Rule by Algorithms? A Preliminary Study on the Tension Between the Rule of Law and AI

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Abstract

Artificial legal intelligent systems have been extensively developed to perform various legal tasks. However, rare discussions focus on the question of whether such development might conflict with the idea of the rule of law. In this article I argue that there is an internal tension between ALIs and the rule of law based on two reasons. First, the idea of a legal subject in the rule of law is conceived as an active, responsible, and answerable agent who has the authority for making a decision. The fact that ALIs become more capable of performing legal tasks eventually leads to the possibility of shifting the decision-making authority away from human. The rule of law draws a baseline for developing ALIs, that is, ALIs should be supplementary, not substitute for human. Secondly, the highly efficient mechanism of law enforcement, one of the core features in ALIs, severely decreases an individual's autonomous sphere of moral reasoning for ALIs seek for an assurance that an agent would comply with law through the certainty of legal sanctions. As a result of adopting this mechanism, ALIs aim at influencing an individual's autonomy of ranking reasons. Based on the two arguments, I demonstrate there are two principle on the regulation of ALIs. The first principle prohibits the development of substitute ALI. The second principle prohibits the widely adoption of highly efficient mechanism of law enforcement. This article examines the fundamental issue of the rule of law in the age of AI from the perspective of legal philosophy.

Key Words: artificial legal intelligent system, the rule of law, the practical difference thesis, the shift of decision-making authority, computer functionalism