

# 世界人工智能法治蓝皮书（2020）

## 访谈六 赋予人工智能法律人格，实现人工智能 数据的治理之路

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**The blue book:** Hi Professor Heine, very glad to have the interview with you. I know you were invited to give a keynote speech at the legal forum of 2nd WAIC in Shanghai last year. How about your experience?

**Klaus Heine:** Thank you very much. It is also my great honour. It was wonderful! I would like to thank the perfect organisation committee of the WAIC, Shanghai Law Society and all volunteers. This is an excellent conference and I was impressed.

**蓝皮书:** Heine 教授您好，非常感谢您百忙之中接受采访。2019年您被邀请出席第二届世界人工智能大会，并在法治论坛上做主题报告，您对此经历感觉如何？

**Klaus Heine:** 我非常乐意接受采访。去年在上海的经历是无与伦比的。我很感谢组委会、上海市法学会以及所有志愿者的精密组织和安排。这是一次非常成功的会议，我对此印象深刻。

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**The blue book:** The title of your speech is “The Quest for AI Data Governance” . One of the most important ideas is that you propose to grant legal personality to robots. Why would that be a good idea?

**Klaus Heine:** Differently from what many non-lawyers may think legal personality is not something that is reserved for human beings. Also firms have their own legal personality, e.g. in the corporate form as limited liability company. And if we go back in time, for example into the middle ages or to ancient China, Rome or Greece, also humans were not fitted with the same legal personality as we are used to it today. Slaves had rights, but not the right of self-ownership; or insolvent citizens lost the right of self-determinacy till they had paid back their debt. What I will say is that the concept of legal personality is a legal artefact, a set of manmade rules that shall serve specific purposes. Typically, a legislator would like to shape legal personality in a way that it is to the benefit of society: Legal persons shall have an incentive to prevent harm, shall raise capital for innovations, shall distribute profit between stakeholders etc. Generically, legal persons are distinctive spots that have been granted a specified autonomy to take decisions and that are liable for their actions. Hence, legal persons may be the owner of property and may be a partner in a contract with corresponding obligations.

**蓝皮书:** 您在第二届世界人工智能大会法治论坛的演讲题为“人工智能数据的治理之路”。我注意到这个演讲中一个重要的议题是你主张应当给人工智能赋予法律人格。您为何会有这样的想法?

**Klaus Heine:** 给人工智能赋予法律人格的这一主张在很多非法律学者看来是难以理解的。其实并不是仅仅自然人才能具有法律人格。举一个很简单的例子，公司作为一个承担有限责任的主体，也被赋予了法人的资格。如果继续向前追溯，我们会发现“法律人格”这个概念并不是一成不变的，而是不断发展的。人们在中世纪，或古代中国、古希腊、古罗马，不同时期不同地点，对于什么是法律人格的认识和今天也有很大的不同。比如我们立刻就能想到的一些例子：在古代，奴隶也是有权利的，但是这种权利并不具有自主性。个人如果破产了，那么除非他及时还清债务，否则就要失

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去自主权利。所以，当我们思考这些例子时，就会意识到，法律人格的本质是一个拟制的概念。拟制法律人格的本质是为实现人们特定目的服务的，为了达到人们追求的特定目标。一般来说，从立法者的角度，他更希望赋予或者发展法律人格，是为了实现更大的社会利益。那么这些社会利益包括什么呢？我认为，可以通过赋予法律人格来提供主体一定的行为激励，从而预防风险，提高创新投入，优化利润分配，等等。总的来说，法人概念的独特性在于其可以从自己的效用出发，作出有效率的行为和决定，同时承担相应的义务。因此，法人可能是财产的所有权人，或者是特定契约的义务主体。

**The blue book:** How does innovation relate to lawmaking?

**Klaus Heine:** The creation of new forms of legal personality is a reaction to the challenges of new situational conditions; may that be the necessity to raise capital for large infrastructures(train projects in the 18th century), the exploration of new continents(European colonies as of the 17th century) or the advancement of SME as of the 20th century by private limited companies. Technological drivers are triggering the legal system to come up with new materializations of legal personality, legal personalities that can better deal with actual challenges than the incumbent legal personalities which were meant to cope with the challenges from the past. Granting legal personality to AI is therefore a quite natural step to integrate autonomous decision making of machines into our society and to let AI do what society likes AI to do for it: Creating wealth and health for all people.

**蓝皮书：**您认为创新和立法的关系应该是怎样的？

**Klaus Heine：**法律人格的创设应当针对特定的挑战和需要。从历史的角度来看，这种紧迫性有多种形式，例如18世纪时针对大型基础设施，作筹集资金准备，再如17世纪时作为欧洲殖民扩张的一种理由，还有20世纪以来小微企业扩张的要求。这些实实在在的经济或者科技的驱动，使得立法者不得不对新事物不断地赋予法律人格，从而实现特定目的。由于既存的法律人格体系已经适应不了新的发展，所以必须要改革已有体系。所以我认为，赋予AI法律人格，并不是一个刻意的安排。相反，

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从历史和科技发展的角度来说，这是一个自然的发展过程。换句话说，赋予 AI 法律人格就是将机器的自主决策融入我们社会发展的自然过程。我们通过赋予 AI 法律人格，把 AI 刻画成我们期待它成为的样子：为全社会创造财富，让人们健康地享用 AI 带来的效用。

**The blue book:** But is a modest adaptation of the law that we actual have not sufficient? A gradual modernization of the law would also be much easier to achieve and the legal profession is much more likely to accept it.

**Klaus Heine:** In my view AI will prosper indifferently from the legal regime around it. AI is a very strong technological imperative that does not care overly what legislators decide or what the doctrinal legal standpoint of law professionals is—at least not in the medium and the long run. Those jurisdictions or countries that master to adapt their legal infrastructure complementary to the technology will have an enormous competitive advantage and can reap the benefits of AI earlier than late adopters. It is the co-evolution of technology and institutions that is in the end decisive for economic growth.

**蓝皮书：**但是我们通过对法律进行适度修改不可以实现我们既定的目标吗？也许逐渐对法律进行调整更容易实现，并且也更容易得到法律学者的广泛接受？

**Klaus Heine:** 从我的观点来说，人工智能是一项非常强大的技术要求，从中长期来看，它并不在乎立法者的决定或法律专业人士的法律学立场是什么。那些最先进行法律改革的国家将会更早的享受在人工智能领域的竞争优势，从而比其他行动较晚的国家更早的享受该技术带来的红利。经济增长最终由制度和技术相互发展决定。

**The blue book:** So in your opinion, what does the AI governance framework look like?

**Klaus Heine:** The paradigmatic shift lies in the direct attribution of rights and obligations to the AI. At the moment an AI is treated as any other machinery belonging to a natural person or company. Rights and obligations concerning an AI are only addressed

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to the legal person that owns it. That means that the full property right of the AI rests unspecified with the owner. The AI is—so to say—covered behind the corporate veil of its owner. And it is the owners' interests that play out against the public interest when it is about the regulation of the AI. This two dimensional relation only changes, when the AI gets its own legal personality. Then it still belongs to the company, but can directly be accessed by the legislator or regulator. That means the AI gets a specific contractual status within the company as employees, management or shareholders have. The specific status of AI allows the regulator to directly govern the relation between the AI and society.

**蓝皮书：**那么在您看来，治理人工智能的法律体系具体应该是什么样的？

**Klaus Heine：**范式转化的核心是将权利和义务直接赋予 AI。在现有体系下，AI 被视为是自然人或者法人拥有的一种机器。由此，与 AI 有关的权利和义务最终都是由这些相关的自然人和法人拥有或者承担的。这也就意味着，AI 的所有财产权利都取决于其所有者。从这个意义上说，当我们说对 AI 进行规制的时候，实际上是平衡 AI 背后的私主体利益和公共利益的冲突。只有当 AI 被赋予法律人格之后，才会改变这种双重关系。在这个意义上，AI 仍然归属特定的自然人或者法人，但是立法者或者监管者可以直接介入其中。也就是说，AI 的角色将类似于公司中的雇员、管理者或者股东。AI 与其直接拥有者的关系，将以合同的方式被重新定义。在这个关系下，AI 所处的特殊地位将允许监管者更好地控制和协调 AI 与社会的关系。

**The blue book：**Could you give an example about the way in which granting legal personality to AI might be advantageous for society, and how it may solve pending legal problems of AI?

**Klaus Heine：**For example, big pharmaceutical companies may employ AIs to create new drugs. At the moment the new receipts of the drugs accrue automatically as patents to the company. Those companies may use the Intellectual Property Rights then to hinder new companies to enter the market. Incumbent competition law is not well prepared to deal

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with those or similar cases, because it has to regard hard wired Intellectual Property Rights law as it is. However, if the Intellectual Property Rights are associated with the AI it would be possible to expropriate the AI rather than the company from the Intellectual Property Right. Historically, Intellectual Property Rights were meant to incentivise and compensate human entrepreneurs for risk taking. That is not the case with AIs. Thus, it is sufficient to guarantee companies and investors making a profit from employing an AI, but not giving them the right to deny access to the data and intellectual achievements generated by AI. AIs fitted with legal personality may have to pay taxes, may have to insure against accidents etc. A whole new world of legal possibilities opens when one makes the paradigmatic step to grant legal personality to AIs and starts thinking about the design of the contractual nexus with which AIs become accommodated into our society. I do not see yet, how society could achieve the same beneficial results without changing the legal status of AI. Those jurisdictions will have a competitive advantage that first move to a new legal status of AI.

**蓝皮书：**您能否举一个例子来说明赋予人工智能法律人格会推动社会发展，并且解释他是如何解决 AI 未决的法律问题的？

**Klaus Heine：**这里我举一个例子，如今较大规模的医药企业已经开始运用 AI 进行药物的研发和生产。在目前的法律体系下，相关药品成果会成为医药企业的专利。在获得这些专利之后，他们可以阻止新的企业进入相关领域，这极大的限制了竞争。现有的竞争法并不能很好的解决这个问题，因为它必须参考并尊重知识产权法的硬性要求。保护知识产权和促进竞争在这个问题上就出现了冲突。在上述例子中，如果知识产权和 AI 关联，我们可以把这部分 AI 征用。知识产权的本质是激励创新，同时补偿创新者在创造过程中可能承担的风险。但是，在 AI 背景下，以上的立法目的并未得到满足。因此，在我们能够保证相关主体获得必要收益的情况下，就不应该继续给予他们阻止别人利用由 AI 产生的知识产权和必要数据的权利。具有法律人格的 AI 也需要行使纳税的义务，同时必须购买相关保险来应对可能的事故。当我们准备迎接 AI 带来的法律制度的范式转化的时候，我们也就开始思考如何设计契约关系来使 AI 适应社会的发展。从推动社会发展、适应科技进步的角度，我目前看不到比赋予 AI