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Law, Automation and Shifting Values

Emerging technology continues to present the law with many challenges. In particular, robots now intervene in more and more tasks previously undertaken by humans, such as policing and driving. The response of the law in these distinct contexts forms the focus of this special section of the journal arising from papers presented at the Socio-Legal Studies Association Annual Conference in Newcastle in 2017.

What has become apparent to us is that the role of law is not some simple facilitator of technological change. If anything, law injects into this 'new world' of technological innovation the hope that human values will both enhance yet constrain the fears that artificial intelligence seems to evoke within society. Many of these fears revolve around the loss of human control and hence a concern with a lack of accountability for the actions of computers. While the legal process is seen by some as a barrier to the introduction of new technologies (the 'law falling behind' narrative) we can also see a counter narrative that suggests that law must act to restrain the excesses of such technologies. In a final twist, as new technologies offer the promise of machines doing much of our work, the law offers the assurance that the injection of human values into those processes must still take place. Yet the tension even here is that humans bring both values and prejudice to the table.

This latter point is evident in the article by Marion Oswald, Jamie Grace, Sheena Urwin and Geoffrey Barnes titled 'Algorithmic risk assessment policing models: Lessons from the Durham HART model and 'Experimental' proportionality'. Using Durham Constabulary's Harm Assessment Risk Tool (HART) as a case-study, this article explores some of the ethical, legal, policy and practical issues of applying 'algorithmic analysis' in the context of UK police intelligence. This type of intelligence analysis is thought to facilitate accurate and 'predictive' policing, strategy and tactics because it allows for a more consistent, evidence-based decision-making profile. However, as the authors articulate, whilst the use of this technology has the ability to enhance a more efficient use of police resources, this also opens up a myriad of socio-legal implications that are dealt with consecutively within the article. This article also determines that there are areas of police intelligence in which the use of this emerging technology would not be universally welcomed because the impact upon society and upon the welfare of individuals would be too great.

This stance mirrors that of Lisa Collingwood's article 'Autonomous trucks: an affront to masculinity?'

in which she argues that the use of emerging technology in the traditional male-dominated truck driving industry would not be universally welcomed because the long-established gender stereotypes inherent within the industry would ultimately need to be consigned to history. In suggesting that the law may not represent an adequate facilitator in this context, she also questions whether society is ready to step up to such a change. While some members of society may regard the demise of 'trucking culture' as of minimal concern, for those directly affected it represents a loss of identity and meaning which will be profound. In that context, if the automation of many aspects of work is supposed to enable us to focus on the more creative aspects of our workspace, then one challenge will be how to address such impacts. Creative law and legal practice may well have to be part of that discussion.

As a consequence, a unifying theme throughout these articles is the ongoing debate about the legal regulation of technology and cyberspace given the use of new information technologies. These articles provide a guide to current and future trends in the field of law and emerging information technologies and the several legal, ethical, policy, judicial, legislative and societal developments that are raised by them. The articles focus on both the enhancements that this technology could provide as well as the areas of disruption that ultimately follow. Thus, while there is both excitement and disturbance in the use of these new technologies, as lawyers our dilemma is whether it is possible to 'balance' between the two or whether it is necessary to make hard choices as to how law should respond. Are we to face the severe limitations of law, or to be encouraged by its capacity to evolve beyond the disruption to people's lives and offer some protection of their interests?

By way of example, several enhancements were seen to flow from the adoption of the HART technology utilised by the Durham constabulary. These were particularly prevalent in the areas of public safety and cost/resourcing. Conversely, matters pertaining to inconclusive, inscrutable or misguided evidence leading to inappropriate responses, coupled with reduced means by which an individual would be able to question or challenge those responses if policing becomes understood only as data-processing and decision-making, present choices for the law that may well have to operate to articulate the limits of such approaches.

Similarly, in truck driving, there are several benefits of autonomous truck technology, notably in terms of improvements to safety, the economy and the environment. However, there is likely to be a huge personal impact on truckers themselves come the introduction of this technology. Several studies suggest that reputation is well entrenched in this industry and appears to represent one of the most intimate and sought-after aspects of (male) truckers' lives and yet autonomous truck technology could

significantly disrupt the machismo image of truckers that has been garnered to date. This calls for an evaluation of the role of legal regulation in this regard and the role of the UK legal system in protecting reputation, even if undeserved. Consequently, these articles question the degree to which the law is to be regarded as a simple facilitator of these new forms of technology and to what extent 'new' legal concepts need to be developed to address the unspoken effects of new technology.

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