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Professor Stewart teaches criminal law and the law of evidence, and has published numerous papers in these areas as well as papers on legal theory, the law of contract, and economic methodology. He is the general editor of Evidence: A Canadian Casebook, 4th ed. (Toronto: Emond Montgomery, 2016) and the associate editor of the Canadian Criminal Cases. His most recent book is Fundamental Justice, 2d ed. (Toronto: IrwinLaw, 2019), a treatise on s. 7 of the Canadian Charter of Rights and Freedoms.

Abstract

Will artificial intelligence (AI) replace law as we know it? Some have argued that AI will eliminate all uncertainty about the application of legal rules and will therefore be able to produce “micro-directives”, commands that will be perfectly tailored and instantly communicated to any legal subject in any situation. Micro-directives, it is suggested, will eliminate the characteristic legal problem of applying general norms to particular fact situations will vanish. So far, however, the literature has provided relatively little discussion of the interaction between micro-directives and criminal liability. The purpose of this paper is to investigate some of those possible interactions. In particular, should failure to comply with a micro-directive be punishable conduct (put another way, does violation of a micro-directive call for a micro-sanction)? Or, on the other hand, should reliance on a micro-directive immunize a person's conduct from punishment? Can micro-directives help in the application (ex ante or ex post) of traditional criminal law doctrines, such as the law of homicide? I anticipate that my conclusions will be skeptical.
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