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EDITORIAL

Editor's Preface

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It is widely acknowledged that the sociology of law was born and developed in the context of the wave of modernisation sweeping the world. The modern codification movement marked by the *Code Napoleon* was to a significant extent dedicated to the unification and overall control in the sense of "Pannomion," leading to an increasingly closed-loop operation of the normative system. The most typical manifestation of this trend is the conceptual jurisprudence theory in Germany. In response to the "one-sided logic" and authoritarian bias of Georg Puchta and his ilk, there was a rebellion in the legal circles of Western Europe to revise and transform the modern legal system and its theoretical form, thus the Freirechtsbewegung promoted by Eugen Ehrlich and the construction of the theoretical system of the sociology of law came into being. It goes without saying that Ehrlich's theory aims to construct a complex system of law composed of multiple elements.

The 2024 Nobel Prize in Physics and Chemistry are awarded to the discoveries and inventions of artificial intelligence technology and its scientific applications, causing widespread astonishment and making it clearer to everyone that we are in the midst of an artificial intelligence digital revolution. The wave of digitisation is sweeping across Asia and the globe, driving significant social transformation. In Asia, modernisation and digitisation are actually progressing in tandem and complementing each other, creating a fascinating duet. Therefore, the sociology of law must confront the opportunities and challenges of this digital transformation. In the digital age, complexity, paradoxes, interactions, code frameworks, scoring systems, algorithm design, and virtual community rules are ubiquitous, and legal pluralism is bound to further exert its influence. It is therefore necessary to reconceptualise the scholarly tradition of the sociology of law since Ehrlich Era within the rapidly changing context and explore the innovation of research paradigms on this basis. Based on the above understanding, I initiated a collection on Asian law and digital transformation, which fortunately received positive responses from many researchers in different countries. I would like to take this opportunity to express my respect and gratitude to all the contributors. The seven articles published here, cover the phenomena and institutions of China, India, Japan, South Korea, Vietnam, Indonesia, Malaysia, Australia, and other countries geographically, and also cover a wide range of topics including digital sovereignty, digital human rights, digital rule of law, algorithmic power, digital platforms, metaverse, blockchain, data regulation, cross-border data flow, etc., which comprehensively show the current status and trends of Asian law and social changes in the digital age, and also raise many issues worthy of further discussion.

My thesis *"The Transmutation of Sovereignty: Digital 'World of Warcraft' and Innovation in the Chinese Legal Order"* takes the game of "Algorithmic" and "digital behemoths" as the problem situation, examines the principles of digitisation as a new way to modernisation

from a macro perspective, and the new challenges it brings to social governance and the design of legal systems, such as the rapid development and extensive application of information technology have broken through the boundaries of sovereignty and profoundly changed the power structure of network platforms, virtual communities, individual users, and the state, bringing various problems and threats to the modern legal system. The Australian *News Media and Digital Platforms Mandatory Bargaining Code*, adopted on 25 February 2021, had to compromise and add an arbitration mechanism amendment clause due to Google's strong dissatisfaction and Facebook's ban on the use of its news platforms by the country's media and users, which is called as "constitutional coup" carried out by internet behemoths. In addition, on 7 March 2024, the short video giant TikTok appealed to 170 million U.S. users to protest against the Senate's passage of a bill to force ByteDance to divest its related app businesses, and then filed a constitutional lawsuit against the government in the U.S. federal court on 7 May for violating the principle of free speech, which also reflects the "quasi-sovereignty" of giant online platform companies and their challenges to existing legislative and executive powers. There are also problems of the application of blockchain technology to make individuals sovereign and form a "semi-sovereignty" pattern, and large language models changing the power balance between government and individuals through artificial intelligence democratisation, creating a "de-sovereignty" trend. In summary, digital technology can limit or challenge the power of modern states through "quasi-sovereignty," "semi-sovereignty," and "de-sovereignty," etc.

Of course, in the sense of preventing the abuse of state power through the relativisation of sovereignty, this kind of restraint is also conducive to the implementation of the spirit of the rule of law in modern time. On the other hand, however, digital technology may also in turn give state power unprecedented energy and magic. For example, China's sovereign blockchain and a unified computing system and digital infrastructure reflect institutional designs aimed at strengthening national sovereignty. The so-called "digital sovereignty" concept proposed by European scholars in recent years also reflects the above paradox: on the one hand, it is a response of sovereignty to the challenges of digitisation, and on the other hand, sovereignty itself also takes a digital form, transforming into the so-called "Algorithmic Leviathan," which may also bring new significant risks and threats to the modern rule of law order aimed at restraining government power and protecting individual freedom. Therefore, how to restrain this new type of Leviathan in the digital age will become a fundamental question of the sociological theory of law. To prevent the "Algorithmic Leviathan" from running amok, can we promote "digital constitutionalism" by strengthening institutional guarantees for individual freedom and rights like the Enlightenment thinkers and politicians since the late seventeenth century? Or can we use the existing digital platform giants (such as China's Baidu, Alibaba, Tencent, and Huawei, collectively referred to as BATH), the sovereignty individuals active in blockchain, and the comprehensive power of large language models and multimodal large language models to balance the Algorithmic Leviathan, making the cyberspace return to a diversified power balance like the feudal system of Western Europe's "Middle Ages" or the "indirect control" of traditional Chinese bureaucratic institutions? In my view, this multi-layered and diverse digital power structure can also be called "digital relationalism." Or combine these two prospects to explore a third way that fits the realities of China and Asia? These are very interesting topics for the study of the sociology of law.

In sharp and interesting contrast to the above macro-narrative is Shikhar Goel's thesis "*Paper in the Age of the Digital: The Curious Case of 65-B Certificates in India.*" This article examines the impact of digitisation on Indian justice and law enforcement from a micro-perspective. The author uses the microscope of empirical research to focus on a very specific phenomenon, namely the 65-B certificate in the Indian Evidence Act. All digital materials, including audio, video, recordings, videos, emails, social media posts, etc., must

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be tested and managed through this paper certificate, when cited as evidence. Through the connected fine seams between paper certificates (analogue) and electronic evidence (digital), the author gets the big picture from the small, revealing the various tensions caused by digitisation in the bureaucracy, law enforcers, and legal experts. Actually, when big data evidence, artificial intelligence evidence, metaverse evidence, and especially blockchain evidence are also applied in law enforcement and judicial occasions, the situation will become more complicated. Blockchain evidence can be verified by comparing hash values, which can obtain and preserve more sufficient credibility. For example, Article 50, Paragraph 2 of the Criminal Procedure Law of the People's Republic of China (2018 Amendment), integrates audio-visual recordings and electronic data into a new type of digital evidence with openness, and forms a ladder-type classification review mechanism and a mechanism for timely updating of review standards.

Karisma Karisma's paper, *"Empowering Energy: Legal and Regulatory Perspectives on Blockchain-Enabled Trading in Malaysia and Australia,"* shows the application scenarios of blockchain technology in the energy industry, especially in P2P energy trading, and analyses that the legal framework for smart contracts in Malaysia and Australia is designed for centralised energy systems and cannot adapt to the actual needs of P2P trading and distributed governance. It is too strict and hopes to promote the reform of the legal system and regulatory mechanisms. Here, it is worth referring to the experience of Japan's blockchain trading system construction. On 7 June 2022, the Japanese government planned to fully improve the Web3.0 environment and approved the *"Basic Policy on Economic and Fiscal Management and Reform for 2022,"* planned to strive for an ideal decentralised digital society, including a more decentralised and trustworthy internet, widespread digital assets on blockchain, and data managed by users themselves to create new value. The Japan Cryptoasset Business Association and the Japan Blockchain Association also proposed tax reform proposals to the government.

Blockchain is also the foundation of the metaverse. Elnur Karimov's article, *"Meta-Morphosis of Copyright and User-Generated Content: Can East Asia's Emerging Policies Navigate through the Metaverse?,"* examines the metaverse policies of East Asian countries (mainly China, Japan, and South Korea) and the copyright of user-generated content. Using "Second Life" as a case study is a bit outdated, but the questions raised and examined by the author are the latest important issues. Although new artificial intelligence such as Chat GPT seems to overwhelm the metaverse after entering 2023, in fact, this kind of generative artificial intelligence constitutes the virtual content manufacturing device and virtual-real connector of the metaverse, which enables virtual beings as digital avatars to have very strong automatic learning capabilities, and thus has the potential to promote the development of the metaverse, especially to bring new opportunities to the Industrial Metaverse. For example, on 24 February 2023, Meta launched its own artificial intelligence large model, LLaMA, and opened it to non-commercial research applications. Three days later, ten giant technology companies in Japan, including Fujitsu and Mitsubishi, joined hands with the largest financial group, Mizuho, to sign an agreement to build a metaverse economic zone. China's Ministry of Industry and Information Technology also continues to emphasise the significance of the metaverse as a future industry. It can be seen that the digital economic development of the metaverse plus artificial intelligence is in full swing. The progress of computer hardware, algorithms, and data collection technology will help the application of AIGC in the metaverse; and as more content is created by users, copyright and other intellectual property issues will become more prominent.

The operation of the metaverse is carried out by digital platforms. Adis Nur Hayati's article, *"The Issue of Dark Patterns in Digital Platforms: The Challenge for Indonesia's Consumer Protection Law,"* analyses the "dark patterns" of digital platforms that induce and manipulate consumer behaviour from the perspective of consumer rights protection, calling for the Indonesian legislature to enact strict prohibitions, rather than the current

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indirect regulation through basic principles and general provisions. The dark patterns also exist in Asian countries outside of Indonesia. It is specifically manifested in the platform's self-strengthening through a series of improper and unfair methods such as traffic hijacking, algorithm capture, interface design traps, and digital addiction, so as to achieve monopoly, and it also threatens personal information security and privacy, which constitutes a key to platform regulation. Although such serious ethical and governance issues must be strictly guarded against and prohibited, there are still dilemmas and some thorny issues in judging and regulating the legality of dark patterns. Therefore, how to prevent related risks and effectively govern platforms is a topic worthy of in-depth research in the digital age.

The key to the rise of platforms is that interactions on the internet will accumulate a large amount of data, and make data into energy source and currency, thereby creating increasingly diverse economic value. As a result, data applications and data transactions have become increasingly common. In this sense, it can also be said that the result of digitisation is the birth of a data-driven society. Social governance can also be carried out to a large extent through data governance. There are two papers in this collection that specifically discuss data governance. One is *"The Dilemma of Cross-Border Data Flow and the Construction of Mutual Trust Platform in Asia"* by Dr Zerui Zhao, which explores the mechanism design in cross-border data flows in Asia. The author believes that due to the large strength gap and great cultural diversity among Asian countries, the existing unilateral governance mechanisms and bilateral governance agreements are difficult to effectively manage the various problems arising from cross-border data flows. Therefore, he suggests designing multilateral management mechanisms based on ethics and jurisprudence, and using blockchain technology to build a mutual trust platform for cross-border data flow in Asia. The other is *"Everyone is Safe Now: Constructing the Meaning of Data Privacy Regulation in Vietnam"* by Huynh Tu, which examines and analyses Vietnam's distinctive approach to data regulation. Unlike the EU and other countries that emphasise the principles of personal information security and privacy protection in institutional design, the recent Vietnamese Decree 13/2023/NĐ-CP on Personal Data Protection (herein PDPD) prioritise state oversight and centralised control over information flows to safeguard collective interests and cyberspace security. Here, the author provides a nuanced explanation of the different understandings of data privacy between regulatory agencies and the regulated groups, as well as the risk communication, arguing that the legal differences in personal privacy protection among countries cannot be eliminated through simple reform measures, nor can they be easily compared, explained, or understood mutually. This claim just reflects the diversity of digitisation in Asia and the characteristics of Vietnamese institutional design.

Generally speaking, the modernisation includes two basic aspects. One is to rationalise state power through the rule of law and improve governance efficiency. The other is to expand individual freedom and improve the fairness of governance through humanism. In the digital age, there is no doubt that information and communication technology and artificial intelligence can greatly improve efficiency. However, whether the rapid iteration of artificial intelligence will lead the world into a Post-Human or Post-Humanism era is a matter of debate. In this regard, Yuval Noah Harari mentioned an important concept as "Homo Deus" in *"Homo Deus: A Brief History of Tomorrow,"* which seems to have not received enough attention in Asia. Whether the Post Human or *Homo Deus* will form a crushing blow to humans and individuals may constitute a severe challenge to the modern national governance system. In the past two or three years, large models have rapidly iterated, and generative artificial intelligence is affecting all aspects of daily life. Undoubtedly, artificial intelligence large models can empower individuals and enhance their independence. But on the other hand, this generative discourse order formed by human–machine coexistence and human–machine dialogue is making everyone live in the interaction as a collection.

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The concept of "I" will inevitably be relativised, and "we" will increasingly become the subject of the lifeworld. In other words, at the moment when generative artificial intelligence is rising strongly, the trend of philosophical and legal thinking from individual "I" to collective "we" has actually become more unstoppable.

In summary, although the basic unit of computer system users is still the individual, and data is authenticated and managed according to the principle of "one person, one account" and self-disciplined individual freedom, the self that once swelled rapidly in social networks, after entering the generative artificial intelligence stage, is increasingly integrated into large models and interactive collections, transforming into "we" in the discourse order and re-emerging. From individual-based to collective-based, this is a fundamental change in social paradigms and research paradigms that the sociology of law has to face, especially in Asia. Digital constitutionalism or digital relationalism still seems to be a fundamental issue before us.

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