



SELF-DRIVING CARS AND THE CHILLING EFFECT OF LIABILITY LAW

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ARGUMENT PRELIMINARIES



This paper was written in 2015, and the prediction at that time was self-driving cars would hit the market in 2020-2025



Why are autonomous vehicles behind the expectations?



**Is manufacturer liability causing
automakers to limit research and
development in autonomous vehicles?**

WHO GETS BLAMED FOR CAR MECHANICAL FAILURES?

Today, in cases of vehicle accidents, the injured party must prove that the manufacturer's design or construction was the reason for damages.

Common types of vehicle malfunction from the manufacturer

- Airbag defects
- Braking system defects
- Computer system defects

Recalls are often the result of manufacturers being sued due to component failure.

- Takata airbag recall (65+ million vehicles)

HOW U.S STATES DEFINE AUTONOMOUS VEHICLES

California

- Vehicle equipped with technology that has the capability of operating or driving the vehicle **without the active physical control or monitoring of a natural person.**

Florida

- Any vehicle equipped with autonomous technology that has the capability to drive the vehicle on which the technology is installed **without the active control or monitoring by a human operator.**

TESLA

“While using Autopilot, it is your responsibility to stay alert, keep your hands on the steering wheel at all times and maintain control of your car.”

THE PROBLEM WITH AUTONOMOUS VEHICLES

Unlike non-autonomous vehicles or semi-autonomous vehicles, fully-autonomous vehicles do not need human involvement

- This increases potential liability for manufacturers in vehicle accidents
- Semi-autonomous vehicles can escape blame by arguing that driver involvement was required

Fully-autonomous vehicle crashes will happen

- Manufacturer's want to escape liability for common crashes
- Manufacturer's do not want the negative press from crashes

Liability laws are reducing the investment in autonomous vehicles

- There is little legislation that protects the manufacturers of autonomous vehicles



SOLVING THE PROBLEM

WHAT LAW CHANGES CAN INDUCE A BETTER ENVIRONMENT FOR MANUFACTURERS TO NOT BE
OVEREXPOSED TO LIABILITY

DEVELOP A MINIMUM SAFETY REQUIREMENT FOR AUTONOMOUS CARS



- At the minimum, autonomous cars should be **safer than the average human driver**
 - Equal to or less crashes
 - Should not increase risk for a driver
 - Should not impact insurance premiums
- Challenges:
 - Comparing autonomous cars to human driven cars is difficult since their shortfalls are often different
 - There is not enough data about autonomous cars safety to make significant conclusions
 - How can this be tested?

ISSUE WITH (MANY) CURRENT LIABILITY LAWS

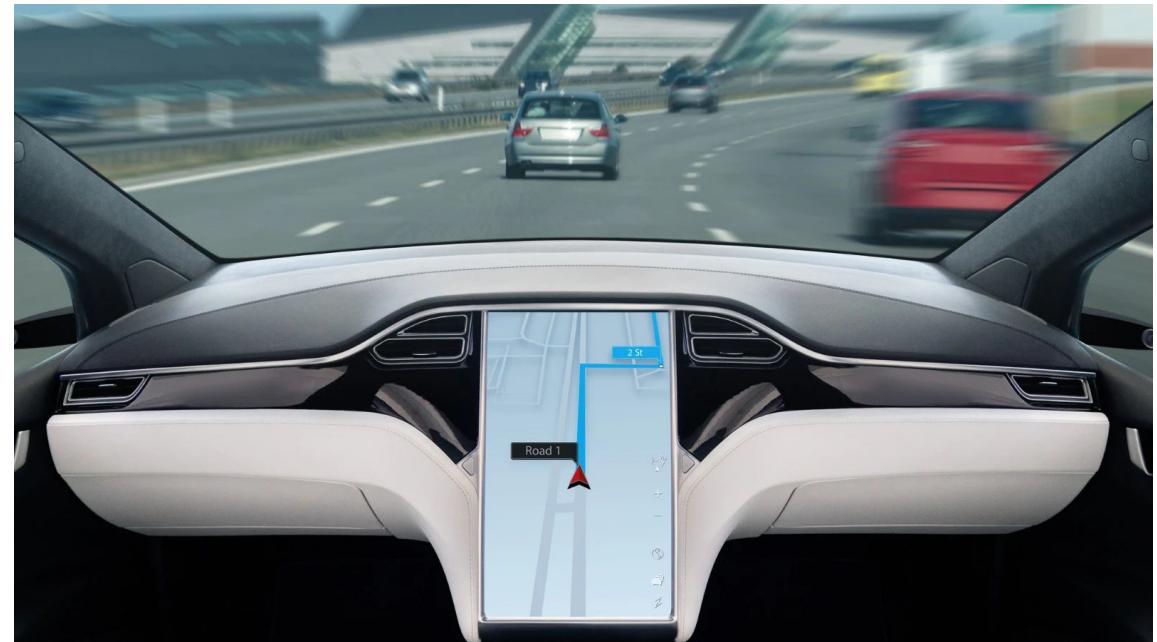
- Many U.S states have **fault-based** liability laws
 - The insurance of the driver responsible for an accident must pay the driver responsible and the victim
 - Problem: for autonomous cars, how do you determine who is responsible?
 - If the blame is placed on the manufacturer, then autonomous car manufacturers will likely not sell (or develop) their autonomous cars



CHANGE EXISTING AUTOMOTIVE LIABILITY LAWS

Authors propose the Swedish system

- No driver is determined liable for the accident
- Victim is compensated by ‘first party’ insurer against damages
- Downside: could result in higher insurance premiums on autonomous cars
- Positive: automakers run a much smaller risk of being blamed for common automotive accidents

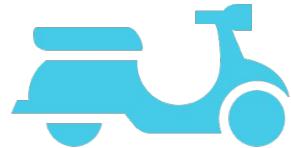


CREATE NATIONWIDE (OR GREATER) LAWS



- Autonomous cars should be able to be used throughout an entire country (or the EU) and not be limited by different rules
 - The U.S should not have different rules in each state about liability laws
 - Cross-border and harmonized context is needed to make cross-border use a reality

WOULD I ACCEPT



Yes, it addressed important issues such as:

Need to develop a requirement for autonomous car safety

Need to create laws that do not over burden automakers



Issues:

Slightly out of date

More brainstorming than fact-based solutions

DISCUSSION

- Self-driving Uber vehicle ran into a jaywalking pedestrian in Tempe, Arizona in 2018
 - Driving behind the wheel was on their phone
- Who do you think is responsible?
 - Person behind the wheel
 - Uber
 - Pedestrian



WHO WAS AT FAULT?

Uber was cleared of any potential charges

- Uber deactivated forward collision warning and automatic emergency braking
- System could not correctly classify and predict the path of the pedestrian

The driver was charged with a negligent homicide

- Was supposed to take control if necessary
- Uber trains its safety drivers to remain alert
- Georgetown Law professor says “The fact she was watching TV makes her an easy and maybe convenient person to accept responsibility, remove that fact and it could easily be Uber.”

RESOURCES

- <https://www.cnn.com/2020/09/18/cars/uber-vasquez-charged/index.html#:~:text=The%20Uber%20test%20driver%20who,with%20negligent%20homicide%20this%20week.>
- https://www.youtube.com/watch?v=hthyTh_fopo&t=24s



THANK YOU