The legal subjectivity qualification of artificial intelligence is examined from the perspective of jurisprudence

Xiaoyu Zhu

Anhui University of Finance and Economics, Bengbu 233000, China;

3142286983@qq.com

Abstract

Artificial intelligence can be divided into three stages, weak artificial intelligence cognitive and behavioral ability has been comparable to human beings in some aspects, strong artificial intelligence is the future of artificial intelligence, and super artificial intelligence can already constitute inorganic civilization. As far as the current jurisprudence research is concerned, there is a debate about whether to give artificial intelligence the legal subjectivity qualification, and the traditional "human-thing" dichotomy is difficult to deal with the problems brought by the current or future development of artificial intelligence. This paper holds that if the weak artificial intelligence with imperfect subject qualification is given legal personality, it will become a tool to control "escape crime"; If artificial intelligence, which has evolved independent consciousness, is regarded as a tool, the basis for judging rationality will be confused. Therefore, from the perspective of the development stage of artificial intelligence and ethical personalism, rational strong artificial intelligence should be given the qualification of legal subject, while weak artificial intelligence is still considered as a thing.

Keywords

Artificial intelligence, reason, Ethical personalism, Legal subjectivity.

1. Introduction

The concept of "artificial intelligence" has been around since the 1950s. In the following 60 years, as a key area of the new round of technological revolution, countries want to seize the opportunity in this field. In 2019, the United States once again updated the National Artificial Intelligence Research and Development Strategic Plan formulated in 2016; In 2018, the EU issued the EU Artificial Intelligence Strategy, set up a high-level Expert Group on Artificial Intelligence (AIHLEG), developed a draft Code of Ethics for Trusted Artificial Intelligence, and EU member states signed the Declaration on Artificial Intelligence Cooperation. Japan released the AI Technology Strategy in 2017, the Comprehensive Innovation Strategy in 2018, and the Human-Centered AI Social Principles in 2019. China has successively issued the "New Generation of Artificial Intelligence Development Plan" and the "National New Generation of Artificial Intelligence Standard System Construction Guide" to strengthen the top-level design of standardization in the field of artificial intelligence and promote the healthy and sustainable development of the industry. Every round of technological change in humanity has led to great social change. After decades of development, the cognitive, computing and learning abilities of artificial intelligence have gradually improved, and Google's AlphaGo can win several world champions in the game of Go. The discussion of legal subjectivity often appears in the impact of new technologies on traditional theories, such as cloning technology and gene editing technology. The discussion of human cloning technology is about ethics and human dignity. After fierce debate, the international community finally confirmed that human cloning does not

have legal qualifications and legislation prohibits human cloning, so human cloning does not affect the fundamental subversion of the definition of natural person in the basic theory[1]. Since then, the twins created by gene editing technology have once again impacted ethics and law and triggered academic discussions. Some scholars believe that gene editing may impact human dignity and survival value ethically, and may lead to new social inequality and human alienation in society[2]. At present, it is still unknown whether gene editors have the qualification of legal subjects. Artificial intelligence, which exists as a non-traditional way of life birth, has been able to imitate the basic way of human thinking and behavior, and the simulation of human thinking inertia and way by big data algorithms has touched the definition of human dignity and rationality, which will inevitably bring impact on society in the future.Therefore, it is feasible and necessary to discuss the legal subjectivity of artificial intelligence first, so as to prevent the social chaos caused by the rapid development of intelligent technology and the failure of theoretical thought to follow it in time.

2. Speculation on the subjectivity of artificial intelligence law

It is necessary to distinguish the legal subjectivity of artificial intelligence. For now, we seem far from the era of strong artificial intelligence, but the unpredictable nature of technological leaps also forces us to judge the legal subjectivity of artificial intelligence. Some countries already have examples of granting legal subjectivity to artificial intelligence. Saudi Arabia gives citizenship to Sophia the robot; Driverless cars are recognized as "drivers" in the United States; The European Union assigns "specific rights and obligations" such as copyright and labor rights to the most advanced automated machine "workers" and calls them "electronic people." The "humanoid" characteristics that AI currently exhibits or will exhibit in the future pose a huge challenge to the law, and this unique ability to learn and act makes the traditional "human-object" dichotomy very difficult. The jury is still out as to whether AI is a person or a thing. Some scholars believe that artificial intelligence should belong to things [3]; Some scholars believe that artificial intelligence should belong to the category of "human"[4]. There are also scholars who divide artificial intelligence into "special existence" between people and things[5]. There are many speculative discussions and controversial views about the legal personality of artificial intelligence. E-personhood is largely the result of a proposal submitted by the European Commission's Legal Affairs Committee, which calls for special rights such as copyright to be granted to automated intelligent machine "workers." According to the limited legal personality theory, because the ability of artificial intelligence to bear the consequences of behavior is limited, the special tort legal liability system is applicable, so the legal personality is limited[6]. According to the control theory, "Robots controlled by natural persons or natural persons - civil subjects - are not yet sufficient to achieve independent subject status." That is, artificial intelligence that is beyond the control of civil subjects can obtain the status of legal subjects. According to the theory of inferior legal personality, artificial intelligence is endowed with inferior legal personality by the establishment of artificial intelligence record registration system by analogy with legal person system, and it enjoys different legal personality from human beings rather than limiting the legal rights of artificial intelligence. It is believed that artificial intelligence can rise to the legal person of a natural person like human beings through the "person plus". The future era of artificial intelligence is not to create entities below the level of human beings, but to transform and promote human beings to "transhumanism". If artificial intelligence, which is beyond simple intelligence, is mechanically regarded as a tool, it may weaken and reduce the importance of the standards of intelligence and reason, and even degrade the noble status of human beings.However, weak artificial intelligence is recognized as "human", then based on the subjective theory of natural persons, people can be covered with artificial intelligence for illegal crimes; Even if artificial intelligence, which cannot be

independent as a "person," has the crucial voting rights stipulated in the Constitution, democracy will be undermined.

3. The legal subjectivity of artificial intelligence is analyzed from the Angle of ethical personalism

The so-called legal subjectivity qualification can be understood as the qualification for people to enjoy rights and undertake obligations. The author believes that if artificial intelligence has the legal subjectivity qualification, it needs to clearly assign its subjectivity qualification criteria, that is, it must take rationality as the granting criterion. The theory of ethical personalism holds that reason includes three abilities: cognition, meaning and morality. Other criteria for judging whether artificial intelligence can be regarded as a "natural person" are important, but the glory of reason has been shrouded in them. Without reason, other conditions cannot support the legal subjectivity basis of artificial intelligence alone. According to Kant, the existence of an irrational objective world can only be called things, while the existence of a rational objective world has a person who can be called, because the nature of a rational being can make it highlight its absolute value, that is, highlight that it can be used as an end rather than as a means. The basic connotation of legal subjectivity identified by ethical personalism should be formed by three abilities of cognition, meaning and morality. Cognitive ability is the most basic ability of human beings. Only by feeling and knowing the material world and the spiritual world can we make the feedback afterwards. Meaning ability refers to the autonomous exchange and decisive ability of human beings, which can process and decide after obtaining basic information from the material world and the spiritual world. Moral ability is the dignity of human rights, which is the unique ability of human being different from animals.

3.1. Cognitive ability is the basic ability of artificial intelligence to know and feel the world

Cognitive ability refers to the ability to perceive the objective material world and the spiritual world. Cognitive ability covers a wide range, including people can have the ability to imagine, curiosity, self-knowledge, reaction ability, perception ability and so on. Cognitive ability is the cornerstone of rationality, and only people with cognitive ability can become people in law. If you want to feel the objective existence of the material world and the spiritual world should have a basic physiological or feedback system, if only the physiological system and can not process information, people and animals are no different, compared to artificial intelligence must also know and feel the world of information collection and feedback system. Such ability is a prerequisite for rational analysis, so cognitive ability is also called basic and pillar ability. A person without this ability can hardly be called a "person" under the law. However, only artificial intelligence that can collect and feedback from the natural world but lacks moral and meaning ability is still in the stage of weak artificial intelligence, and its ability to independently decide and set behavioral goals is determined and deprived by the creator, and it can only obey the creator's instructions and cannot make independent self-behavior. For human beings, the feelings, curiosity and imagination which are derived from knowing and perceiving the world can be regarded as the source of creation. Therefore, cognitive ability can be described as the "window" ability of artificial intelligence, and this ability is the premise of meaning ability. If you cannot receive the information, how can you analyze and demonstrate the information based on the data processing and then make the judgment and behavior in line with the autonomous consciousness?

3.2. The ability of meaning is the ability of artificial intelligence to determine the interactivity with the expression of feelings

The capacity of intention can be understood as the capacity to make the expression of intention according to the civil law, and the capacity of legal conduct is included, which contains the narrow sense of capacity of conduct and the capacity to bear responsibility, that is, the capacity of unlawful conduct. Meaning ability covers the ability to think, choose, decide, introspect, communicate and act. In civil law, autonomy of will is the key ability for people to carry out all social activities, and it is also the basic ability for people to bear responsibility in criminal law. In the social framework, human beings can independently and responsibly determine their own existence and the social relations they intend to establish according to their own will, and can restrict their own behavioral purposes to a legal degree. From the perspective of current law, autonomous consciousness is the subjective condition for intelligent robots to obtain legal personality, and the objective condition is to be able to independently express meaning and then form social relations. This means that within the range of various social possibilities, people have the ability and autonomy to decide and express the social relations they intend to establish, create behavioral goals and limit their own behavioral standards. Only artificial intelligence that can freely express its meaning and control its own behavior can carry out corresponding legal acts and bear legal consequences, and can obtain the qualification of legal subjectivity. From the current stage of social science and technology and theoretical research, the difference and division between artificial intelligence and human beings to a large extent still take "similarity" and "degree" as important distinction criteria. Artificial intelligence with high similarity or degree of human beings can create interactive social relations, combine mechanical meaning with the consciousness, emotion, knowledge and conscious ability of human beings, and have the ability to raise and solve problems. Whether it belongs to the mechanical meaning ability unique to artificial intelligence is limited by whether it can be summarized as an emerging social subject on the one hand, and whether artificial intelligence has "autonomous consciousness" outside human control on the other hand. In general. Whether "meaning ability" or "autonomous consciousness" is one of the key judgment criteria for granting the legal subjectivity qualification to artificial intelligence.

3.3. Moral ability is the key ability of artificial intelligence's unique personality dignity

For artificial intelligence, moral ability refers to the ability to distinguish and identify moral norms and regulate their own social practice activities just like human beings. [7]. Moral capacity can be understood from the perspective of ethics on another level, that is, people are connected by various social relations, and behind these social relations are legal relations. The interpretation of moral capacity from the legal relationship that constitutes the key personality and dignity can be understood as that every independent person has independent personality and dignity, the acquisition or recognition of personality dignity should be mutual, and the recognition and respect of other people's personality is the publicity of self-dignity. Without moral capacity, one cannot respect the human dignity of others, and others need not respect one's personality. The inevitability of artificial intelligence impacts the traditional legal basis of natural person's personal dignity and leads to the weakening of human's personal dignity status. As far as the mechanical dignity of artificial intelligence is concerned, how to deal with the relationship between artificial intelligence and human dignity is the key to endow artificial intelligence with legal subjectivity. The legal person should be a person with sound ability, although the artificial intelligence has the cognitive and meaning abilities covered by reason, but if the ethical and moral ability is lacking, it cannot be identified as a legal "person".If artificial intelligence lacks moral ability, it will harm the interests of public society and even human society. When discussing the principles of social morality, Finnis of the School of Natural Law

believes that we must accept the potential risk of derogating social public good customs caused by compatriots or the same race, but if the potential risk of damaging social good is caused by people other than compatriots, we do not need to accept or even resist. According to this principle, if artificial intelligence lacks moral capacity and its inevitability damages human racial interests, then there is no need to accept the risks it brings, and there is no need to recognize its legal subjectivity qualification.

3.4. Rational wisdom is the essential ability of the legal subjectivity qualification of artificial intelligence

The moral capacity that man possesses, the dignity of personality, is the rational essence of man. Anthropocentrists may argue that robots should not be accorded the same subjective status as natural persons[8]. But if AI is already rational in nature, then it should be empowered. Ethically, rational people should treat every rational being equally. As long as the rational relationship of interaction is in line, then both human beings in the biological sense and artificial intelligence created by human beings should be equal in personality in ethics, and inhuman or disrespectful alienation will violate the universal humane ethics. The psychodynamic theory proposed by Freud explains the personality structure of id, ego and superego. The ID includes the most primitive human desire to satisfy the instinctive impulse and emotional physiological needs such as hunger and anger; Ego is the middle layer of personality structure, it is rational and logical thinking, is the executor of individual personality. Reason, culture, cultivation, consciousness, etc. are the components of self; The superego is the moral part of the personality structure, the moralized self, which is composed of social norms, ethics and values, and is the result of socialization. The relationship between the three can be understood as follows: ID represents human instinct and is the basis of personality; The superego is an idealized and moralized goal; The ego sits in the middle and regulates the conflict between the two. Therefore, from the perspective of Freudian personality structure, it can be concluded that the legal subjectivity qualification of artificial intelligence should be based on its self-personality level and develop towards superego personality. In other words, AI should have the human dignity that comes with moral competence. Only a state of basic rationality can be endowed with legal personality.

4. Negative evaluation of artificial intelligence legal personality granting criteria outside ethical personalism

There are also other theories in the academic circle to demonstrate that there are other sufficient conditions besides rational requirements as the criteria to qualify artificial intelligence as a special legal subject. These views outside of rationality in the academic circle seem to be reasonable, and no longer regard rationality as the sufficient condition for judging whether artificial intelligence can possess the legal subjectivity qualification, but they cannot fully shake the basis for judging the legal subjectivity qualification of artificial intelligence. Such views can be divided into the sacredness of life, the ability to feel pain, desire and so on.

4.1. The negative judgment on the sanctity of life

John Finnis, Ronald Wadkin and other scholars believe that the existence of human life cannot be compared with other animals, and the sanctity of human life determines that only human beings are legally human. Although modern law mimics the legal person and the animal as "human", it is only because this kind of mimicry is only because of the value of human beings. This argument overemphasizes man's position in the natural world and human society. But what is the reason why man is understood as divine? What is the difference between man and animal? It is understood that the reason why human life is sacred comes from its rational nature. Therefore, the distinction between human beings and other organic or inorganic organisms

based on the sanctity of human life cannot be effectively supported. Because of the limitation of cognition, human beings do not know the natural world infinitely. To a certain extent, the "correct cognition" obtained by people is based on the result of interest leveling and value selection in social relations. Judging the legal subjectivity qualification of artificial intelligence based on the anthropocentric cognition of "the sanctity of human life" ignores or devalues the existence value of other organic and inorganic organisms to some extent.

4.2. The negative judgment of the subject theory of desire

According to the theory of desire, the person who desires can be described as the subject of the naturalization of the legal subject, the person who desires eventually becomes the interest burden because of the purpose and interests of the desire, and the person who desires and loses the motive of social action because he has no desire and no desire. The proper interest burden can not be borne by the body without desire and thought, the subject without desire is removed from the ability to perceive pleasure and pain, and the perception and motivation composed of desire are the key to the interests of law[9]. Persons. According to the understanding of this theory, "desire" can be reduced to the purpose of human action, in other words, the cause and purpose of behavior. This theory merely emphasizes that if a person in law must have the meaning ability to set goals for himself, the irrational factors such as pleasure and pain are generated along with the behavioral motivation, rather than the first generation of pleasure and pain followed by the behavioral motivation. The "desire theory" can also be understood as a person who feels irrational factors such as pleasure and pain in order to achieve the goal set by himself and considers the profit and loss to be a legal person.

4.3. The negative judgment on the perception of pain theory

The theory of the ability to feel pain holds that the person who can feel pain is the key to the benefits protected by law, and the essence of legal personality includes the ability to feel emotions. Only when suffering can be perceived can it be protected by law. At the same time, only when the entity that perceifies pain can restrict its own behavior based on emotional empathy can it be legally restricted. However, from the perspective of human sensibility and human reason, it is not necessary to give animals legal subjectivity based on emotional compassion, because the legal subject created by emotional emotions cannot be determined to be reasonable, so it is enough to prohibit the abuse of animals by legal provisions. In addition, if the artificial intelligence created by humans has moral capacity and a rational basis, it can act in line with social practice and ethical standards even if it does not feel pain. After all, artificial intelligence is superior to the characteristics of human life.

5. Artificial intelligence is given the practical evaluation of the subject of special legal qualifications

5.1. The Turing Test is used to test whether artificial intelligence is rational

Jurisprudence is a scholar of practice. It is meaningless to discuss the legal subjectivity qualification of artificial intelligence in the sense of jurisprudence without serving practice, after all, the era of artificial intelligence has just begun. The Turing test is now widely recognized as a way to determine whether artificial intelligence is conscious and rational. The key assumption of the test is that only rational people can identify rational people, and only humans can judge whether the artificial intelligence being tested has consciousness and rationality. The basic content of the test is: the tested artificial intelligence and people are placed in two separate rooms, and then the examiner does not know whether the room is artificial intelligence or people to ask it, if the examiner through the information conveyed by the two can not determine whether the room is artificial intelligence or human, then the artificial intelligence passed the test. The result of this test is to determine whether the AI has

the ability to think independently. The essence of this test is to determine whether artificial intelligence has the same information analysis and discrimination processing ability as humans based on human standards and judgments. At present, no artificial intelligence can be fully approved by the Turing test. But it's worth noting that in a Turing test conducted by the Royal Society of London in 2014, a chatbot managed to fool a third of the judges at the time. In this regard, the future of AI passing the Turing test is just around the corner.

5.2. The Turing test was improved by ethical personalism as the criterion of subjectivity evaluation

The Turing test can be further refined in order to be more in line with the practical evaluation of the mechanical rationality of artificial intelligence. Specifically, the test can be divided into two aspects, the first one is the perception and meaning ability test; The first aspect of testing can be done by the basic Turing test, and any AI that does not pass the basic Turing test will not have the ability of perception and meaning, and will not have the root ability required by the legal subject. And the second aspect is the test of the moral ability of artificial intelligence that is, the mechanical rationality and dignity test. Artificial intelligence that cannot pass this test, even if it has the ability to perceive and express itself, cannot integrate into the human world or even harm humanity because it does not conform to the ethics and universal values of human society. Artificial intelligence with the first aspect can process objectified information similar to human brain processing and memory by using big data logic operations. In the process of data evolution and iteration, artificial intelligence with mechanical rationality can generate human free will and self-generated humanoid rational emotions such as moral judgment, inspiration and aesthetics driven by data intentionality, which are difficult to be processed by logical data operation. This kind of artificial intelligence has mechanical rationality on a par with human beings, enjoys rights but also needs to assume obligations, and obtains mechanical dignity such as "general personality rights". In a legal relationship with others, other rational people also need to regard them as legal subjects. Therefore, only through such tests can artificial intelligence with mechanical rationality and thinking be granted the qualification of legal subjectivity[10].

In the specific test mode, the situational simulation method can be used to observe the specific performance of artificial intelligence in the improved version of Turing test. If the tested artificial intelligence is programmed to stray into the real world to conduct data-based simulation of real activities, the host tester will judge by the specific performance of the artificial intelligence in a specific moral environment. In addition, a control group composed of humans is also needed for comparison experiments to obtain scenario selection under the same moral environment as that experienced by artificial intelligence. In the final data, a panel of experts set up by the host judges whether the moral judgments and rational choices made by the AI under the scenario simulation are reasonable or more noble than those made by the human. If a panel of experts cannot distinguish between data derived from AI or humans based on controlled trials, then the moral capacity of AI is already comparable to that of humans. The research and judgment on the legal subjectivity qualification of artificial intelligence should follow the modified Turin test of ethical personalism as the reference standard. According to the stage of artificial intelligence, it should be given legal personality. As far as weak artificial intelligence is concerned, because it does not have any "mechanical rationality", the main logic of this kind of artificial intelligence comes from the original intention of the designer to create the robot, and it cannot make any independent behavior goal setting and meaning expression, so it cannot be endowed with legal personality. As far as strong artificial intelligence is concerned, it already has "mechanical rationality", it already has the ability to perceive and express, the ability to express meaning, it can independently accept the information given by the world and give feedback, and finally set behavioral goals for itself and make independent

decisions. At this time, it can not be fully endowed with legal personality, because if the artificial intelligence at this time does not have moral and ethical cognition, it will be very likely to harm human society. Therefore, only strong artificial intelligence with independent moral and ethical judgment can be endowed with independent legal personality. As far as super artificial intelligence is concerned, this kind of artificial intelligence has no difference with humans except for physiological characteristics, so it is already considered "electronic people".

6. Conclusion

"Any job that is describable, important, with fixed rules and standard answers, has the potential to be replaced by intelligent robots." The debate about whether artificial intelligence will shape a harmonious and convenient future world or bring disruption and subversion has never stopped. The conditions for giving artificial intelligence legal subjectivity in legislation are not yet mature, but it is necessary to discuss related issues. Whether to grant the legal subject recognition of artificial intelligence should be based on whether it will bring vicious subversive changes to human society that cannot be controlled, and we cannot create a "monster" that we cannot control. No matter what the future holds, the development of artificial intelligence cannot threaten human society, and the legal subjectivity granted to it must also conform to social ethics and values.

If you follow the "checklist" your paper will conform to the requirements of the publisher and facilitate a problem-free publication process.

References

[1] Z.Yuan.Limited Legal Personality Review of Artificial Intelligence,Oriental jurisprudence,Vol. 1 (2017) No. 5, p.50-57.

[2] K.Wang.Legal regulation of multi-dimensional risks in human gene editing,quest,Vol. 1 (2017) No. 11, p.98-107.

[3] H.D.Wu.Institutional arrangement and legal regulation in the era of artificial intelligence,Legal science,Vol. 1 (2017) No. 5, p.128-136.

[4] S.F,Guo."Electronic man" legal subject theory,Oriental jurisprudence,Vol. 1 (2018) No. 3, p.38-49.

[5] L.X.Yang.Artificial personality-like: the status of intelligent robots in civil law -- Also on the civil liability of intelligent robots causing human damage,Qiushi Journal,Vol. 1 (2018) No. 4, p.88-92.

[6] S.X.Zhang.Legal person, legal subject and the legal status of artificial intelligence,Modern jurisprudence,Vol. 1 (2019) No. 4, p.53-64.

[7] J.H.Chen.Legal Challenges to Artificial Intelligence: Where to start?,Comparative law research,Vol. 1 (2018) No. 5, p.144.

[8] C.Y.Wang.Jurisprudence analysis of the qualification of artificial intelligence legal subject,Journal of Henan University of Economics and Law,Vol. 1 (2019) No. 3, p.63-72.

[9] X.Q.Liu.Robot behavior ethics and criminal law regulation in the era of artificial intelligence, Comparative law research,Vol. 1 (2018) No. 4, p.43-44.

[10] W.F.Long.Legal philosophy thinking on the subject status of artificial intelligence law,Legal science, Vol. 1 (2018) No. 5, p.27-29.