to regulate the crime of AI. The author thinks that there is no need to add new charges. First, the criminal law risk of AI has not yet come, the sudden addition of charges is easy to lead to advanced legislation, which also violates the modesty of criminal law. Second, AI does not have the possibility to become the subject of criminal responsibility. Moreover, for the criminal regulation involving AI, the author thinks that it is mainly attributed to two subjects: producers and users.

Hadj, a German economist, believes: "any product needs the responsibility of the manufacturer, otherwise it will affect the progress of society [4]. First, In the production stage of AI, if the producer intentionally implants criminal programs or data into the programming of AI in order to achieve a certain criminal purpose, and the user does not know that the AI is implanted into the criminal program and used reasonably, the producer should bear all the damage caused by the use stage of AI. Secondly, if the producer has done his reasonable duty of care in the production stage, or even the producer does not have the possibility to meet the risk, the user should be the subject of criminal responsibility if he uses AI as a criminal tool to commit a crime. Third, if the producer has done his reasonable duty of care in the production stage of AI, he still produces a robot with program defects. Because the AI machine belongs to a high-tech product, the producer can be punished according to the crime of producing and selling fake and inferior products. Fourth, if users tamper with AI programs in the process of using, it will lead to the risk of abnormal behavior of AI. AI system can be interpreted as an advanced computer information system, so it can be interpreted as a crime of destroying computer information system.

Therefore, the crime of AI can strengthen the responsibility of producers and users, and can be reasonably interpreted as related crimes, then can also be regulated by the current criminal law.

5. Conclusion

The current criminal law still has the ability to regulate the crimes involving AI. At present, AI is still in the primary stage, so we should make a calm analysis based on the current situation of the development of AI, and put forward some constructive suggestions for the development of AI.

References

- [1] YUEH-HSUAN WENG, CHIEN-HSUN CHEN, CHUENTSAI SUN. Toward the Human-Robot Co-Existence Society: On Safety Intelligence For Next Generation Robots [J]. 4 International Journal of Social Robotics, 2009(4):274.
- [2] Susanne Beck: 《The problem of ascribing legal responsibility in the case of robotics》, 《Ai & Society》 2015 (4).
- [3] ANDREW ARRUDA. An Ethical Obligation to Use Artificial Intelligence: An examination of the Use of Artificial Intelligence in Law and the Model Rules of Professional Responsibility[J]. American Journal of Trial Advocacy, 2017(40):443-450.
- [4] Hadj Ahmed Bouarara Abdelmalek Amine Reda Mohamed Hamou. A New Swarm Intelligence Technique of Artificial Haemostasis System for Suspicious Person Detection with Visual Result Mining [J]. International journal of swarm intelligence research, 2016(4).