

## **Criminalisation by design: pushing or re-drawing the boundaries of criminal law?**

*The butler did it.* Yet, what if the perpetrator of the biggest cliché in mystery fiction were a humanlike robot? Would ‘he’ still count as a criminal offender to bring before court?

Besides triggering the interest of detective and science fiction fans, such scenario has already caught the attention of legal scholars who currently question the criminal responsibility of robots. At first sight, because *technology is neither good, nor bad, nor it is neutral* (Kranzberg: 1986), conceiving ‘guilty robots’ does not appear unreasonable. In this vein, robots might be deliberately programmed as means to a criminal end; additionally, they could also commit a crime owing to faulty programming or, in a distant future, following their own decision-making process.

Nevertheless, could the law solve this problem at source and so embody criminal rules in the programming of robots? Ultimately, such ‘criminalisation by design’ would not be far from approaches already adopted in other fields of law, such as in the case of privacy and data protection. Yet, by targeting conducts prior to the causation of any tangible harm, will this approach broaden the boundaries of criminal law? Or, rather, will it provide a criminal code specifically for robots? In order to answer these questions and to assess the legal feasibility of ‘criminalisation by design’, we will examine fundamental questions of criminal law theory, ranging over the existing rationales and fundamental principles of criminalisation.

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