

Checks and Balances in Enterprises' Use of Personal Data

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Abstract: When it comes to the use of personal data, enterprises' legitimate rights and interests are protected by law. However, the protection of such rights and interests is limited. This study explores the checks and balances in enterprises' use of personal data. The use of personal data applies the social governance concept of public interest protection and the theory of justice. To break the data monopoly that harms public interest, it is important to start from the confirmation of rights. The main aim of confirmation of rights is to determine the ownership of data rights and limits of exercising such rights. On the basis of the principle of hierarchy of interests, when commercial interests come into conflict with personality rights and interests, enterprises should give way to personality rights and interests and prioritize the protection of these rights in data, including the personality rights and interests of others and those of the enterprise itself. When using other people's data for commercial purposes, enterprises must be careful not to infringe on the legitimate rights and interests of others, which is a requirement by the concept of balance of interests and the theory of justice.

Keywords: Rights and Interests, Personal Data, Public Interest

1. Big Data as the Production Factor of Enterprises

In the current era where personal data have become an important factor of production, it is crucial to strike a balance between the free circulation of data and the protection of personal rights. This is precisely based on the concept of balancing public and personal interests, which seeks to protect enterprises' legitimate rights and interests in the use of personal data. However, such protection of rights and interests should be checked and balanced to prevent data monopoly that interferes with public interest, give way to personality rights and interests, and ensure that the legitimate rights and interests of others are not violated.

Enterprises include big data undertakings that use big data as a profit-making method as well as enterprises and public institutions that generate or obtain big data in the process of operating and organizing transactions, such as securities and futures exchanges, gold exchanges, energy trading centers, foreign exchange trading centers, and various local exchanges. Big data enterprises are divided into two models: state-led operations and independent operations. State-led big data

companies are enterprises in which agencies representing the state's identity, such as GBDEX and Shanghai Data Exchange, have the decision-making power on their big data operations. Independently operated big data enterprises refer to private Internet companies that collect data by themselves and realize data profit through transactions or transfers, such as Alibaba, Tencent, and Baidu. The specific methods they adopt include data mining, precision marketing, data asset management, and information security assurance. In this era of big data where data are considered a key factor of production, Chinese enterprises are also springing up one after another. Collecting data and mining the commercial value of data are inevitable operations for enterprises to create economic value for themselves and the society. The data collected by enterprises include personal and nonpersonal data. Personal data refers to data that can help recognize the identity of a natural person. The channels used by enterprises to collect personal data are multidimensional, such as customer data collected through an enterprise's own business management activities, personal data disclosed by the government or institutions that do not involve privacy, anonymized personal data purchased by data management consulting companies or data trading platforms, and personal data crawled from websites by crawler tools. By

mining the value of personal data, enterprises can obtain expected benefits. Personal data, rich in potential value, has become the backbone for the development of the digital economy. It has become a supporting resource for enterprises in the Internet age and an indispensable part of big data analysis. Enterprises have gained huge wealth by analyzing personal data and mining its potential value.

Enterprises analyze the collected data, mine its potential value, use it commercially, and enjoy property rights and interests in the collected personal data. Simultaneously, enterprises use the data for transactions and to provide data services. They also enjoy the personality appeal to win recognition for their service behaviors, that is, the personality rights and interests of enterprises. There are theoretical and legislative bases for enterprises to enjoy property and personality rights and interests for the commercial use of personal data. According to the labor remuneration theory, labor should be rewarded accordingly. Enterprises collect personal data through various legal channels, transfer it to a special storage system for data analysis, and mine data value. It is the process of labor that creates value and its results—i.e., the data property rights and interests—should be protected. Additionally, according to the concept of “goodness” in Rawls’ *A Theory of Justice*, social wealth should be distributed freely, equally, and equitably¹. Moreover, according to Rawls’ second principle of justice, resources and opportunities should be distributed differently.² In other words, it should be based on positions and titles to achieve distributive justice.

2. Checks and Balances 1: Prohibition of Data Monopoly That Interferes with Public Interest

2.1. Data Monopoly That Interferes with Public Interest Runs Counter to the Concept of Public Interest Protection

To promote free circulation of data and safeguard public interest, it is necessary to prohibit data monopoly. The digital economy is considered one of the key pillars of national economic development. The 2020 pandemic gave prominence to the importance of data circulation and data sharing in economic, cultural, and political spheres. Therefore, the data monopoly by certain dominant enterprises is not only likely to affect the commercial interests of crucial industries but also damage public interest in various aspects such as overall economic development, social services, and government functions. On April 6, 2020, the Central Committee of the Communist Party of China and the State Council issued the *Opinions on Building a More Perfect Market-Based Allocation System and Mechanism for Factors*, emphasizing the importance of data sharing and self-owned circulation and requiring the rapid development of the concept of data-factor market. This is a clear indication that data have become a factor of production that is instrumental in economic development, and therefore, necessary measures must be undertaken to ensure that social and economic developments are

not affected by monopoly of data.

In ancient Greece, “public” (polis) was a political concept that emphasized caring for others and selfless devotion [1]. The subject of public interest is the unspecified “others.” Unspecified means “within a certain scope”. From a political point of view, the scope means “within a country”, and from a legal point of view, it means “within a society controlled by a legal system”. The understanding of public interest differs in the academic world. This paper contends that public interest, national interest, and social interest cannot be equated. National and social interests are subordinate concepts of public interest. National interests refer to the national defense and security, military, and political interests enjoyed by a state as the subject, whereas social interests refer to social, economic, and cultural interests that are as a result of social members’ appeals for nonpolitical, economic, and cultural interests. As the superior concept of national and social interests, public interest refers to the common interests protected by law that are enjoyed by the unspecified others. Public interest is a concept relative to individual interests. Most of the laws clearly stipulate norms to protect individual interests because individuals are the cells that make up society and the country. Therefore, the protection of individual interests is crucial to social stability and national security. Regarding public interest, the law generally stipulates principle-based clauses or implicit norms instead of express terms, such as Articles 117 and 132 of China’s *Civil Code*.³

The conflict of interest arising from data monopoly is the conflict between individual and public interests. Individual interests refer to the private interests pursued by civil subjects (including natural persons, legal persons, and unincorporated organizations), and they include the personal interests of natural persons and the property interests of enterprises. Conversely, public interest, although a vague concept, represents the interests that a society with a specific structure should pursue as a whole, such as the green environmental protection interests pursued by all. For instance, data subjects, as natural persons, have the right to privacy and information control over their own data, but the state requires the disclosure of necessary personal data for epidemic prevention and control and publishes the information of natural persons infected. In practice, this is called the conflict between personality protection and public epidemic prevention and control. Enterprises monopolize data out of their respective individual interests, but if such private interests impede national and social public interests, such as public epidemic prevention and control, national industry development, and the prosperity of digital economy, priority is given to protecting public interest. In data protection, it is necessary to strike a balance between individual and public interests, which requires prohibiting data monopoly that harms public interest.

2.2. Data Monopoly That Harms Public Interest Goes Against the Theory of Justice

Justice, as a theory, can be traced back to the philosophical theories of ancient Greece. In ancient Greece, the theory of justice propounded by Plato focused on state justice. Plato

believed that the state was the foundation of justice, and it was nonsense to talk about justice without a state. He outlined an ideal state that embodies justice. Conversely, Aristotle explained justice from the perspective of political science. He believed that justice is good in politics, and it exists in an equal order, which is reflected in distributive justice. He, just as Plato, believed that the existence of the state is the basic condition for exploring what justice is. However, in the Renaissance, Rousseau denied Plato and Aristotle's theories of state-based justice; instead, he propounded the theory of social contract. He believed that the state is the origin and basis of injustice, and a new social contract should be established to realize social justice and equality. For Rousseau, social order is the foundation of all rights. After Rousseau, the main representatives of the theory of justice are Kant and Bentham. Kant believed that justice mainly meant moral justice, although he also recognized political justice, whereas Bentham believed that justice should be utilitarian justice and it refers to the greatest well-being of the majority of people. In the 20th century, Rawls proposed a theory of justice that is based on a correction of the predecessors' research on justice. He explained what justice is from the perspective of social structure and asserted that justice should embody social justice. Rawls contended that justice is fairness; it is the criterion through which one can evaluate a social system, and the object of justice is the social structure. According to him, justice is employed to distribute the basic rights and obligations of citizens and divide the complex interests in social relations. In Aristotle's view, the object of justice is human behavior. In the modern era, as Western thinkers represented by Rawls perceive, justice is the moral standard for evaluating social systems and the object is the social structure. Additionally, justice serves to measure the fairness of social resource distribution, distribute rights and obligations, and divide conflicting interests. Rawls describes this justice as "fairness." As Rawls sees it, justice primarily values equality and freedom as well as fairness and equality of opportunities. It also emphasizes the legitimacy of differences. On this basis, rights and obligations and conflicts of interest arising from social cooperation are equally distributed to achieve fair justice and fairness in the social structure.

The connotation of justice requires that deprivation of the interests of others is prohibited. Therefore, justice should be based on the idea of goodness. Goodness is the goal that people pursue, and the basic meaning of goodness is the basic interests that people want to obtain, which should not be deprived by others. "In a well-organized society, a real sense of justice will depend on one's goodness, so that destabilizing tendencies can be brought under control" [2]. Under the guidance of the concept of goodness, the distribution of social wealth, resources, and opportunities should be rational and reasonable. Such rationality and reasonableness, instead of being temporary, should be premised on the cooperation of members of society throughout their lives. Therefore, this goodness represents the satisfaction of rational desires and of interests that reflect a good social order. The purpose of data circulation is to fully realize the use value of data; meet certain interest demands of natural persons, legal persons, unincorporated organizations, and the

state; and achieve the ultimate goal of social services. However, interests vary, and interest demands may conflict and collide. For example, the interests of natural persons for data privacy may conflict with the interests of data platforms for the disclosure of data information. In such instances, how to balance various interest demands, what kind of criteria can be adopted to balance different interest demands, and which theory can serve as a guide are the basic questions that should be resolved. The theory of justice prohibits the deprivation of the interests of others and requires that the protection of the interests of all parties be based on the concept of goodness. Therefore, data monopoly that harms public interest goes against the concept of goodness.

Justice sets social services as the ultimate pursuit. This implies that social services are the touchstone of justice. The concept of justice, as we know it, should not only have the nature of goodness—that is, not depriving others of their interests—but also have the attribute of social services. What can be described as justice should be an act that does not violate "social interests." Additionally, justice itself should be an act of providing social services. Society is a fair system of cooperation. The maintenance of this system should be guided by rules recognized by the public, and people who engage in social cooperation can act or refrain from acting in accordance with the rules. Moreover, people should have a mindset of reciprocal fairness in cooperation and discard selfish ideas—i.e., be altruistic. Arguably, good social order can be established only when the concept of "social interests" is adopted. As a result, the social cooperation system will achieve its true fairness, and justice as fairness is true justice. The highest pursuit of justice is to serve society. To serve society and protect public interest, it is necessary to prohibit data monopoly that harms public interest; realize the free circulation of data; and promote the development of national industries, national digital economy, and flow economy, which are the fundamental connotations of justice.

2.3. Confirming Data Rights to Curb Data Monopoly

First, it is crucial to confirm the rights of the subjects generating original data. The subjects generating original data should be protected by the establishment of personal data rights. Civil rights are divided into personal rights and property rights, which protect personal, identity, and property interests. Personal data rights refer to the protection of the data personality and property interests of a civil subject as a natural person. Article 111 of the *Civil Code* of the People's Republic of China stipulates that personal information is protected by law, and Article 127 stipulates that data and online virtual property are protected by law. Also, provisions on the protection of personal information are included in the Personality Rights Section of the *Civil Code*. By establishing personal data rights, it is possible to protect specific data interests of natural persons, including adding more content to the data and information on personal dignity and freedom to general personality rights, which corresponds with the connotation of the theory of justice that requires respect for personal dignity and freedom under the guidance of the theory

of justice. Data should be graded and classified on the basis of the protection of personal interests [3]. The gradation and classification of data involves raw data that can be circulated. There are secret-involved data and nonsecret-involved data. Secret-involved data refer to data that involve personal privacy, which is not within the data scope for legal and open circulation, whereas nonsecret-involved data refer to data other than secret-involved data that can be used publicly. The use of data should follow the principle of informed consent. Relevant stakeholders should be involved and asked for consent before their data are used. When the stakeholders do not agree to the use of data related to their personal privacy or other personal interests, the data should not be used. In the chain of circulation or utilization, if there is any infringement on the personal or property interests of the interested subjects, the subjects have the right to apply to the data controller to delete the data. This right is called the right to data deletion.

Second, it is also important to confirm the rights to the data produced by enterprises and define the borders of those rights. First, from the perspective of civil rights, big data property rights are bestowed on enterprises. To protect the property interests of big data producers, the theory and norms of property rights should be expanded by supplementing the concepts and types of data property rights and adding data objects to ownership. Data property rights are special, intangible property rights. Different from intellectual property rights, network data cannot be included in intellectual property rights but it can create value and conform to the definition of property, and falls within the scope of virtual property rights. Guided by the Property Rights Section of the *Civil Code*, the special law introduces additional provisions for the protection of rights and interests of virtual property. Additionally, it is feasible to add data property rights to the usufructuary theory of right over the property of another. Article 323 of the *Civil Code* stipulates that “the usufructuary shall have the right to possess, use and benefit from the real or personal property owned by others in accordance with the law.” This legislation further stipulates that usufruct includes personal property, thus leaving a legislative space for special personal property such as data property. Therein, the dynamic data contract system to ensure the security of data circulation should correspond with the anonymous contract in the contract section of the *Civil Code*. Theoretically, depending on whether one has paid for the use of specific data, the data should be divided into systems of the data transaction contract, the data free use contract, and the license agreement between equal subjects. A data transaction contract refers to a contract for the paid use of data and generally the purpose of data use is not for the public good; a data free use contract refers to a contract for free access to and use of data for the benefit of the public; and a license agreement between equal subjects means that the data subjects shall be of equal status, instead of being the management or the subordinate, or the supervisor or the supervised. Enterprises that hold a large amount of data license the data to other civil subjects for paid or free use through equal license agreements. Second, restrict the rights of enterprises from the perspective of power and function. The

rights a business has over data can be described as data property rights. In China, property rights are considered part of real rights, and ownership is at the core of the property rights system. Whether to fully vest the possession, use, benefit, and disposal of ownership in an enterprise depends on the attributes of the data property. Data property is intangible; it is not a consumable that can be destroyed by one-time use. Enterprises can control but cannot absolutely possess it. However, they have the right to use, benefit, and dispose it with restrictions. The restrictions can be implemented as follows. While empowering enterprises, the necessity of free data circulation should also be considered. This requirement aims at facilitating data sharing and realizing the value and goal of serving society. The restriction of enterprises' rights can be realized by developing a system of enterprise obligations and responsibilities. The obligations and responsibilities of enterprises will restrict the exercise of their rights, which is necessary to encourage data sharing and crucial in promoting the development of the national digital economy. From the perspective of behavior restrictions, the obligations of enterprises include proper use, security assurance, safeguarding public interest in data, liability for tort, and liability for breach of contract. The proper use obligation requires enterprises to follow the principles of data use gradation and classification, informed consent, and prohibition of forced opening and use of data, whereas the security assurance obligation requires data controllers to perform their duties as reasonable managers of data in open circulation, with reference to the regulations on consumer security obligations in public places.⁴ The obligation to safeguard public interest requires data controllers to prioritize public interest over private interests, as required by the social service concept of the justice theory and the principle of hierarchy of interests in civil law. Public interest in the use of data refers to interests enjoyed by the unspecified others. For example, to promote the free circulation of data and the development of the data economy, enterprises should not monopolize the collected data or hinder data sharing without authorization. If an enterprise fails to fulfill its due obligations, it should be punished and relieved in accordance with the liabilities for tort and breach of contract. The liability for tort refers to the provisions of the online tort liability system provided for under the *Civil Code*. Enterprises, regarded as special tort subjects, should bear fault liability and assume tort liability to victims if they fail to fulfill the security assurance obligation. The liability for breach of contract in the use of data refers to the contractual liability of a data controller who does not undertake their contractual obligations as agreed in the data transaction contract, the data free use contract, or the license agreement between equal subjects.⁵

3. Checks and Balances 2: Personality Rights and Interests Enjoy Priority over Property Rights and Interests

Rights and interests are often referred to collectively. They

comprise interests that are sublimated into law and then become rights as well as those that are not but are protected by law. Therefore, rights are interests sublimated into law. Conflicts of data rights and interests fall under conflicts of civil rights and interests, including conflicts of data rights and data interests. One of the primary ways to resolve conflicts of civil rights and interests is by considering the hierarchy of interests. The hierarchy of interests is the order of various civil interests [4]. Value is deemed as the criterion for judging the hierarchy of interests to realize the balance of rights and interests. Therefore, it is taken into consideration when establishing the hierarchy of interests: first, personal value is superior to property value, and second, social value is superior to personal value [5].

First, personal value is superior to property value. The realization of personal value is achieved through the protection of personal rights and interests, whereas that of property value is made possible through the protection of property rights and interests [6].

Personal rights and interests are the collective term for personality rights and interests and identity rights and interests. Personality rights and interests are about the protection of rights and interests concerning human dignity and freedom. The *Universal Declaration of Human Rights*⁶ declares the importance and necessity of protecting personality rights and interests. China's *Constitution* emphasizes that human dignity and freedom are protected by law.⁷ China's *Civil Code* also features a separate section on personality rights, which fully demonstrates the importance of protecting personality rights and interests. Identity rights and interests are rights and interests about life, health, and identity. China's *Constitution* clearly stipulates that the right to life and health shall not be violated.⁸ The *Civil Code* and *Criminal Law* stipulate the liability for tort and punishment for infringement of life and health rights and interests, which reflects the importance the law attaches to the protection of personal rights and interests. Property rights and interests also occupy a very important position in the laws of various countries. For example, China's *Constitution* stipulates that citizens' private property shall be not infringed,⁹ and the *Civil Code* has a separate *Property Rights Section* to protect private property. However, when personal rights and interests come into conflict with property rights and interests, why should the former be protected first? This can be explained by the fact that the existence of human beings is the basis for the realization of property value. Without human beings, property will become worthless. Property has value only when people desire to own it. Without the existence of people, property will be like a tree without roots. Consequently, being people oriented is the highest goal of our country and the value pursued in building socialism in China.

Personal rights and interests are superior to property rights and interests in the hierarchy of interests, which is achieved in the following ways: First, personality rights and interests take precedence over property rights and interests. Personality rights and interests are an integral part of personal rights and interests. Personal rights and interests are superior to property

rights and interests, and this is further corroborated by the superiority of personality rights and interests over property rights and interests. Article 990 of the Personality Rights Section of the *Civil Code* stipulates the specific personality rights and general personality rights in Chinese legislation. Personality rights and interests are related to personal dignity and freedom, and they include rights and interests about life and health. Therefore, when there is a conflict between personality rights and interests and property rights and interests, priority should be given to protecting the former. Second, specific personality rights and interests take precedence over general personality rights and interests [7]. Specific personality rights under Chinese law include the rights to life, body, health, name (natural person), name (legal persons and unincorporated organizations), portrait, reputation, honor, and privacy [8]. General personality rights refer to personality rights and interests originating from personal freedom and dignity other than the aforementioned specific personality rights. (It is important to note that only natural persons enjoy general personality rights and interests.) The reason why the law lists specific personality rights is to take into account their importance in social life. What is not listed is the unexhausted situation that has not fully revealed its seriousness but cannot be ignored. When a certain right and interest are included in the protection scope of specific personality rights, there is no need to seek protection for general personality rights. For example, when a person's right to life is deprived, his personality freedom is also deprived. Therefore, in these circumstances, the right to life and general personality right are violated simultaneously, and according to the principle of hierarchy of interests that specific personality rights and interests are superior to general personality rights and interests, this will be considered a violation of the right to life.

Second, social value is superior to personal value. Social values are realized through the protection of public interest [9], whereas personal value is achieved through the protection of personal interests. When there is a conflict between public and personal interests, the principle of hierarchy of interests requires that public interest shall come first. Public interest, relative to individual interests, is the interest of all unspecified members of a society. When personal data are used, personal interests are reflected through the personal interests of the personal data subject, which are the personality interests and property interests of the data source subject, and the property interests of the data controller and the data users as analyzed above. Although public interest concerning personal data is advocated and protected by social management agencies as representatives [10], its subject is an unspecified social group. The manner in which personal data are collected, used, or circulated can be determined by demands of public interest. For social services and public safety or to satisfy the public's right to know, public interest may infringe on personal interests. In such circumstances, the subject of personal interests should consider public interest as the priority and give away or surrender part of their personal interests.

Justice cherishes respect for personality and liberty. Rawls

believes that “what is justice” is the thinking and answer that people make on the basis of their own nature, and justice embodies human nature. To be a human being, one has to require others to respect their human dignity as a human being and the freedom they should enjoy as a human being. To safeguard personal dignity and freedom is the core connotation of justice. Justice should protect the basic pursuit of human beings—the rational pursuit of self-interest. It is human nature to pursue equality and freedom. Rawls’ theory of justice agrees with the pursuit of human nature and is a scientific view of justice. Rawls believes that people are free and should have the freedom to choose. Simultaneously, he also believes that people should follow morality and respect the personality of others. Therefore, freedom and equality exist simultaneously. Pure individual freedom has no social value and as such should not be encouraged. Pushing the boundaries further, Rawls demonstrates that people should be rational, and when people pursue self-interest, they should consider reciprocity and social cooperation, which are the borders of personal dignity and freedom.

4. Checks and Balances 3: Do Not Infringe on the Legitimate Rights and Interests of Others

Enterprises, using other people’s personal data for commercial purposes, should not infringe on the legitimate rights and interests of others. Legitimate rights and interests include rights and legitimate interests not defined by law. Interest is the result of value judgment, and valuable interest is just interest. The law seeks value. Value is measured from the perspective of satisfying the needs of the subject. It pursues the social necessity and conforms with the subject’s purpose. Legal value “refers to the functions and attributes of law that are meaningful to people and can meet people’s demands” [11]. The measurement scale of value is the satisfaction of the necessary needs of social subjects. The criterion of justice is to judge from the perspective of social value. Resources are social rather than individual, and therefore, they have a social character; i.e., in a society with limited resources, how resources are allocated depends on whether it is “just.” Society is a collection of individuals, and social justice ultimately lies in the affirmation of individual needs, which is respect for the equality of human values. When individual needs conform with social value propositions and norms generally followed in society, individual needs are considered legitimate, good, just, and can be protected by law. Social norms should be the sublimation of the will of the majority, and “goodness” is a common feature of the will of the majority. Therefore, the collection of personal goodness is sublimated into social norms and becomes the yardstick for judging justice. Only when an individual’s interest demands meet the criteria of justice will it be necessary to consider the value of his or her interests. The conflict of interests in data is the contradiction between multiple interests, and the coordination method is to judge the value of interests and discriminate between justice

and injustice. And based on this idea interests are measured.

Rights are interests protected by law. Interests are divided into interests protected by law and those that are not. Interests protected by law are transformed into rights, and the certainty of rights provides strong and secure protection for interests [12]. Interests evaluated using the scale of justice should be protected by law and sublimated into rights. The most fundamental way to alleviate conflict of interest is to divide interests based on rights. Rights are the core form of protection of interests by private law, and they are accompanied by obligations. When personal data interests become rights, it means that the subject of the rights will correspond to the obligee who must not infringe on the rights. However, for interests, there are no corresponding obligations. When personal data are in use and the rights of the data subject are violated, the rights subject can actively exercise the right to request protection of rights, request the obligor to perform its obligations, or request judicial authorities for relief.

When enterprises use personal data commercially, conflicts of interest arise, resulting in a state of confrontation between interests. It is necessary to find a way to resolve this confrontation in theory and achieve mutual interests. In such circumstances, win-win results for all parties and the resolution of conflicts of interests can be achieved through the yardstick of justice. What is justice? Justice is a word much affected by many factors, such as dynasties, ruling parties, political systems, cultural backgrounds, and ideologies, which render the connotation of justice different. The criterion for attaining justice is to judge from the perspective of social value. It was Socrates who first proposed the concept of justice, but he did not give an explanation. The law only protects just interests [13]. However, the law is the incarnation of the will of the ruling class, and the content of the law will be completely different under the action of many of the aforementioned factors. In China, justice refers to the will that reflects the interests of the people. Aristotle contended that “The will of the majority is justice” [14]. To achieve justice, legal justice must conform with national interests. Therefore, when judging whether an interest is just, it is necessary to evaluate whether it is in line with national interests, and national interests are also reflected in social public interest. Consequently, to ascertain whether an interest is just, it is important to consider whether it conforms with the social public interest. Only an interest that conforms with social public interest can be considered a just interest, and only just interests are protected by law. Just interests take the form of legal and legitimate interests in law and are divided into personal and public interests as well as personal and property interests. The law allows the value of various interests to be fully realized to achieve the dual purpose of legal protection of personal and public interests, fulfill its function of serving the country and ensuring social stability, and achieve legal and valuable goals. Justice is the prime goodness in society. This can also help realize freedom, opportunity, dignity, and even wealth and, where resources are scarce, help realize an equitable distribution of fairness and justice as much as possible. When it is difficult to meet all personal needs, to

optimize the allocation of resources, justice provides the most scientific solution that protects all well-intentioned personal needs. The collection of personal goodness is the source of social norms. The value of personal good interests conforms with the criterion of justice, which determines the legal and social norms as well as the content of rights.

In short, after being judged by the theory of justice, interests receive protection from the law and are considered rights by the law. Rights are the sublimation of just interests. They represent the specific benefit form of interest subjects under the protection of the law. Various forms of interests in the use of personal data, after being filtered using the theory of justice, are sublimated into various rights of personal data subjects. The subjects of rights adhere to the scopes and borders of their respective rights, and conflicts of interests are thereby eliminated.

After weighing interests in light of justice, the use of personal data by enterprises should not infringe the legitimate rights [15] and interests of others. Specifically, the following relationships shall be well balanced:

First, the interests of the original data producers should not be infringed. A producer of original data is a natural person who has personal interests in the privacy and personal information of the personal data. Their interest appeal is to be respected and to get relief when their personality interests are infringed. The interest appeal of an enterprise is to obtain personal data through legal channels and realize appreciation of economic value in commercial use. However, there is a risk of an enterprise leaking the private data of a data source subject. To avoid this, enterprises are required to refrain from infringing upon personal data, personal nonpublic information, and other personal interests of the subject generating personal data. Additionally, enterprises should not improperly collect, process, utilize, and transmit personal data for the public management value or wealth value while violating the personality rights and interests of the original personal data producers.

Second, the interests of various social management institutions should not be violated. In the process of using personal data, various social management agencies perform vital responsibilities. To maintain public safety and facilitate public management, various social management agencies have to collect a large amount of personal data for processing and utilization. On behalf of the public, these agencies are required to supervise and manage data collection, processing, utilization, and transmission by enterprises to safeguard personal data interests, social public interest, and social stability. When there is a conflict between public and enterprise interests, priority shall be given to protecting public interest and enterprises shall give up certain interests to conform with society-based standards. Enterprises' interest appeal of using personal data shall also be placed after public interest when there is social and public service appeal of various social management agencies.

Third, the interests of other data users should not be infringed. Other data users refer to the terminal subjects of the personal data usage flow chain, including natural persons,

legal persons, and unincorporated organizations. Data users will try to obtain personal data to achieve some of their legitimate purposes. However, no personal data should be disclosed to users without consent, and all stakeholders should be careful not to violate the personality and property interests of the natural person who is the data source subject. For example, when using a platform for livestreaming, the information of natural persons should not be exposed in the livestreaming video without consent, and the faces of those who enter the frame without permission should be mosaicked to respect the privacy and portrait rights of others.

5. Conclusions

The use of personal data by enterprises for commercial purposes has become a key driving force for economic growth in the cyberspace era. The disputes of interests following the use of data vary widely in forms. For example, there are disputes over the rights of subjects, the right to use data, personal interests, and between personal and public interests. Although academic breakthroughs on data protection have seen explosive growth in recent years, the basic points of contention have not been effectively mitigated. How to protect and limit the rights of enterprises in the Internet era is not only a new theoretical problem but also a tough dilemma in practice. The use of personal data by enterprises is legal. It is an inevitable trend that data are used as a production factor to build a data-factor market, and therefore, the legitimate rights and interests concerning data should be protected by law. However, facing data monopoly, data war, data infringement, and other acts that harm public interest, protecting the rights and interests of enterprises using personal data reasonably is a key concern. Through in-depth theoretical derivation, this paper has proposed three checks and balances that can help protect the rights and interests of enterprises in using personal data.

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References

- [1] Frederickson, H. G. (1997). *The Spirit of Public Administration*. San Francisco: Jossey - Bass Publishers.
- [2] [US] John Rawls, translated by He Huaihong, He Baogang, and Liao Shenbai: *A Theory of Justice*. China Social Sciences Press, 2019: 516.
- [3] Guo, Sujian. (2020). Conceptualization and Measurement of Global Justice. *Exploration and Free Views* 1, no. 5, 46-63.

- [4] Wang, Liming. (2014). Hierarchy of Interests in Civil Law and Considerations. *The Jurist*, No. 1.
- [5] Yu, Xiaolan, Liu, Daoyun. (2011) The Limits of Protection of Personality Rights in China. *Oriental Law*, No. 3.
- [6] Yu, Xiaolan. (2018). Construction of Information Deletion Right from the Perspective of Civil Code Compilation. *Political Science and Law*, No. 4.
- [7] Yu, Xiaolan. (2021). The three legal dimensions of China's big data governance. *Journal of Chinese Governance*. doi: 10.1080/23812346.2021.1988267.
- [8] Stevens, Tim. (2018). Cyberweapons: Power and the Governance of the Invisible. *International Politics*, 55 (3-4), 487.
- [9] Lnenicka, Martin, and Jitka Komarkova. (2019). Developing a Government Enterprise Architecture Framework to Support the Requirements of Big and Open Linked Data with the Use of Cloud Computing. *International Journal of Information Management*. (46), 124-141.
- [10] Gao, Xiang, and Yu, Jianxing. (2020). Public Governance Mechanism in the Prevention and Control of the COVID-19: Information, Decision-Making and Execution. *Journal of Chinese Governance*, 5 (2), 178-197. doi: 10.1080/23812346.2020.1744922.
- [11] Gardner, John. (2017). Dagan and Dorfman on the Value of Private Law. *Columbia Law Review*, 117 (6).
- [12] Wang D. (2018). Development of Principle of Public Order and Good Custom in Tort Law. *Law Review*, 99-112.
- [13] Beal, Michael J. (1988) In the Interest of Fairness and Justice: The Right to Indemnity and Contribution among Sellers in Strict Liability Cases. *UMKC Law Review*, 56 (4).
- [14] [Ancient Greece] Aristotle, translated by Wu Shoupeng: *The Politics of Aristotle*. The Commercial Press, 1965: 312.
- [15] Yu, Xiaolan, and Yun Zhao. (2019) Dualism in Data Protection: Balancing the Right to Personal Data and the Data Property Right. *Computer Law & Security Review: The International Journal of Technology Law and Practice*. <https://doi.org/10.1016/j.clsr.04.001>.

Biography

Xiaolan Yu is a professor and a doctoral supervisor at Anhui Normal University as well as a postdoctorate scholar in law at Shanghai Jiao Tong University. She is mainly engaged in the research areas of basic theories of civil law and private law governance of data. She has published several papers on data governance in SSCI source journals and in CSSCI source journals in addition to a monograph.

1 Rawls believes that justice should be developed based on the concept of goodness. Goodness is the goal that people pursue, and the basic meaning of goodness is the basic interests that people want to obtain, which should not be deprived by others.

2 Rawls's theory of justice aims to realize two principles of justice. The first principle of justice is the "principle of equal liberty". Rawls argues that "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all." The second principle is

the "equal opportunity and difference principle". Rawls believes that everyone should be fair when they enjoy the opportunity of freedom, and at the same time, they should be differentiated according to different positions and titles. This differentiated fairness is mainly applicable to the distribution of income and wealth. But the existence of this difference is premised on the observance of the first principle, that is, on the premise of affirming equal liberty, there will be differences in income distribution according to different positions and social status.

3 Article 117 stipulates: "For the needs of public interest, fair and reasonable compensation shall be given to those whose real or personal property has been expropriated or requisitioned in accordance with the authority and procedures prescribed by law." Article 132 stipulates: "Civil subjects shall not abuse civil rights to damage national interests, social public interest or the legitimate rights and interests of others."

4 Moderate openness and duty of use are the requirements of the concept of "goodness" to respect the personality and freedom of others in the theory of justice. Article 1035 of the *Civil Code* stipulates: "The processing of personal information shall follow the principles of legality, justification, and necessity, and shall not process excessively....." Accordingly, data enterprises shall use data legally, properly and with necessity, and shall not use data for illegal purposes, and shall not leak or sell data that can help identify personal characteristics. The data controller's proper use obligation corresponds to the personal data right holder's right to self-determination of personal information. The security assurance obligation refers to that the data controllers shall perform their duties as reasonable managers of data in open circulation, with reference to the security assurance obligation of operators in physical space stipulated in Article 1198 of the *Civil Code*. It is reasonable to transplant this clause into the field of data openness. The purpose of the legislation on security assurance obligation is to regulate the service obligations of operators, regardless of whether they operate in virtual or physical spaces. With the development of big data, cyberspace has become the main premise for business, and operators' security assurance obligation in the virtual environment conforms with the legislative purpose and is key to protecting data security of data rights holders. The security assurance obligation of operators in a virtual environment is clearly stipulated in Article 38, paragraph 2, of the *E-Commerce Law* (2018): "For goods or services that are related to the life and health of consumers, where an e-commerce platform operator fails to fulfill the obligation to review the qualifications of the operators on the platform, or fails to fulfill the obligation of security assurance for consumers, thus bringing harm to consumers, they shall bear corresponding responsibilities."

5 For the liability for tort, please refer to Articles 1194 and 1198 of the *Civil Code*. Article 1194 stipulates the liability for network tort in a general manner, and Article 1198 stipulates the responsibility of the person with the security assurance obligation. If a data controller fails to perform the corresponding obligations and causes damage to others, it shall bear the liability for tort; if any third party causes damage to others, the third party shall bear the liability for tort, and the data controller, failing to fulfill its obligations of proper use, security assurance, and safeguarding public interest, shall bear corresponding supplementary liabilities. There is no stipulations in the *Civil Code* for data transaction contracts, and for data products as transaction objects, please refer to the sales contracts for usable goods. Data is virtual property and is protected by law. It is clearly stipulated in Article 127 of the *Civil Code* that it is an indisputable fact that data has become a transaction object. The liability for breach of contract in the use of data refers to the contractual liability of the data controller who does not undertake the contractual obligations as agreed in the data transaction contract, the data free use contract and the license agreement between equal subjects.

6 The Universal Declaration of Human Rights was promulgated by the United Nations in 1948. Article 12 of it stipulates that the privacy, family information, communications, honor and reputation of natural persons shall be protected by law. It is considered to be the international legal source for the protection of personality rights and interests, and also the first legal manifestation of the protection of personal information rights and interests.

7 Article 33 of the *Constitution* stipulates that citizens' human rights are protected by law, Article 37 stipulates that citizen's liberties are protected by law, and Article 38 stipulates that citizens' personal dignity is protected by law.

8 Article 36 of the *Constitution* stipulates that citizens' life and health shall not be infringed.

9 Article 13 of the *Constitution* stipulates that citizens' lawful private property shall not be infringed.