From the Perspectives of Legal Positivism, Natural Law, and Legal Liberalism, Respectively, What are the Different Understandings and Positions on the Legal Personhood of AI?

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Abstract: With the development of artificial intelligence (AI), conflicts over the social function of AI arise. This article will be dedicated to the discussion of the probability and necessity of recognizing the legal personhood of AI through the lenses of three major jurisprudential schools: legal positivism, natural law, and legal liberalism. The goal is to find out the possible path of the legal positioning of AI to maximize the benefits of AI use. Therefore, this essay can serve as a theoretical review of the advantages and disadvantages of acknowledging AI's legal personhood. The essay first discusses the central logic of three major jurisprudential schools, as well as the current studies on AI's role in the legal field. Then, AI is put under the lens of these jurisprudential schools. This essay will conclude that AI can and should be considered a legal person because AI's legal personhood can bring social benefits.

Keywords: AI; Jurisprudence; Legal positivism; Natural law; Legal liberalism

1. Introduction

As early as 1992, Mr. Solum started to discuss the possibility of granting AI legal personhood in his work Legal Personhood for Artificial Intelligences [1]. As time develops, the possibility of granting AI "a special legal status" like what companies have more and more attention. In 2017, Saudi Arabia officially granted citizenship to an AI robot named Sophia [2]. To some degree, it can be considered an important step for robots to gain a certain type of legal personhood. In this article, AI is defined as a computer or robot that is able to stimulate human learning, comprehension, problem-solving, decision-making, creativity, and autonomy [3]. It is believed that AI robots with a reasonable degree of human characteristics and moral capabilities, which demonstrate a kind of indistinguishability between AI and natural persons, should be treated as legal persons [4]. However, it will cause

certain challenges to the current legal system and jurisprudential understandings, as AI's possible legal personhood may be contradictory to current legal and research practices. Thus, this article aims to find out the possible path for the legal positioning of AI to maximize the benefits of AI use by exploring AI's legal personhood via the lenses of the three major jurisprudential schools: legal positivism, natural law, and legal liberalism.

Different jurisprudential schools may have different attitudes to AI's legal personhood. However, after a detailed exploration, this essay will conclude that if AI becomes indistinguishable from human beings, it is possible for all three jurisprudential schools—legal positivism, natural law, and legal liberalism—to grant AI legal personhood. In addition, in some circumstances, AI should be granted legal personhood.

This article aims to build the foundation for future research and provide references to future legal practices. To reach this end, the essay will first discuss the logic of and relationship between the three major jurisprudential schools. Then, this article will conclude existing viewpoints on AI's position in law. Finally, the probability and necessity of granting AI legal personhood will be analyzed in the discussion section.

2. Literature review

This article aims to find out the possible path for the legal positioning of AI to maximize the benefits of AI by exploring AI's legal personhood via the lenses of three major jurisprudential schools: legal positivism, natural law, and legal liberalism. Therefore, it is important to thoroughly explore the differences and relationship between jurisprudential schools and the current study of the intersections between AI and law. This section will first be dedicated to the main ideas and relationship between legal positivism, natural law, and legal liberalism. Then, the focus will be shifted to current studies related to AI and law to give a clear background introduction to contemporary ideas on AI's position in law.

2.1. Three jurisprudential schools
2.1.1. Legal positivism
Positive law has a direct definition of the legal person. That is, "legal personality and legal persons are, as it were, mathematical equations devised for the purpose of simplifying legal calculations" [5]. In this jurisprudential school, legal personhood is nothing more and nothing less than a purely legal and abstract concept with no extra metaphysical or moral requirement. For instance, in the case of the Estate of K, instead of trying to find out whether a frozen embryo is a natural person or not, the court decides to look for support in the law of inheritance solely [6]. In legal positivism, anything can be treated as a legal person as long as the laws say so [7]. Therefore, in this legal system, lawmakers have the absolute power to determine what constitutes legal personhood. However, this can create a lot of issues.

First of all, it is extremely hard to separate legal concepts from non-legal ones. Going back to the case of Estate of K, even though the law of inheritance allows "fetuses to have been deemed to be born as of the date of death", the definition of "born" and "death' is still vague [7]. This might invite the so-called "irrelevant" aspects such as medical and metaphysical elements to the discussion.

Secondly, it's extremely hard to separate abstraction from reality. In this system, a legal person is treated as "pure abstraction, something which exists 'only in the contemplation of law" [5]. However, human society has developed a rather fixed cognition of legal persons, and in practice, it is sometimes hard to keep the kind of "purity" of legal concepts. Fundamentally speaking, this issue represents the problem that lies in the attempt to completely

separate matter from consciousness [8]. For instance, under legal positivism, legal concepts like the corporate legal person are separated from the entity of a corporation. This attempt might be problematic as it is hard for people to understand a concept without some kind of substance. This idea shows how a "legal person is powerfully modeled on a certain conception of an individuated moral subject" [7].

Finally, and probably most importantly, because legal positivism believes that law should be independent of other disciplines, including morality, ethics, and science, this jurisprudential school leaves room for laws that stand against morality. For one, in the famous Nurnberg Trial, Nazi leaders defend that their actions are justifiable as their actions are legal in the Nazi's law system, so the charges should not have stood [9]. In the system of legal positivism, this kind of defense seems very reasonable. Legal positivism separates legal concerns from all other elements, including morality, which means the immortal laws are still laws and still need to be obeyed. Thus, from the perspective of legal positivism, as Nazi leaders obeyed the law, they should not be judged guilty. Another example is that during the colonial period, laws granted citizenship to slave ships, but laws did not grant citizenship to slaves [10]. These examples explicitly show the issue of separating morality from law. It has the danger of allowing and even promoting the existence of immortal laws that can stand against basic human rights.

In conclusion, legal positivism demonstrates a practical and clear definition of a legal person as it takes the law as an independent system. Although this feature has led to many problems in history, the fact that it brings the basis of a law to everyone and considers legal personhood as an "empty slot" will provide this jurisprudential school with high flexibility, equality, and efficiency [7]. These advantages will be shown explicitly on the issue of recognizing AI as legal persons.

2.1.2. Natural law

The discussion above shows that problems in legal positivism come from the radical exclusion of non-legal aspects. In contrast, natural law emphasizes non-legal, especially metaphysical and even biological aspects of legal persons. In this case, the concept of the legal person is very much equal to the concept of the natural person [7].

Legal positivism highlights that all moral capabilities come from metaphysical personhood itself. According to the International Encyclopedia of Comparative Law, "people everywhere acquire general legal personality at birth" [11]. In the case of Winnipeg Child and Family Services v G, the respondent was accused because her addiction to solvents is damaging her unborn baby [12]. Despite the majority refusing to consider unborn babies as legal persons, the minority opinion states that, as modern medicine has extended the formation of humanity before the birth of children, it is reasonable to say that they have a certain kind of legal personhood [12].

Even though this statement seems quite reasonable, it faces the risk of inviting complicated non-legal concepts into the discussion of legal issues. For instance, the very definition of life and death can be extremely controversial, for there is no universal understanding of life. In an article published in 2013, the author listed 17 key moments where different biologists may consider that life is created [13]. In addition, natural law excludes many other things, such as animals. In this kind of jurisprudential system, legal personhood belongs solely to humans, which stands the contrast to the animal rights and ecology movements. This can also be a concern in the future. As for AI, it seems that AI has no possibility of being recognized as a legal person in this jurisprudential school. However, the discussion section will explore some circumstances where AI could be recognized as a legal person.

2.1.3. Legal liberalism

According to Wolfe, natural law resembles some of the most critical aspects of legal liberalism [14]. Legal

liberalism is nourished by natural law but forms a different logical system. Based on Kantian philosophy, legal liberalism stresses that reason should be the guide of people's lives and world [15]. In this case, the most basic evaluation of legal personhood in legal liberalism is reasoning ability. Only those who are guided by reason can be acknowledged as legal persons. When applied to cases, this jurisprudential school demonstrates explicitly different interpretations of the same merit. For instance, in the case of Re A (Children), John Harris demonstrates his argument that neither of the twins can be considered as humans, for both experience a lack of moral capacity [16]. The reason why legal liberalism emphasizes reason so much is that only those who are capable of reasoning can undertake responsibility and exercise obligation [7]. For example, legal liberalists believe that children cannot take full responsibility for their behaviors because their minds are not yet fully developed [7]. People in a vegetative state cannot take full responsibility for their actions as they have lost their consciousness. In legal liberalists' eyes, these individuals have to depend on others. Then, they cannot be recognized as legal persons. However, this idea demonstrates a few concerning characteristics.

As mentioned above, even more subjects are excluded from legal personalities in this system, including young children, the mentally ill, and women in some historic periods due to sexism, where society believed that women lacked rationality [7]. However, not only for those groups who are excluded from legal personhood due to a real or unwarranted lack of rationality, but also as the range of discussion increases, it is easy to find out that no people have absolute independent rationality [17]. Hunter states that it is impossible for any person not to rely on others. When a person grows up, he or she receives education, builds relationships with people, and gains life experience [17]. According to Martha Fineman, all these things have a strong cumulative effect on one's decision-making, so it is illogical to say that anyone can make decisions on their own and take full responsibility for their decisions [18]. In other words, legal liberalism's true legal persons are impossible in this kind of strict definition. It is rather a kind of myth that only exists in liberalists' imagination [18]. However, in conclusion, despite all the concerns being proposed, it is still a matter of fact that legal liberalism has a meaningful theoretical basis and a significant potential in the issue of AI's legal personhood.

Legal liberalism demonstrates a special definition of legal personhood, that is, only those with full reasoning ability can be acknowledged as legal persons. This argument will give AI a great chance of becoming a true legal person in this jurisprudential school in the future.

2.1.4. Compare and contrast

Though they are seemingly irrelevant, there is a close connection between these three jurisprudential schools. As it is expressed by Naffine, these schools form a "diminishing circle" [7]. Legal positivism provides possibilities for everything to become a legal person, whereas natural law confines legal persons to be metaphysical persons, and legal liberalism further believes that legal persons should primarily be rational and autonomous.

More specifically speaking, legal positivism claims that if and only if a subject is granted legal personhood, it can be treated as a legal person. No other elements should be invited to the discussion of legal personhood. In contrast, natural law highlights the importance of metaphysical personhood and invites other elements, especially medical and biological aspects, into the discussion of legal personhood. Legal liberalism goes a step further from natural law and endeavors to discover the moral capabilities that make one a legal person.

2.2. AI's position in law

This section will be dedicated to a thorough demonstration of the intersection between AI and law. Arguments

related to AI's position in law will be divided into two parts: Treating AI as a tool and studies on AI's legal personhood. This section will display that AI still mostly works as a tool in society, and despite the abundant studies on AI's legal personhood, there is still a heated debate about AI's legal personhood. However, with the development of artificial intelligence technology, the debate on whether artificial intelligence has a legal personality will become more and more realistic in the future. The exploration in this section will lay the foundation for further discussion on how or whether artificial intelligence should be granted legal personality in the future.

2.2.1. AI as a tool

Recently, the application of AI has become dramatically prevalent. AI can be a very effective tool in many circumstances, including assisting lawmakers, helping governance, and improving legal services [19–21]. As a tool, AI has demonstrated some very valuable qualities, including high efficiency, fast data analysis, and cost savings [22].

For instance, in the legal service industry, scholars propose that AI is capable of working together with lawyers [23]. In this case, the mixture of human and machine intelligence can increase the working efficiency and effectiveness of law workers. Lawyers can focus on more professional issues instead of spending meaningless time on onerous paperwork, and the firm can increase profit by reducing its employees [23].

Due to all these uses and advantages, AI has long been considered a great tool for human beings, and that is exactly what most of the laws nowadays recognize AI as.

2.2.2. AI as a legal person

Despite the fact that people still primarily use AI as a tool, as the use of AI has become so very prevalent in today's world, the possibility of taking AI as a legal person has arisen.

Firstly, as AI has been developing at an incredible speed, it is possible for AI to become an entity that is indistinguishable from humans. As mentioned by Jowitt, AI should be granted legal personhood upon a certain degree of moral capabilities based on Kantian philosophy [24]. In addition, Chesterman also mentions that "as AI systems approach the point of indistinguishability from humans, they should be entitled to a status comparable to natural persons" [25]. Therefore, the legal system should be ready for a change to adapt to the development of AI.

Secondly, AI plays such a critical role in our social life today that it might need to independently perform some legal activities. The circumstance discussed above represents one perspective towards AI's legal personhood, whether it is morally capable or not. Here, the focus of the discussion is shifted to the practical value of granting AI legal personhood. Assuming that AI has not obtained full moral capability, AI can still be considered a legal person through the ability to perform legal duties or undertake legal rights [4]. In this case, as long as laws grant AI the capability of performing tasks related to legal obligations and rights, AI should be treated as a legal person. Just like corporate juridical persons, AI's legal personality in this instance can be considered as a legal invention to help deal with social problems instead of as a representation of certain moralities.

However, arguments against the legal personhood of AI still exist. For one, even though Chesterman shows the potential for AI to gain legal personhood, he still considers granting AI legal personhood at this moment to be unwise and untimely [25]. He argues that granting AI legal personhood requires a deep moral and philosophical basis, which is yet to be established in the case of AI, as legal personhood is not only a legal concept but also a thorough understanding of individual rights and dignity [25]. In addition, Bryson implies that granting AI legal personhood may harm the good of other legal persons as a whole, as creating new legal persons may weaken legal

protections for current legal persons [26]. The authors also mentioned that there might be abuses of power where the users or inventors of AI may use AI as a way to hide from their responsibilities.

2.3. Summary of literature review

In conclusion, different jurisprudential schools have totally different understandings of legal personhood, and the idea of taking AI as legal persons can be controversial in all jurisprudential schools. In the next section, the article will dive deep into the possibilities of taking AI as legal persons in each jurisprudential school in order to build a solid basis for future research and legal practices.

3. Discussion

This section will elaborate on the feasibility and rationality of taking AI as legal persons from the perspectives of different jurisprudential schools. By putting AI under the very lenses of different jurisprudential schools, the section will conclude that AI has a higher possibility of being a legal person in legal positivism and legal liberalism. This is because legal positivism will acknowledge the legal personhood of AI as long as the law regulates so. As long as AI has developed enough self-discipline to help it make independent, rational decisions, legal liberalism will treat it as a legal personhood for the sake of equality. It is still possible for natural law to grant legal personhood to AI because the definition of a legal person in natural law evolves with the development of other subjects, including theology, science, and philosophy.

3.1. Legal positivism

As it is mentioned in the literature review, legal positivism emphasizes a total separation between laws and other subjects. In this case, what the law says is the one and only truth [7]. Therefore, legal positivism has great potential in giving AI legal personhood. A similar case to further illustrate the assertion is a corporate legal person. Neither a corporate legal person nor an AI is a natural person. However, the idea of a corporate legal person is widely accepted. Therefore, as long as laws grant AI legal personhood, AI's legal personhood should stand. Although this is true, the necessity of recognizing AI as legal persons is debatable.

There are some arguments concerning the overwhelming legislative and enforcement costs of granting AI legal personhood. For instance. Chesterman indicates that even though AI may get to a state of indistinguishability from humans, due to the high cost of acknowledging AI's legal personhood, people should not do so [25]. In addition, some consider that the introduction of AI's legal personhood will diminish the general advantages of legal persons, despite the claim that legal personhood cannot be taken as a zero-sum game [26]. All these opinions suggest that taking AI as a legal person brings unpredictable risks to the jurisprudential system, as a new human-like entity that takes a great part in social life can trigger controversies in all aspects of social life. Admittedly, their arguments make sense, but only when AI is granted full legal personhood.

However, in real-life practice, the artificial forms of legal personhood are often limited; that is, not all legal persons have the same personality rights as natural persons. For one, the corporate legal person does not have many civil and political rights, such as marriage rights and the right to vote. The reason behind this phenomenon is that the very aim of the invention of the corporate legal person is to inspire commercial activities instead of creating a new entity that is legally similar to a natural person [27]. This logic can also be applied to the case of AI.

The ultimate goal of granting AI legal personhood is not to make AI "human", but to make sure the current

legal system is coherent with social development. In this way, the benefit of legislation can be maximized and the cost can be minimized. Therefore, granting AI legal personhood in certain fields where AI has triggered social controversies can be helpful. For instance, in the field of publication, granting AI copyright can help preserve the originality and creativity that the copyright system seeks to protect and promote, which is happening in the EU. In 2020, the European Parliament passed a resolution where they stated that the preservation of originality can be achieved through supporting a "horizontal, evidence-based and technologically neutral approach to common, uniform copyright applicable to AI-generated works in the Union" [28]. Alesia Zhuk believes that it recommends introducing a label system that refers to an institution that requires works that involve different degrees of AI intervention to be put on different labels to indicate AI's involvement. To some degree, this action acknowledges AI's copyright, as AI is now able to put its name on its "works" and the property right of AI is therefore acknowledged and protected [29]. By granting AI property rights, the label system strengthens the originality and creativity of humans and makes sure that the law keeps up with the pace of time.

Without the system, the public has witnessed and will witness challenges to some of the very basic human values, including creativity and originality. For instance, in 2022, Jason M. Allen won a painting contest by using work generated by an AI model without informing the committee of this contest [30]. This reflects a concerning problem that AI is threatening human creativity. AI has gained such strong creativity that its works are pretty much indistinguishable from human creations. In this case, people can use AI-generated works to challenge the principles of creativity and originality at an excessively low cost. Labelling systems can cancel out this drawback at a very low cost because, as AI is granted some kind of copyright, it is illegal to use AI's work without using a small yet effective label that signals AI's involvement. Therefore, this method can be considered a very effective and efficient way of regulating AI use.

In conclusion, even though there are risks in acknowledging the legal personhood of AI, it is critical to keep in mind that the primary goal of granting AI personality rights is to better regulate AI use. In this case, the act of granting AI part of legal personhood should be advocated for it creates high social benefit at a relatively low social cost.

3.2. Natural law

In the school of natural law, granting AI legal personhood is almost impossible, as natural law emphasizes the metaphysical personhood of a legal person. The very basic logic of natural law is that legal personhood comes from the inherent and unique dignity of natural persons [7]. Therefore, this jurisprudential school needs a clear definition of natural persons, and this definition cannot be given by law independently. In this case, natural law has a strong dependence on other subjects such as medicine, philosophy, and theology to help develop a correct definition of natural persons.

Every discipline is constantly evolving, including its definition of a natural person. Consequently, the definition of a legal person has changed over time accordingly. For instance, the concept of death has experienced a great change in time due to the development of medicine. Early physicians tended to believe that the sign of life lay in heartbeats and breathing, and they thought that the heart and lungs were the two critical organs to mark life activities [31]. However, the development of medicine prompts physicians to consider brain death as the end of life, for it marks the end of consciousness. Therefore, even though people may still be able to maintain vital signs, they cease to be natural persons and consequently lose legal personhood in natural law. In the current law of England and Wales, the definition of a natural and legal person has changed accordingly with the development of medicine

and taking brain death as a mark for death [32]. This is a perfect example to indicate how development in relevant subjects, including medicine, changes the definition of a legal person in natural law.

Temporarily, AI is not recognized as a legal person in natural law, for AI is not a natural person. However, the medical and scientific definition of human may be expanded in the future, which will provide the possibility for natural law's recognition of AI's legal personhood.

3.3. Legal liberalism

Legal liberalism has a unique definition of a legal person. In this jurisprudential school, legal persons must be equipped with the ability to make independent decisions and take full responsibility for their decisions. This definition of legal person gives AI a large chance of being recognized as a legal person. As long as AI has rationality, it should be included in the range of legal personhood.

In fact, AI may have the potential to establish the ability to make independent decisions and take responsibility for them, which is indistinguishable from human abilities in the short future, as some AI models are already equipped with independent learning ability. For instance, AlphaGo is capable of making complicated yet reasonable decisions based on the situation on the chessboard. According to Lee Sedol, winner of 18 world Go titles, instead of making decisions just based on probability calculation, AlphaGo has creativity in matches. This comes from its automatic learning process. The research team just introduced AlphaGo to the rules of Go and instructed it to play against itself on different levels, millions of times, to help it increase its capability. This method of "reinforced learning" means AI has the ability to learn independently and make independent decisions, which is very different from the traditional method of relying on the information provided by programmers. In other fields such as self-driving cars, news recommendations, and trading, this learning method is also applied [33]; therefore, leading-edge AI has gained some basic decision-making and independent learning skills, which creates possibilities for the future.

However, the rationality that AI is equipped with creates new controversy. That is, does AI have a reasonable amount of moral capacity to be a legal person or not? As it is proposed by Chesterman, even though AI has some degree of reasoning ability, AI still faces a huge issue of a lack of moral capacity and difficulty adapting to society. In addition, AI may have different values, moral standards, and goals from human beings, and it takes time and energy to "correct" these things [25]. Moreover, some scholars in this jurisprudential school directly point out that even though granting AI legal personhood can bring us social and economic advantages, AI's legal personhood can also create potential legal and moral issues [26]. They argue that AI's personality rights can create risks for natural persons, and even though AI is granted legal personhood, they may find it impossible to protect their rights due to a lack of moral capacity [26].

Their dispute indicates a serious issue: that is, rationality without moral capacity is meaningless. AI will still be a rational tool instead of a person. This argument makes some sense. However, any entity with enough rationality should be considered a legal person. Otherwise, the logic of this jurisprudential system will break down. It might be true that entities only equipped with rationality will not be able to fit in social life, but they must be considered as legal persons because of the basic logic of this jurisprudential school, i.e., legal persons are entities with sufficient rationality. If entities that meet this definition are not recognized as legal persons, then the logic of this theory is not comprehensive. With this point in mind, purposeful exclusion of AI, an entity with enough autonomy and rationality, is similar to the historical exclusion of women and slaves. It is a sort of discrimination that will threaten everyone's legal rights and equality, which legal liberalism is committed to bringing. This

discrimination breaks down the logic of this jurisprudential school and affects the legitimacy of all legal persons. In contrast, an equal evaluation of legal persons can make the jurisprudential school logical and give equal protection to all entities in the society. With the idea of equality rooted in the jurisprudential school, legal systems can avoid repeating historical mistakes such as discrimination against women and black people.

In conclusion, AI should be considered as a legal person under legal liberalism as long as it has the indistinguishable ability to reason. Purposeful exclusion of AI from legal personhood for any other reason should be refused for the sake of equality in this jurisprudential school.

4. Conclusion

In conclusion, different jurisprudential schools have different interpretations of the definition of legal personhood, but all should find a possibility of granting AI legal personhood in the future. In legal positivism, AI can be a legal person as long as the law regulates so; therefore, the true issue is the necessity of acknowledging AI's legal personhood. This article has argued that limited or partial legal personhood for AI is beneficial, which is reflected in a creative industry where the EU's act of acknowledging the copyright of AI successfully preserves the creativity of human beings and the originality of human works. In the school of natural law, AI certainly is not a legal person at present. However, as the concept of humans keeps evolving, the possibility of taking AI into account as legal persons in the future still exists. Regarding legal liberalism, with further development of AI's ability to reason, AI should be categorized into the range of legal persons, otherwise, this can be considered as a purposeful exclusion of AI from the range of legal persons, which is discrimination against AI and disrupts the logic and authority of legal systems. Thus, as stated above, this article has found the possible path for the legal positioning of AI and paved the way for further research. There are still many to be researched, especially on more specific and practical issues. For example, if an AI has legal personhood or limited legal personhood, will it be possible for it to commit a crime and to be held accountable? Also, there are very limited practices of granting AI full or limited legal personhood, which means that the analysis of AI's legal personhood is still rather hypothetical. In addition, this article is confined to rather limited sources. For one, there might be inaccessible legal cases that can contribute to the argument, so the conclusion reached here is still slightly partial and limited. In the future, as more practices of granting AI full or limited legal personhood occur, a more thorough understanding of the benefits and drawbacks of action can be obtained. This article demonstrates an optimistic view toward the future development of the AI industry, which is a hypothetical claim that needs to be examined over time. As AI can keep developing at the speed it has nowadays, there is no reason to be pessimistic about AI's legal personification.

Disclosure statement

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