

# Introduction

Rights are the source of power. According to Max Weber, power is “the ability to force others to act according to the will of the power owner, and the persecutor does not act like this in other situations.” American sociologist Parsons believes that in terms of thinking political phenomena, power is a core concept of the great Western tradition. At present, our jurisprudence research is more about the study of legal rights. Therefore, from the political “power” to the legal “right,” the two basic problems are mainly clarified through the normative attributes of the law. One is to directly restrict the power through legislation or making rules, so that the power holder can know the boundary of their power. The other is to define the boundary of the rights of citizens, so that the rights, especially the basic rights, of citizens are authoritative, so that those in power cannot overstep. The most critical research method of law science is to determine the legal relationships, and the content of the legal relationships is the rights and obligations, and the law science is therefore called the law of rights and obligations. But as Foucault believes, power has become a strategic situation, a situation in social life, an effect that basically determines the contrast of social force, a situation that no longer attached to the legal system but permeated the entire society life. At this time, the protection of rights should also be adapted to the changing situation of social life, and effectively maintained in the comparison of new social forces, thus forming a more complete legal system.

On the surface, the external framework of the existing legal system is indeed very brilliant, from the Corpus Juris Civilis, Napoleonic Code to the legislations of German Civil Code, the legal system is quite complete in the eyes of all beings. It seems to be complete enough to satisfy human needs for orderly and organized life and the human desire of repeating the experience or arrangements and the impulse to adapt to certain situations. However, as human beings entered the era of digital civilization, the changes in the relationship between power and rights are profoundly changing the situation of social development. Data power and data rights are intertwined, and relationships of data rights become the main aspects

of the contradiction between productivity and production relations. Data people will come from hypothesis into reality, and data relationships are reflected in personal life, business operation and national security. A new thing that is different from traditional things and transcends traditional people begins to enter the field of legal relations, which is the “data.” In the face of contradictions based on the laws of the eighteenth century and the reality of the twenty-first century, in the fields involving civil law, economic law, administrative law, criminal law, procedural law, international law, etc., data rights jump out of the traditional relationships of legal rights and obligations, and it is no longer the traditional “opposition to the possession of all possessors.” On the contrary, the flow and sharing of data is becoming an era feature, and at the same time, we urgently need to balance the relationship between personal data protection and data for commercial use in the collection, storage, transmission and processing of data. It is exactly the common issue that global cyberspace governance faces. As Immanuel Kant thought that all legislations involve two factors, the first is law, and the second is motivation. The law mainly focuses on the objective inevitability and forms the obligation; and the obligation determines the motivation through the relationship of the law. No matter which type of legislation, the ultimate point is the rights, including the rights gifted and the rights acquired, as well as the rights of nature and the rights provided by substantive law. But Immanuel Kant also adds that asking a jurist “what is right” is like asking a logician “what is truth” which makes him feel embarrassed. Data as a future right, what it is, where it comes from, which also makes us embarrassed. But let’s put it up, maybe the question is worthy of consideration more than the answer itself.

Data rights, human rights and property rights are the core of new rights system with the same value of era. However, since the ownership and boundary of data asset have been in a vague and controversial state, it is difficult to clearly define the demarcation of the rights, responsibilities and obligations of data subjects, data processors and the actual controller of data separately, which makes data governance to be the most obvious weakness of national governance. The individual rights-based of “I am the master of my information” is difficult to obtain an effective support from the law, which lets the distribution of data rights determined by the ownership of data assets and the division of data quality and security responsibility cannot be implemented,

and interests of data value is monopolized by powerful people and becomes a new origin of social unfairness.

Individual “natural rights” are the cornerstone of a society ruled by law. among various theories of rights up to now, the theory of natural rights is a long-standing classic theory. The theory holds that everyone has certain rights in the sense of being human, and these rights are inherent, non-transferable, and inalienable. At the same time, from the point of view of the current law circle, because the definition of the data rights is unclear, and the related protection is also very controversial. Even if being agreed, it is illegal to buy and sell personal information online. That is to say, even if the account registrant (seller) agrees to sell his or her personal information of citizen, it does not affect the “seller” and the buyer latter to commit the crime of infringing the citizen’s personal information. This is because, in jurisprudence, civil validity and criminal violations are two different levels of evaluation. Citizens’ personal information is firstly a personality right. Personality and identity have strong personal attributes and cannot be bought and sold at will. In other words, data rights or self-determination of information is only a reason for the seller’s innocence, but it cannot deny the criminal responsibility of the “seller” and the buyer latter. Therefore, only if we further clearly define the data rights in law, and put the data rights at the same important position as human rights and property rights, effective protection of data rights can be achieved. The data rights have an altruistic and shared attribute naturally, which is a kind of existence between conflicts and games of private rights and public rights. Once the data rights rise from a natural right to a common and “public will,” then it definitely transcends its own form and becomes a social right. As stated in the GDPR: “To protect the right of personal data is not an absolute right. It should be considered in its role in society and should be balanced with other fundamental rights in accordance with the principle of proportionality.” In other words, while protecting the rights of subject of data, it should still leave room for technological innovation and industrial development at same time, which is precisely the essence of the “best use of things” of civil law.

The Internet brings data transmission, sharing and value exchange and value-added beyond the space, but also faces the challenge of unbounded, priceless and disorderly. From transmitting data by everyone to exchanging value for everyone and sharing the order by everyone, the Internet also

undergoes an evolution from information Internet to value Internet and to order Internet. This evolution of low-level to high-level and simple to complex, is a data state that can't be copied into copyable, essentially a state of human-centered data flow in virtual space. The non-boundary of such a state makes the data flow unsure, unpriced, untraceable and unregulated. In a sense, the Internet leaves us in disorder and chaos. The flow of data on the Internet is like a wild horse running fast in the wilderness without borders. the wild horses becoming better need to be put on the reins of rules. The establishment of such rules requires both technical support and institutional guarantees.

In the legislative system of our country, on the basis of balancing the personal data rights and the free flow of data value, strengthening the protection of rights of data subjects and the legal definition of obligations of data controllers and processors are the primary and urgent issues the legislation of data rights faced. This kind of urgency not only manifests that how to face and regulate new technologies, formats and models that are changing with each passing day, but also how to promote not impede technological innovation and social development while protecting personal data. but no matter what, the approval of GDPR of Europe Union and the challenges of cross-border flow of data and cyberspace governance are becoming more and more serious. the clear expression and co-identification for the fundamental problem of data ownership, the origin, boundary and attributes of rights, that is, the legal basis of "data rights" are even more important. it is also a subject pertinent for us to seize the important opportunity of developing big data and promote the modernization of the national governance system and governance capacity.

In *Sapiens: A Brief History of Humanity*, Yuval Noah Harari wrote, "Exploring the characteristics of modern society is as difficult as questioning the colors of the chameleon. The only thing we are sure about is that it will change constantly and be an eternal revolution." In contrast to the foreign big names that came to China to promote welfare of science and technology in the past, if Nicholas Negroponte brings the imagination, Kevin Kelly brings inspiration, Harari brings us more with an anxiety that has been abandoned by the times. But they have a common feature and reach an unprecedented consensus on the question that the Internet smashes the old order, the old rules, the old pattern and the old world, however, there

is no answer to how the Internet reconstructs a new world. The introduction of data rights law provides us with a new perspective to re-examine the world with the criteria of law.

Modernity is not a fixed state, but a force field that various strengths compete. Any hegemonic tendency of principles, powers and elements will infringe other rights subjects, and any self-certification of claims and schemes must also communicate and dialogue with others. This “complex modernity” determines the significance of introduction and legislative practice of data rights for humans enter digital civilization. In the face of the increasingly complex digital civilization and the transformation of its social order, the enormous volume and influence of the digital economy, we need to have a relatively clear concept system of data rights, and form a general cognitive framework that inherently regulates digital order with complex features. Promote data rights from necessary to statutory and to reality. This is a process of inclusive and prudent legal practice, and the relationship showed between data rights not recognized and recognized by law, the data rights institutionalized and realized, is not only a reflection and critical consciousness based on historical experience, but also a construction consciousness based on norms and beliefs. Only by respecting the universal norms and values of modernity can we gradually step out of the disorder and chaos of the era of digital economy. Only by forming scientific and reasonable rules of data protection can we realize the full circulation and use of data, promote economic growth and social progress under the premise of ensuring personal dignity and freedom. This is also the common question of human beings moving towards the community of digital civilization.

Harari predicted the law of the future in *Homo Deus: A Brief History of Tomorrow*. He believes that in the future artificial intelligence will gain a dominant position, and our law will become a digital rule, regulate all human behaviors except the laws of physics. For the past, law was a product of civilization; for now, law is a tool for maintaining civilization; for the future, law is a means of promoting civilization. The data rights law is the necessity of orderly circulation of data, the balance of data reuse, personal privacy and data utilization. It is the basic material of the “square” world of the legal empire that constructs digital space. The light of scientific wisdom and the light of legal rationality will complement each other in the era of digital civilization.

Remixing is a kind of internal structure and motor process of symbiosis and mutual transformation of chaos and order. It is not a hard mix of old ways and new ways, but an integration of the elements and reconstruction of arrangement. The evolution of the world in chaos and order makes people realize the power of remixing, and block data interprets such a remix full of power. From deconstruction to reconstruction, as a paradigm of thinking in the field of remix, block data helps humans better grasp the law and predict the future. Human beings are entering an era of remixing and also an era of living together. The human beings living together need order by nature, and the impact of remixing on the structure of rights let people re-examine the society and the construction of a new digital order. Data rights are the source of the inner vitality of digital order. The claim of data rights is an important force to promote the reconstruction of order.