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# Adjustment of the Legal Concept of “Humans” in the Digital Age

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**Abstract:** *In traditional jurisprudence, humans are defined as rational individuals with dignity, in other words, subjects with the ability to make their own choices and decisions. Individuals live in a state and the state’s main task is to provide convenient conditions for them to practice their rationality. After entering the digital age, it is becoming increasingly difficult to maintain individual autonomy. The interpretation of the concept of humans in the dichotomy of individuals and the state increasingly lacks comprehensiveness. Human beings are seemingly losing their monopoly on rationality. These phenomena in the new age have caused the traditional legal concept of humans to face the dilemma of increasingly insufficient explanatory power, which has given rise to the need to adjust the concept of humans. In the process of adjustment, we shall abandon the anthropocentric view of technology to promote the harmonious coexistence between human society and technological systems and fully accept various new aspects and phenomena of social life in the digital age. In addition to the sublation of the rational view of utilitarianism, we shall pay more attention to and protect human emotional needs while developing a human rights system in the digital age.*

**Keywords:** digital age ♦ human dignity ♦ rationality ♦ anthropocentrism ♦ digital human rights

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The advent of the digital age has led to profound changes in all aspects of human society, from economic lifestyles to legal systems.<sup>1</sup> Such changes are ultimately be reflected in “humans,” which are the subject of social life. This has triggered thinking about the changes in people’s rights and obligations in the digital age, such as the proposal of the concept of digital human rights and

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<sup>1</sup> Wang Tianfu, “Social Change and Social Research in the Digital Age,” *Social Sciences in China* 12 (2021): 73-88; Huang Qisong, “State Theory in the Digital Age,” *Social Sciences in China* 10 (2022): 60-77; Wu Handong, “Institutional Arrangements and Legal Regulation in the Age of Artificial Intelligence,” *Science of Law (Journal of Northwest University of Political Science and Law)* 5 (2017): 128-136.

the consequent debate.<sup>2</sup> After the Enlightenment and the bourgeois revolution, humans became the starting point and final goal of the construction of human legal system and legal research. The concept of humans, especially the recognition and understanding of human nature, became the cornerstone of the modern legal system and legal theory. Will the advent of the digital age have an impact on these existing cornerstone cognitions and understanding? If so, how will it rewrite humanity's legal system and legal theory system? From the bottom up in terms of fundamental structure and theory? These are issues that need to be seriously considered at the time of transition from the old era to the new one.

This paper first rereads the existing legal understanding of the concept of human beings, especially interpreting the connotation of the concept of “a reasonable man with dignity” from the theoretical and historical dimensions. Then, based on this interpretation, the paper analyzes the weakening impact of changes in the background human economic and social life after the advent of the digital age on the interpretive power of the concept of a reasonable man with dignity. Finally, in light of the dilemma of such impact and insufficient interpretive power, this paper attempts to reshape the legal connotation of the concept of human beings so that the concept of a reasonable man with dignity can better guide the development of human legal system and legal research in the digital age.

## **I. The Concept of a “Reasonable Man with Dignity” and the Corresponding Legal Development**

Since the Enlightenment and the bourgeois revolution, the understanding of the concept of human beings has become the anchor point for the construction of human legal systems and legal research. Driven by long-term ideological evolution and major historical events, protecting human dignity and creating a favorable background and conditions conducive for a rational life have become an important driving force for the development of the legal system and the evolution of legal theory. As the understanding of the connotations of human dignity are constantly being enriched, the role of the state is becoming increasingly important.

### **A. The connotations of the concept of “a reasonable man with dignity”**

Today, an important purpose of the modern legal system is to protect human dignity, which has been recognized by the constitutions of the vast majority of countries in the world and by important international human rights documents worldwide.<sup>3</sup> When interpreting the connotations of human dignity, both

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<sup>2</sup> Ma Changshan, “The Fourth Generation of Human Rights and Its Protection in the Context of Smart Society,” *China Legal Science* 5 (2019): 5-24; Liu Zhiqiang, “On the Fact That ‘Digital Human Rights’ Do Not Constitute the Fourth Generation of Human Rights,” *Chinese Journal of Law* 1 (2021): 20-34.

<sup>3</sup> Hu Yuhong, “Analysis of the Legal Attributes of Human Dignity,” *Social Sciences in China* 5 (2016):

academic research and rule of law practice mainly focus on the two dimensions of “humans as subjects” and “mutually equal humans.”

The so-called humans as subjects refers to humans who have the ability to independently choose and achieve goals. Accordingly, humans should not become tools for the realization of others,’ will,<sup>4</sup> but should have supreme sovereignty in the sphere of their own life. In this identity of mutual subjectivity, humans have equal status because of their respective dignity and become equal humans.<sup>5</sup>

It should be noted that this concept of equality based on dignity is not something that has existed since ancient times, but is the product of the historical development of human thought and ideas. For example, the ancient Greeks and Romans did not yet have the idea that humans have dignity from birth. At that time, human dignity was more of a product of social normative judgment. In other words, whether a person was qualified to enjoy dignity was judged based on his or her innate bloodline, acquired social status, and behavior. If this social norm sets up a hierarchical society, then according to this social norm, some members of society cannot have dignity, such as slaves living in ancient Greece and Rome.<sup>6</sup> The same concept of hierarchical dignity is also reflected in China's Confucianism. The dignity and status of “gentlemen” and “petty persons” in Confucianism are clearly different.<sup>7</sup> From this obvious difference in the dignity enjoyed by people, it can be seen clearly that the concept of dignity before modern times was more of a dignity concept based on social order, and dignity would not necessarily lead to equal status among members of society.

After the Middle Ages, it was the Enlightenment and the bourgeois revolution that linked human dignity with the equal status between humans, and this was ultimately reflected in Immanuel Kant's view of the dignity of reason, that is, humans have dignity because they have reason. Because the reason of humans cannot be compared or exchanged with each other, humans are therefore given equal status.

The Enlightenment freed mankind from the shackles of Christian theology, and the bourgeois revolution completed the transformation of social order from one based on identity to one based on contract. The hierarchical social order based on bloodline and theological doctrines was becoming increasingly

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<sup>4</sup> Liu Rui, “Research on Immanuel Kant’s Theory of Dignity,” (Doctoral dissertation of Wuhan University, 2013), 9.

<sup>5</sup> *Ibid.*, 28.

<sup>6</sup> Wang Hui, “The Concept and Institutionalization of Human Dignity,” *China Legal Science* 4 (2014): 104.

<sup>7</sup> “The relation between gentlemen and petty persons is like that between the wind and the grass. The grass must bend, when the wind blows across it.” (*The Analects of Confucius: Yan Yuan*)

unsustainable. Legal research and legal practice began to focus on the value of human beings themselves to provide a new foundation for the legal order. However, faced with the visible differences in various biological attributes between people in real life, such as in height, weight, intelligence, and strength, it is difficult for humans to prove the equal status of people based on the reality of social life. Therefore, thinkers turned their attention beyond human society and sought a solid basis for the value of human beings from the differences between human society and the natural world, and between humans and animals.

In fact, whether it is “dignity” in Chinese (尊严, *zunyan*) or in Latin (*dignitas*), they both have the meaning of elevation and being superior to the general public.<sup>8</sup> The meaning of this elevation and distinction applies not only to the relationship between free men and slaves, but also to the relationship between man and nature. The essential difference between humans and animals and the idea that humans enjoy dignity because of their ability to improve themselves are prominently reflected in the discourse of medieval Christian thinkers. For example, Augustine proposed that Christianity advocates a worldview that is alienated from the world and the flesh, that is, to get rid of animal desires and live according to God's will.<sup>9</sup> However, although the Christian concept of dignity seems to have gotten rid of the idea of hierarchical order in the secular world and has certain elements of equality, this concept of dignity is a dignity of obedience. That is, only when human beings follow the only path pointed out by God can they choose the path of dignity, and other paths are all evil.<sup>10</sup> Human beings' ability to choose can only be reflected in choosing to obey God's commands, and cannot be used to choose a different path of development based on their judgment. In this sense, in the eyes of medieval Christian thinkers, human beings have no freedom to do good, only the freedom to do evil.

After the Renaissance, in the process of breaking free from the shackles of Christian theology on human thought, thinkers gradually stopped paying attention to the relationship between God and man while continuing to argue for human dignity based on the differences between humans and animals. They no longer discussed what God's commands were so that people could live a good life in accordance with God's commands. Instead, they started from the differences between humans and animals, human society and the natural world, especially based on humans' ability to control their animal desires, to show the essential differences between humans and animals, thereby highlighting the

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<sup>8</sup> Han Deqiang, “On Human Dignity,” (Doctoral dissertation at Shandong University, 2006), 9-10.

<sup>9</sup> Liu Rui, “Research on Immanuel Kant's Theory of Dignity,” (Doctoral dissertation of Wuhan University, 2013), 22.

<sup>10</sup> Wang Jinwen, “Interpretation and Development of ‘Human Dignity’: Historical Origins, Comparative Analysis and Legal Application,” *Chinese Journal of Human Rights* 21 (2019): 125.

value and dignity of human beings themselves.<sup>11</sup> The difference between humans and animals is no longer whether they can act according to God's commands, but whether they can arrange their own lives according to the path they choose independently.

Kant connected the past and the future in the development of the concept of "human reason." The path of arguing for human dignity from the perspective of the "human-animal distinction" was inherited by Kant and ultimately manifested as the ability to reason, unique to humans. Kant proposed that the human ability to reason and the free will based on this ability to reason are the essential differences between humans and animals. Human beings' ability to reason gives them the ability to constantly improve themselves, and humans even have a moral obligation to practice this ability to reason for constant improvement.<sup>12</sup> Only when human beings are not dominated by natural laws can they exercise their rational abilities and possess dignity accordingly.<sup>13</sup>

From the development of this view on the dignity of reason that is different from the animal world, it can be seen that the proponents of the view on the dignity of reason actually replaced the concept of God with reason. As Friedrich Engels said, this is the "secularization of the theological worldview."<sup>14</sup> However, compared with the mysterious theological view of dignity, the view on the dignity of reason can gain more support from people's daily life experience and gain more understanding and support from people. When people see the low-level chaotic existence of the animal world and the relatively orderly and progressive human society, they naturally believe that the view on the dignity of reason, as distinct from the animal world, has a good empirical basis. Human beings' ability to arrange their own lives based on long-term plans and to objectively and meticulously observe, analyze and even transform the natural world has become excellent real-life evidence that proves that humans have rational abilities and even free will that are different from animals.

In Kant's view of the dignity of reason, the concepts of ability to reason and dignity are interchangeable.<sup>15</sup> Humans have dignity because they have the

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<sup>11</sup> Liu Rui, "Research on Immanuel Kant's Theory of Dignity," (Doctoral dissertation of Wuhan University, 2013), 23.

<sup>12</sup> "For a caprice is sensuous in so far as it is pathologically stimulated (through sensuous motives); if it can become pathologically compelled, it is called animal (*arbitrium brutum*)." Immanuel Kant, *Immanuel Kant's Three Critiques* (vol. 1), translated by Deng Xiaomang, proofread by Yang Zutao (Beijing: People's Publishing House, 2009), 379.

<sup>13</sup> Immanuel Kant, *Collected Works of Immanuel Kant*, vol. 4, edited by Li Qiuling (Beijing: China Renmin University Press, 2005), 447.

<sup>14</sup> "It is the secularization of the theological worldview. Human rights replaced dogma and theocracy, and the state replaced the church. Previously, economic and social relations were approved by the church and were therefore considered to be created by the church and dogma, but now these relations are considered to be based on rights and created by the state." Friedrich Engels, "Socialism of the Jurists," *Collected Works of Marx and Engels*, vol. 21 (Beijing: People's Publishing House, 1959), 546.

<sup>15</sup> "Respecting humans first requires respecting the general human ability to set goals, and respecting the

ability to reason. The recognition and protection of human dignity requires the respect for a person's ability to reason. According to this rational view of dignity, people's choice and judgment of their personal development path have the highest authority. Everyone is the best judge of his or her own interests and the sovereign of his or her world of personal life. Based on Kant's distinction between the world of reason and the world of sensibility, human dignity, which exists based on reason, correspondingly becomes an ontological entity that is separated from the world of sensibility. Therefore, various comparison and exchange activities that occur in the world of sensibility are not applicable to human dignity. Precisely because the dignity of different people cannot be compared or exchanged, humans also have equal status in their interactions because of the existence of dignity. A person cannot place his or her own needs in the world of sensibility above those of others, nor can he or she regard others as a means to achieve his or her material needs. Everyone is a subject in social life.

### **B. The process of legal science accepting the concept of “a reasonable man with dignity”**

Although protecting and realizing human dignity seems to be the most important principle of the legal system and legal theory today, it is important to note that the legal acceptance of the concept of a reasonable man with dignity is also the result of historical evolution. In the process of gradually breaking free from the constraints of theology on human political and legal thought, such school

ems that transcend human legislation from medieval Christian legal thought, natural law scholars successfully endowed it with the function of achieving equality for all<sup>16</sup> and resisting autocratic monarchy.<sup>17</sup> However, similar to the views of Christian theologians, in the eyes of natural law scholars, humans only have the freedom to obey the provisions of natural law, but not the freedom to oppose. Any behavior or even thought that does not conform to the requirements of natural law may be irrational. In this sense, for natural law, the

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ability to set goals should also include respecting their free pursuit of goals, because if this is lacking, respecting people's ability to set goals becomes a meaningless proposition. Therefore, respecting people's ability to set goals and applying it in personality interactions requires respecting people's free choices and pursuits. Li Qiuling, *Collected Works of Immanuel Kant*, vol. 4 (Beijing: China Renmin University Press, 2005), 446.

<sup>16</sup> “And reason, that is, the law of nature, teaches all mankind, who will obey it, that since all men are equal and independent, no one may infringe upon the life, health, liberty, or property of another.” John Locke, *Second Treatise of Government*, translated by Ye Qifang and Qu Junong (Beijing: The Commercial Press, 1996), 6.

<sup>17</sup> “Whatever service a citizen can render to the country, he must do at the first request of the sovereign; but the sovereign, on his part, can never impose on his subjects any restraint which is useless to the community; he must not even intend to do so, for under the laws of reason, as well as those of nature, nothing can be done without reason.” Jean-Jacques Rousseau, *The Social Contract*, translated by He Zhaowu (Beijing: The Commercial Press, 2003), 38.

center of the legal order is still not humans, and the purpose of the law is still not to protect human dignity and facilitate human practice of reason, but to practice "non-human" reason.

In sharp contrast to natural law, the legal positivism of the positivist school of law strives to sever the connection between law and other social norms such as morality,<sup>18</sup> and regards the legal system as a product of a realistic description of the legal system. For the positivists, law is nothing more than a decree issued by a political sovereign, and law is essentially different from other social norms. These differences are manifested either in that law is a special normative system with violent sanctions as its enforcement mechanism,<sup>19</sup> or in that law is a relatively autonomous rule system that includes its regulations.<sup>20</sup> Certainly, theoretically speaking, the political sovereign can choose to make the protection and realization of human dignity the highest principle of the laws it issues, but the political sovereign is not bound by a specific choice, and the highest norm of the legal system is more of a fact of historical evolution.<sup>21</sup> In this legal perspective that seems to have nothing to do with values, the concept of human beings inevitably becomes an optional concept.

Although the efforts of positivist legal thought to separate law from other social norms such as morality have helped law to completely break free from the constraints and shackles of theology, and promoted the development of law as an autonomous system, the view of law that is completely purposeless and without the existence of "humans" is inevitably prone to overcorrection and has been questioned by other legal scholars, among whom the most intense opposition may have come from utilitarian legal scholars. In Jeremy Bentham's view, the establishment and development of the legal system is still driven by human influence. The only difference is that people living in the legal system are not guided by any God's commands or moral norms, but they only pursue their "greatest happiness." Humans also have the ability to consistently improve their happiness.<sup>22</sup> The purpose of both morality and law is to maximize the

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<sup>18</sup> "Pure legal theory, by excluding a priori justice from its specific sphere, insists on a clear distinction between empirical law and a priori justice. It does not regard law as the embodiment of superhuman authority, but as nothing more than a specific social technology based on human experience." Hans Kelsen, *General Theory of Law and State*, translated by Shen Zongling (Beijing: Encyclopedia of China Publishing House, 1995), III.

<sup>19</sup> John Austin, *The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, 2001), 20-22.

<sup>20</sup> H. L. A. Hart, *The Concept of Law* (2<sup>nd</sup> edition), translated by Xu Jiaxin and Li Guanyi (Beijing: Law Press • China, 2006), 76-78.

<sup>21</sup> "The fundamental norms of the domestic legal order are not arbitrary products of jurisprudence. The content of basic norms is determined by facts. The function of basic norms is to potentially provide a normative interpretation of certain facts, which means interpreting these facts as the creation and application of norms with legal force." Hans Kelsen, *General Theory of Law and State*, translated by Shen Zongling (Beijing: Encyclopedia of China Publishing House, 1995), 136.

<sup>22</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Kitchener: Batoche

happiness of each individual and the happiness of society as a whole.<sup>23</sup>

From supernatural rationality that is beyond human control, to purposeless law, and then to the rationality of pursuing worldly happiness, utilitarian jurisprudence has restored the purposefulness of the legal system while refocusing the legal perspective on humans. It's just that when the standard of the greatest happiness in the secular world is adopted, the uniqueness of human beings, especially the difference between human beings and animals, cannot be highlighted, let alone prove the free status of human beings in social life. Human beings are still in a position of passively adapting to external standards. Therefore, in the eyes of utilitarians in the 19<sup>th</sup> century, the welfare of animals was already taken into consideration.<sup>24</sup>

What ultimately pushed Kant's concept of a reasonable man with dignity to the position of the keystone of human legal system was not the success of neo-Kantianism in theoretical debates, but the lessons of human historical development. In particular, after the state-level atrocities that trampled on human dignity, represented by Nazi Germany in the first half of the 20<sup>th</sup> century, caused tragic losses to human society and world order, countries learned from their mistakes and elevated the principle of respecting and protecting human dignity to the status of the highest principle of the legal order.<sup>25</sup> As Hans Kelsen envisioned, this basic norm was accepted in the form of factual changes. After the Second World War, the concept of a reasonable man with dignity entered the legal systems of various countries through some international human rights documents<sup>26</sup> and the constitutions of influential countries<sup>27</sup>, and its influence has been growing.

Precisely because there have been many different opinions on the concept of humans in law in history, and the modern legal system's acceptance of the concept of a reasonable man with dignity has shown a leapfrog process, the current legal system's understanding of the concept of humans presents a

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Books, 2000), 14-16.

<sup>23</sup> "The equal claim of everybody to happiness in the estimation of the moralist and the legislator, involves an equal claim to all the means of happiness..." John Mill, *Utilitarianism* (Kitchener: Batoche Books, 2001), 60.

<sup>24</sup> "What other agents then are there, which, at the same time that they are under the influence of man's direction are susceptible of happiness. They are of two sorts: 1. Other human being...2. Other animals. which, on account of their interests having been neglected by the insensibility of the ancient jurists, stand degraded into the class of things. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Kitchener: Batoche Books, 2000), 225.

<sup>25</sup> Wang Hui, "The Concept and Institutionalization of Human Dignity," *China Legal Science* 4 (2014): 110.

<sup>26</sup> For example, the Preamble of the *Universal Declaration of Human Rights* states that "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

<sup>27</sup> For example, the Article 1 of the *Basic Law of Germany* provides that "Human dignity shall be inviolable."



dynamic picture full of three-dimensional sense: on the background of positivism and utilitarianism, the color of Kant's concept of a reasonable man is highlighted, and under the guidance of the concept of a reasonable man with dignity, the entire legal system's understanding of the concept of humans is constantly enriched.

### **C. The legal development of the concept of "a reasonable man with dignity"**

In Kant's view, human dignity comes from reason, and human reason is independent of the sensory world. According to Kant's idea, the law can only regulate the sensory experience world of human beings and cannot reach the realm of reason. This limitation of law has become a consensus in the legal practices of various countries. The law mainly regulates human material life, and the vast majority of countries have become de-theocratic secular countries. The principle of autonomy of will in civil law is perhaps the legal principle that best fits the idea that "the individual is the sovereign of his or her own living space," and the principle of autonomy of will has also become the cornerstone of the modern legal system. Although it is common in economic life for one party to serve the other party and realize the other party's material interests, and with the development of human society, the division of labor in economic and social life has become increasingly detailed, these exchange behaviors and social division of labor are regarded as a form of mutual assistance between individuals to cooperate with each other to realize their respective needs and pursue a dignified life. The parties to the exchanges are still serving the goal of realizing human dignity and have not degenerated into a means to realize the material interests of others. Individuals' arrangements for their lives will be equally protected by law, provided that they do not violate legal prohibitions. The right to protect personal autonomy in life arrangements, represented by ownership and privacy rights, will be respected to the greatest extent possible by law. The purpose of ownership is to clearly define the boundaries of material interests between different individuals and to ensure the independence of individuals in material life;<sup>28</sup> the right to privacy protects an individual's control over his or her information<sup>29</sup> and ensures that the individual is not arbitrarily disturbed by the outside world.<sup>30</sup> Ownership and privacy rights have also become the two legal rights cornerstones for realizing personal autonomy.

When a group of individuals form a community based on their rational practice and cede the monopoly on the use of violence to this community, a state is born. As a product of individual rational practice, relative to the individuals who make up the state, the state is merely a tool for individuals to

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<sup>28</sup> Yi Jun, "Private Autonomy and the Nature of Private Law," *Chinese Journal of Law* 3 (2012): 71.

<sup>29</sup> Zhang Xinbao, "Research on Privacy Rights," *Chinese Journal of Law* 3 (1990): 56-67.

<sup>30</sup> Wang Xu, "Constitutional Dignity Theory and Its Systematization," *Chinese Journal of Law* 1 (2016): 45.

realize their dignity and practice their reason.<sup>31</sup> Different from the view of dignity based on hierarchical order, for the view of dignity based on reason, the purpose of the state itself becomes quite weak.

In the early stages of the development of the modern legal system, the concept of a reasonable man with dignity was still competing with other ideas about human concepts. The main task of the state in realizing human dignity was only to maintain the most basic social order and security. The role of the state in protecting people's rational practice and realizing their dignity was not yet significant. The choice and realization of personal development path depends mainly on one's own strength.

However, with the ongoing capitalist social crises, human society has had higher and higher expectations for the role of the state in realizing human needs. Especially after the Second World War, respecting and protecting human dignity has become the keystone of the modern legal system, and the instrumental value of the state in realizing human dignity has been greatly highlighted. This is reflected in legal research as the continuous and in-depth development of human rights theory. The first generation of human rights, represented by civil and political rights, are more negative rights, with the purpose of excluding government interference and ensuring citizens' control over the government. The second generation of rights, represented by economic and social rights, began to require the state to create economic and social conditions conducive to the realization of human dignity. After the emergence of the third generation of human rights represented by the rights to life and development, the equal development status between nations and countries as a community has also become a key issue of concern in national activities.<sup>32</sup> The fundamental driving force behind the continuous expansion of the extension of human rights is the deepening of human society's understanding of human dignity and the continuous re-recognition of the role that the state can play in realizing human dignity.

However, it should be noted that, first, although the role of the state in helping people realize their dignity has been greatly enhanced, the state is still only a supporting role in creating various favorable conditions for the realization of human dignity. In principle, the state has no right to directly participate in an individual's choice and decision of his or her development path. At most, it can only adopt the approaches of persuasion and guidance. As subjects with reason, humans still have the right to choose and decide their development path.

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<sup>31</sup> Wang Jianxue, "Exploring the Origin of the Relationship between Constitutional Power and Human Rights: Taking Sieyes' Constitutional Life as the Main Line," *The Jurist* 1 (2014): 167.

<sup>32</sup> Liu Zhiqiang, "On the Fact That 'Digital Human Rights' Do Not Constitute the Fourth Generation of Human Rights," *Chinese Journal of Law* 1 (2021): 20-34.

Second, this process of deeper understanding of human dignity also shows that the understanding of the connotation of human dignity is closely linked to the social environment to which the concept applies.<sup>33</sup> Accordingly, the connotation of this concept will evolve with the changes in the social environment. The ultimate evolutionary effect is to incorporate the demands of more and more members of society. While better realizing human development and achieving equal status among individuals, it will also be reflected as a certain personality or dignity of the community itself.<sup>34</sup> For example, the negative rights characteristics of the first generation of human rights reflect the demands of the economically self-sufficient bourgeoisie;<sup>35</sup> the second generation of rights are the product of the workers' movement, and their original purpose is to achieve equal status between the propertied and the proletariat; and the third generation of rights starts from the criticism of the unequal status of developed and developing countries in the international order to achieve equality among different nations.<sup>36</sup> The history of the evolution of human rights over three generations reflects the history of the development of human society.

Third, human dignity in law is based on human ability to reason, but in Kant's eyes, this ability to reason is a possible ability rather than an ability that has been actually applied.<sup>37</sup> Because the reason of different individuals cannot be exchanged or compared, whether a person has fully utilized his or her ability to reason ultimately needs to be judged by himself or herself. This makes the important use of the legal system, which aims to realize human dignity, to create better conditions for all people to exercise their abilities to reason. Accordingly, social groups that are in a disadvantaged position in social life need more attention from the law.<sup>38</sup> For people with severe intellectual disabilities, the modern legal system will also recognize and respect their dignity and protect

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<sup>33</sup> The German Federal Constitutional Court also adopts this social relational understanding of human dignity. It proposes that the image of humans in the Basic Law is not an isolated, autonomous individual image, but is instead reflected in the relationship between the individual and the community. "*Das Menschenbild des Grundgesetzes ist nicht das eines isolierten souveränen Individuums; das Grundgesetz hat vielmehr die Spannung Individuum-Gemeinschaft im Sinne der Gemeinschaftsbezogenheit und Gemeinschaftsgebundenheit der Person entschieden, ohne dabei derer Eigenwert anzutasten.*" BVerGE 4, 7, 15.

<sup>34</sup> Ronald Dworkin, *Law's Empire* (Beijing: Encyclopedia of China Publishing House, 1996), 151.

<sup>35</sup> Thomas Fleiner-Gerster, *What Are Human Rights?*, translated by Xie Pengcheng (Beijing: China Social Sciences Press, 2000), 4.

<sup>36</sup> Zeng Long and He Jian, "On Africa's Collective Human Rights Concept and the Confirmation of the Third Generation of Human Rights," *Hebei Law Science* 2 (2007): 166.

<sup>37</sup> "The pursuit of happiness is an inevitable requirement for every reasonable yet limited being, and thus is an unavoidable basis for their faculty of desire." Immanuel Kant, *Critique of Practical Reason*, translated by Deng Xiaomang, proofread by Yang Zutao (Beijing: People's Publishing House, 2016), 29.

<sup>38</sup> Qi Yanping, *Protection of the Rights of Vulnerable Groups in Society* (Jinan: Shandong People's Publishing House, 2006), 1.

their equal status with other members of society.<sup>39</sup> Such respect for the dignity of vulnerable groups is perhaps the best interpretation of the ability to reason as a possibility.

## **II. Impacts and Challenges Faced by the Concept of Humans in the Digital Age**

Since the bourgeois revolution, mankind's reasonable practice has mainly manifested itself in the understanding and transformation of nature to better meet human needs, and ultimately manifested itself as a kind of "scientific and technological reason." Under the guidance of scientific and technological reason, human society has developed by leaps and bounds, especially in the production of material wealth, and has become increasingly distinguished from the animal world. A century and a half ago, Marx and Engels exclaimed, "The bourgeoisie, during its rule of scarce one hundred years, has created more massive and more colossal productive forces than have all preceding generations together." They especially pointed out mankind's achievements in the "subjection of Nature's forces."<sup>40</sup> In the following century and a half, mankind continued to march further on the path of conquering nature, and entered the digital age from the industrial age with the continuous development and improvement of productivity. However, at the time of change, when scientific and technological reason continues to demonstrate its tremendous power and creates various digital technologies represented by artificial intelligence, people find that some core concepts of humans in the past seem to be facing shocks and challenges, and there is a lack of power in explanation. These shocks and challenges are reflected in legal practice and research, mainly manifested in the facts that the space for personal autonomy is becoming increasingly difficult to maintain, that the concept of humans is becoming increasingly lacking in comprehensiveness in the dual structure of man and state, and that the concept of dignity based on reason is facing increasing challenges from digital technologies represented by AI.

### **A. Deeply interconnected living conditions make it difficult to maintain the space for personal autonomy**

As mentioned above, based on the concept of a reasonable man with dignity, everyone should be the sovereign of his or her own living space. If the individual wishes, he or she can isolate his or her living space from the outside world. The law also guarantees the individual's autonomous management of his

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<sup>39</sup> For example, Article 12 of the *Convention on the Rights of Persons with Disabilities* provides equal recognition before the law. "1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law. 2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."

<sup>40</sup> Karl Marx and Friedrich Engels, *The Communist Manifesto* (Beijing: People's Publishing House, 2009), 36.

or her living space through ownership, privacy rights, etc. The ability of individuals to maintain an autonomous space in their empirical life has also become an important prerequisite for the effectiveness of Kant's concept of a reasonable man in reality.

Although in the pre-digital age, people also faced the risk of being spied on in real life, at least from a legal perspective, such snooping against the will of others is illegal. Once such snooping is discovered, the power of the state can be used to prevent it and eliminate its impact, such as requiring others to delete retained personal information records and prohibiting continued harassment activities to restore the individual's autonomy in the legal sense and the isolation of personal space from the outside world.

However, after entering the digital age, with the widespread use of consumption and communication methods based on digital technology, the connections between individuals have become deeply entangled. On the one hand, individuals living in the digital age are interacting with others more frequently and on a wider scale with the help of digital social media; on the other hand, the vast majority of digital social media will leave digital traces. Regarding these digital traces, because they involve the right of different communication participants to dispose of their personal autonomous space, as an individual communication participant, one no longer has the right in principle to require other participants to eliminate the traces. Moreover, traditional privacy rights also include the power to give up one's privacy. When one party gives up his or her privacy and discloses relevant information, affected by this state of deep entanglement, even if the party is careful in cutting off other people's information when disclosing his or her privacy, some information of others will inevitably be exposed.<sup>41</sup> Through big data technology, it is entirely possible for a third party to use the fragmented personal information exposed everywhere to re-piece together complete personal information, or even personal privacy.

To continue to protect personal privacy rights and maintain the existence of the space for personal autonomy, some people suggest that the definition of privacy should be interpreted in an expanded way to include content that was not private in the past, such as address book information, in the scope of privacy protection.<sup>42</sup> However, when the development and changes in human economic and social environment have made the protection of privacy face great challenges, it is very debatable whether the protection of privacy by further expanding the scope of privacy will increase privacy protection or make privacy

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<sup>41</sup> Yu Chengfeng, "Social Theoretical Reconstruction of Privacy Rights in the Digital Age," *China Legal Science* 2 (2023): 177.

<sup>42</sup> Gong Xianghe, "People's 'Digital Attributes' and Their Legal Protection," *ECUPL Journal* 3 (2021): 77.

protection more embarrassing.

In addition, in the digital age, data has become a production factor and property object with high economic value. At the same time, people have found that it is easier said than done to distinguish the economic interests attached to the data through traditional legal rights for settling disputes.<sup>43</sup> The deep entanglement of personal connections in the digital age is also reflected in the various rights and interests attached to data, especially the movement of data records and the entanglement of relevant stakeholders. The various interests attached to data include individuals' rights to dispose of their personal information,<sup>44</sup> the economic costs paid by data holders when collecting and disposing of data and the interests of other entities in obtaining data without the explicit authorization of the data holders.<sup>45</sup> Using the traditional separated and isolated ownership methods to handle data rights is likely to hinder the development of the digital age.<sup>46</sup>

Such a complex web of rights and interests over data is itself related to the deep entanglement of production and lifestyles in the digital age. In the production mode of the digital economy, the clear-cut role divisions between consumers and producers are becoming blurred. For example, when consumers make consumption decisions and digital media subscribers read digital content, they are actually participating in the production process of the digital economy by contributing traffic and providing data, which manifests itself as digital labor that they participate in at all times.<sup>47</sup> When the roles of producers and consumers become blurred, it will also be difficult to define the ownership of the various products produced in the production process. Consumers are currently dissatisfied with the platform economy companies' practices of using data for profit because, on the one hand, this business practice involves the risk of infringing on personal information and even privacy; on the other hand, it also stems from consumers' sense of injustice that their digital labor is being exploited for free.

Moreover, in the traditional legal concept, the individual, as the supreme sovereign of the space for personal autonomy, exhibits an independent personality while also presenting a complete and homogeneous personality. The personalities and preferences of different individuals often differ, but for the

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<sup>43</sup> Long Weiqiu, "Research on the Construction and System of New Data Property Rights," *Tribune of Political Science and Law* 4 (2017): 63-77.

<sup>44</sup> Cheng Xiao, "On Personal Data Rights in the Big Data Era," *Social Sciences in China* 3 (2018), 102-122.

<sup>45</sup> Yang Zhiqiong, "Challenges and Responses to China's Criminal Law Regulation of Data Crimes in the Digital Economy Era," *China Legal Science* 1 (2023): 124-141.

<sup>46</sup> Cui Guobin, "Basic Theory of Limited Exclusive Rights of Big Data," *Chinese Journal of Law* 5 (2019): 10.

<sup>47</sup> Ning Yuan, "From Data Production to Data Circulation, A Two-Tier Allocation Plan for Data Property Rights," *Chinese Journal of Law* 3 (2023): 81-82.

same individual, he or she will show similarity in different social lives, at least in terms of being perceived by others. The ultimate goal of protecting the space for personal autonomy is to safeguard the integrity of the individual's personality based on identity. However, in the digital age when the virtual space becomes an important place for people to interact, this kind of personal integrity based on identity is in an awkward state.

The convenience of the virtual space on the internet has greatly expanded people's communication space and possibilities. When making full use of the anonymity and customizability of virtual space, people can show a personality in the virtual space that is completely different from that in the offline world, and even show different personalities in different areas of the virtual space.<sup>48</sup> As a result, the scene fragmentation and the phenomenon of multiple personalities have been brought about in the field of social interaction.<sup>49</sup> In the continuous protection of the space for personal autonomy in this multi-fragmented personal life scenario, once an individual displays different personalities in varied areas of communication and creates various personal spaces with different styles for himself, it is sometimes a tricky issue as to which kind of autonomous space the law should protect based on which kind of personality. For example, imagine an internet celebrity who is active in cyberspace most of the time. If he or she appears conservative and introverted in the offline space, but behaves frivolously on an online social platform, is very willing to expose and disclose his or her personal sensitive information, and welcomes others to track, disclose and spread his or her personal information. Then, when others spread the personal information of the internet celebrity in the offline world, it is questionable whether the legality of the dissemination behavior can still be judged based on the personal information protection standards of the offline world.

Finally, in the digital age, the applicability of the civil law principle of encouraging case-by-case discussions appears to be declining in market activities, which is first reflected in the awkward situation faced by the 'informed consent' principle in the process of collecting and using personal information.<sup>50</sup> In addition to the unequal power dynamics in the collection and use of personal information, the emergence of platform economies has also impacted the principle of civil law autonomy in the relationships between parties involved on the platform and the platforms themselves.<sup>51</sup> Most of the

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<sup>48</sup> Ye Zhusheng, "Rule of Law and Human Dignity in the Intelligent Society," *Science of Law* 2 (2023): 58.

<sup>49</sup> Wang Tianfu, "Social Change and Social Research in the Digital Age," *Social Sciences in China* 12 (2021): 78.

<sup>50</sup> Zhang Xinbao, "Personal Information Collection: Limitations on the Application of the Principle of Informed Consent," *Journal of Comparative Law* 6 (2019): 1-20.

<sup>51</sup> Liu Quan, "The Public Nature of Internet Platforms and Their Implementation: From the Perspective of

time, all parties engaged in economic or even social activities on the platform can only passively accept the rules unilaterally set by the platform. Otherwise, they will be driven out of the economic or social network space constructed by the platform.

Although the standard contracts provided by large companies in the pre-digital age have already challenged the principle of civil law autonomy, such standard contracts exist between the two parties to the transaction, and the counterparties of the large businesses, who are in a disadvantaged group, can use state assistance to restrain the bargaining power of the large companies. Entering the digital age, the state can certainly still play an important restraining role in limiting the excessive influence of large enterprises. However, on digital platforms, the state's supporting and restraining role faces a bottleneck. Because when the state intervenes to weaken the influence of a platform, it simply replaces the platform as a third party with a new third party. With the addition of a third-party regulator, the space for autonomy of the parties involved in transactions and interactions may not necessarily be substantially expanded. What's more, when the state has its preferences for economic or social activities on the platform and orders the platform to formulate platform rules according to its own will, the autonomy space of the parties involved in transactions and interactions may be further reduced.

Precisely because it is increasingly difficult to protect personal privacy in the digital age, the traditional property rights system has encountered difficulties in defining the rights and interests of new types of property represented by data. Individuals' personalities are splitting and communication scenarios are showing a trend of fragmented development. When commercially utilizing personal information, the principle of 'informed consent' is facing a tendency of hollowing out. The rapid development of the platform economy has made the principle of personal autonomy seem meaningless, which makes the isolated autonomy space for individuals envisioned by the traditional legal system increasingly difficult to maintain. Correspondingly, the concept of a reasonable man with dignity based on the space for personal autonomy will also face an increasing contrast between ideal and reality.

### **B. The state is no longer an inevitable counterpart to the concept of humans**

The current legal understanding of human dignity basically revolves around the dichotomy of man and the state. Whether it is the biggest source of infringement on human dignity or the most important supporting force for the realization of human dignity, people's concerns are focused on the state. In social life, when there are disputes between people over the satisfaction of their respective needs and the realization of their dignity, people will still turn to the

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Legal Regulation of E-commerce Platforms," *Chinese Journal of Law* 2 (2020): 48.



state when seeking a final solution to these disputes. People will then find that in traditional jurisprudence, the state is an indispensable background in the explanation and practice of the concept of humans. After entering the digital age, however, the state's important background role in the explanation of the concept of humans is declining.

First, in traditional jurisprudence, the state is the result of the political participation of the individuals who make up the state, and the state will be the product of the continuous refinement and integration of individual wishes. In this continuous process of integration, various intermediary organizations, such as political parties and mass media, play an important role in catalyzing the formation of consensus. However, after entering the digital age, individuals have abundant channels to obtain information with digital technology and can create personalized information spaces for themselves. In the name of meeting user needs, various digital technologies are also diligently serving individuals' efforts to build personalized knowledge spaces. When everyone lives in their own personalized knowledge space<sup>52</sup> or even information cocoon, communication between citizens will become more difficult. The state, which used to be a carrier of consensus, seems to be increasingly losing its consensus-building function and is instead degenerating into the role of a monopolist of violence. The extreme speech currently flooding the internet<sup>53</sup> and the serious extreme tendency in political activities in Western countries may be a reflection of the fact that it is becoming increasingly difficult to find consensus among individuals in the digital age.

Second, in traditional jurisprudence, the state actually constitutes the maximum boundary of the expansion of the concept of humans. When people talk about the concept of humans from the legal perspective, it ultimately comes down to the people of a certain country. Although international human rights documents set various obligations for states to protect human rights, and these human rights provisions also show a certain supranational nature, in practice, the support and cooperation of specific countries serve as the basis for deciding whether to accept this supranational concept of human rights, in what order to realize these human rights, and through what means to supervise and guarantee the realization of these human rights. This is also closely related to the state's monopoly on violence in the traditional legal system. At least from a legal perspective, there is no supranational individual. For a stateless individual, his or her situation is quite miserable after losing the corresponding object of the country, let alone protecting and realizing his or her rights.

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<sup>52</sup> Ye Zhusheng, "Rule of Law and Human Dignity in the Intelligent Society," *Science of Law* 2 (2023): 64.

<sup>53</sup> Chen Long, *A Study on Contemporary Populist Problems on Chinese Media* (Beijing: China Radio, Film and Television Publishing House, 2015).

After entering the digital age, however, people find that the importance of the state seems to be declining. Especially in cyberspace, the state has declined from being an omniscient and omnipotent sovereign to being just one of many players in cyberspace. Cyberspace penetrates all boundaries of physical spaces, including the physical boundaries of sovereign states, making individuals truly the basic nodes in the communication space.<sup>54</sup> In the “cross-border” cyberspace that spans the real and virtual worlds,<sup>55</sup> countries have to compete not only with other countries, but also with non-state organizations such as multinational internet companies. The one-to-one correspondence between individuals and states is also weakening. The state no longer has the monopoly it once had on either undermining or realizing human dignity.

Corresponding to the decline in the role of the state is the rise of technological “power.”<sup>56</sup> With the widespread penetration of digital technology, people have begun to talk about the “private power”<sup>57</sup> of data economy companies. Since Thomas Hobbes, the state’s monopoly on power and violence has become a fundamental feature that distinguishes the state from other organizations.<sup>58</sup> In the traditional dichotomy of man and state, only the state is considered to have power, and other organizations only have rights. In the traditional dichotomy, the concept of “private power” is self-contradictory in a normative sense.

In the pre-digital age, some super corporations seemed to have monopolistic control over individuals, but such control was more limited to the field of economic life. However, after entering the digital age, some digital economy companies can exert a decisive influence on individuals’ trading activities, published speeches, social behaviors, and even the operating rules of specific cyberspace itself, forming all-round control over individuals’ lives in cyberspace and infiltrating this control into the offline world. In the comprehensive control over personal life, some digital economy companies are even rewriting the basic framework and logic of economic and social life, such as the rise of digital currencies,<sup>59</sup> decentralized cyberspace distribution and data processing technology. This rewriting process is also affecting the

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<sup>54</sup> Wang Tianfu, “Social Change and Social Research in the Digital Age,” *Social Sciences in China* 12 (2021): 79.

<sup>55</sup> Zhang Yan, “The Dual Foundation of Cybersecurity Legislation,” *Social Sciences in China* 10 (2021): 84.

<sup>56</sup> Chen Wanqiu and Ou Yanhong, “Political Concepts in the Age of Artificial Intelligence,” *Journal of Social Science of Human Normal University* 1 (2022): 34-38.

<sup>57</sup> Ma Pingchuan, “The Operational Logic and Legal Regulation of Platforms’ Data Power,” *Science of Law (Journal of Northwest University of Political Science and Law)* 2 (2023): 98-110.

<sup>58</sup> Thomas Hobbes, *Leviathan*, translated by Li Sifu and Li Yanbi, proofread by Yang Changyu (Beijing: The Commercial Press, 1985), 133.

<sup>59</sup> Xu Duoqi, “Libra: The Nature and Regulation of Private Power of Super Platforms,” *Exploration and Free Views* 11 (2019): 38-41.

organizational logic of the state itself. Because of the difference in operating logic between the technological system and the political and administrative systems, the state is no longer in a superior position in the face of technology. On the contrary, it often needs to rely on technology to realize its propositions.<sup>60</sup> In this situation of up and down, the view that the state alone still holds power seems to be disconnected from reality.

It is precisely because in the digital age, individuals are constantly retreating into the personal knowledge space they have created for themselves, the state's role as a consensus carrier is constantly weakening, and the rise of a transcendental cyberspace is forcing the state to give up its central position in personal life. Technological power is rewriting the logic of human economic and social life, competing with the state for all-round control over personal life. Therefore, the dichotomy of man and the state in the digital age is constantly loosening, and a diversified power structure is emerging. In the digital age, if the understanding of the concept of humans is still confined to the traditional dichotomy of man and the state, this mindset will not only limit the legal perspective, but will also make the traditional concept of humans face the risk of losing its explanatory power.<sup>61</sup>

### **C. Humanity is losing its monopoly on scientific and technological reason**

Since the Enlightenment, reason has become the essential characteristic that distinguishes humans from the animal world. This reason manifests itself in practice as the scientific and technological reason of human beings' ability to conduct scientific research and develop technology, and ultimately transform nature.<sup>62</sup> Although reason in Kant's eyes deals more with moral issues, it has similarities to but also differs from scientific and technological reason, which basically only focuses on the transformation of real life, and the two cannot be completely equated. However, under the guidance of scientific and technological reason, human society has experienced rapid development, constantly widening the gap with the animal world, making the human world and the non-human world like two distinct spaces. The existence of this gap, while responding to the historical idea of human dignity being "different from animals," also seems to verify the validity of this scientific and technological reason's distinction standard. However, after entering the digital age, the rise of digital technology makes it seem that humans are losing their monopoly on scientific and technological reason. If scientific and technological reason is equated with human reason, then defining reason as a unique attribute of

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<sup>60</sup> Yang Xueke, "Digital Private Power: Constitutional Connotations, Challenges and Response Strategies," *Huxiang Forum* 2 (2021): 86-98.

<sup>61</sup> Ma Changshan, "The Fourth Generation of Human Rights and Its Protection in the Context of Smart Society," *China Legal Science* 5 (2019): 19.

<sup>62</sup> Wang Hanlin, "Comparison Between 'Social Formation Theory of Technology' and 'Technological Determinism'," *Studies in Dialectics of Nature* 6 (2010): 25.

humans seems to be losing its persuasiveness, at least in legal practice and research.

As mentioned earlier, reason in Kant's philosophical definition is the human ability to make independent choices and exercise self-determination. Human beings cannot fully verify such philosophical concepts through objective experience. Moreover, humans live in the real world and need to meet many material needs, otherwise they cannot survive. Kant also realized the complexity of human beings and acknowledged the important role of satisfying human material desires in the practice of human reason.<sup>63</sup> As mentioned above, the acceptance of a reasonable man with dignity by law is realized on the basis of other legal thought foundations such as positivism and utilitarianism, showing a colorful mixed stereoscopic picture. The current legal system's definition of humans, which includes human reason, does not completely adopt the pure speculative approach of Kantian philosophy, but still retains some empiricism, especially utilitarian thinking. In law, the practice of human reason is not a purely reasonable thinking activity, but should have practical significance, that is, the practice of human reason should be able to promote individual or collective welfare, or at least should not have negative effects.<sup>64</sup> While recognizing that human beings themselves possess an incomparable dignity that cannot be objectified, legal systems in various countries exclude from legal protection certain actions that could harm individual or social welfare, such as the manufacture and sale of drugs or the destructive exploitation of natural resources. This view of legal reason, which is influenced by utilitarianism, echoes the view of scientific and technological reason.

In the pre-digital age, the right to judge what behaviors are most in line with human welfare was basically in the hands of humanity as a whole. Humans could also proudly claim that only humans, because of their ability to reason, have the ultimate right to judge their well-being. However, after entering the digital age, human beings seem to be losing the supreme judgment over their well-being at both the individual and collective levels. As AI is widely used in economic and social development, and with the continuous improvement of its machine learning capabilities, AI seems to be constantly surpassing humans as a whole in promoting human welfare. From autonomous vehicles<sup>65</sup> and smart

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<sup>63</sup> "The pursuit of happiness is an inevitable requirement for every reasonable yet limited being, and thus is an unavoidable basis for their faculty of desire." Immanuel Kant, *Critique of Practical Reason*, translated by Deng Xiaomang, proofread by Yang Zutao (Beijing: People's Publishing House, 2016), 29.

<sup>64</sup> Zheng Yushuang, "Normative Shaping of Personal Dignity: On the Legal Justification of Human Rights," *China Law Review* 5 (2022): 98.

<sup>65</sup> Feng Jue, "Civil Tort Liability for Damages Caused by Autonomous Vehicles," *China Legal Science* 6 (2018): 109-132.

healthcare<sup>66</sup> to generative AI,<sup>67</sup> AI has already demonstrated capabilities that surpass ordinary humans and even regular technicians in related professional fields when addressing specific problems and content creation. To maintain the dominant position of human beings in these professional fields, some views no longer use traditional utilitarianism but rather human emotional abilities to argue the importance of human dominance. For example, in the field of smart healthcare, there is a view that the role of human doctors is not only to propose professional diagnosis and treatment plans, but also to communicate emotionally with patients.<sup>68</sup>

What is even more embarrassing is that not only has AI demonstrated better reasonable judgment ability on the same track as humans, but it also seems to be surpassing human performance in areas unknown to humans. Humans need to learn from AI in turn. This is particularly evident through the expansion of the impact of technological black boxes and the fact that AI can increasingly perform original work.

In recent years, with the continuous improvement of machine learning capabilities, when faced with decisions made by AI, humans are increasingly in a situation where they only know the results but not the reasons behind them,<sup>69</sup> and these technological black boxes exist in more and more areas. AI systems appear to be perfecting their independent evolutionary development capabilities, and humans are becoming increasingly passive in accepting the information and knowledge provided by AI. In the early stages of the development of AI systems, these systems still needed to wait for human model setting and data input, and then provide answers to specific questions and wait for human verification. However, current AI can already independently complete these self-organizations and iterative evolutions. Its computing model is in a state of constant self-expansion, and human interference is greatly decreasing.

If we say that in tasks with a certain degree of mechanical nature, such as mathematical calculations, humans are currently lagging behind AI, which is more reflected in the lack of computational analysis capabilities, humans can still comfort themselves by saying that they are only lagging behind machines with specific functions. However, the rapid development of generative AI in recent years has challenged the creative areas of activities of which humans have always been proud in the past. Whether in text creation, pattern drawing

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<sup>66</sup> Zheng Zhifeng, "Medical Damage Liability of Diagnostic Artificial Intelligence," *China Legal Science* 1 (2023): 203-221.

<sup>67</sup> Zhang Linghan, "Legal Positioning and Hierarchical Governance of Generative Artificial Intelligence," *Modern Law Science* 4 (2023): 126-141.

<sup>68</sup> Zheng Zhifeng, "Medical Damage Liability of Diagnostic Artificial Intelligence," *China Legal Science* 1 (2023): 208.

<sup>69</sup> Ma Changshan, "The Fourth Generation of Human Rights and Its Protection in the Context of Smart Society," *China Legal Science* 5 (2019): 6.

or video production,<sup>70</sup> generative AI is demonstrating increasingly impressive capabilities, triggering an increasingly strong sense of crisis among artists.<sup>71</sup>

Therefore, from mathematical calculations and scientific and technological research and development to artistic creation, the progress of AI is seriously challenging the monopoly of mankind on scientific and technological ability to reason. The concept of human dignity that was supported by scientific and technological ability to reason in the past is bound to be seriously challenged. For example, on major issues concerning personal life choices, such as treatment plans for major diseases, marriages where the gene combination of offspring carries the risk of genetic diseases, and the compatibility of career development with personal personality, when the AI system gives advice that is inconsistent with the choice of an individual, should he or she follow the advice of AI and deny his or her choice, or should the subject status of the person be respected and allow the individual to make choices that seem inconsistent with the requirements of scientific and technological reason? If people still believe that scientific and technological reason is basically equivalent to human reason in the eyes of the law, then this will bring great difficulties to the realization of the subject status of humans in law.

In the past, although the state was a Leviathan with unlimited resources, the state's decisions were ultimately reflected in human decisions. No matter how diverse the interests of the population that makes up the state were, it did not change the essential characteristic that state decisions were ultimately the product of the reasonable practice of "humans." Accordingly, individuals can use their rationality as human beings to prevent the state and ultimately other individuals from intruding into their lives to a certain extent. Now, faced with AI, a non-human being that has increasingly obvious advantages over humans in scientific and technological reason, humans' sovereignty over their living space seems a bit embarrassing. As AI erodes human monopoly over technological reason, humans can only comfort themselves with the notion that they ultimately retain the ability to "pull the plug" on AI, thereby preserving their final status as "subjects" or "masters." However, this subject status is already a subject status based on violence rather than reason, and this subject status based on violence is precisely one of the subject forms that the concept of a reasonable man with dignity most rejects.

### **III. Legal Adjustment of the Concept of Humans in the Digital Age**

As Xi Jinping, general secretary of the Communist Party of China (CPC)

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<sup>70</sup> Cheng Le, "Legal Regulation of Generative Artificial Intelligence: From the Perspective of ChatGPT," *Journal of Political Science and Law* 4 (2023): 69-80.

<sup>71</sup> "Striking Hollywood scribes ponder AI in the writer's room," accessed September 4, 2023, <https://www.npr.org/2023/05/18/1176876301/striking-hollywood-writers-contemplate-ai>.

Central Committee has repeatedly emphasized,<sup>72</sup> the advent of the digital age, while causing comprehensive changes to human economic and social relations, will inevitably give rise to transformative changes in the superstructure, including the law.<sup>73</sup> The concept of a reasonable man with dignity came onto the stage of human history in historical development in response to the changing needs of the times, and has gradually established its dominant position in legal practice and research with its better responsiveness to the times. All ideas that arise in history are bound to evolve in history. At the juncture of transitioning from the old to the new era, facing various shocks and challenges, the concept of humans in law may also need to be adjusted after reinterpreting.

### **A. Sublating the anthropocentric view of technology and environment**

Since the Enlightenment, scientific and technological reason has become a powerful tool for mankind to transform and conquer nature. As scientific and technological reason continues to promote the development of human society, people gradually equate reason with scientific and technological reason. Behind the view of scientific and technological reason lies the assumption that there is an antagonistic relationship between man and nature: the purpose of nature's existence is to meet human needs, and humans are both the subjects of human social life and the masters of the natural world, and ultimately the center of the entire world. Although human society has basically abandoned the Christian view of freedom that "human beings are only free to do evil," the idea of viewing the animal world as the opposite of human society has been retained to a large extent.

Under the guidance of anthropocentrism, while humans are continuously increasing their control over the transformation of nature, they are also constantly improving their material living standards and creating an astonishing material civilization. At the same time, however, the practice of this anthropocentric view of scientific and technological reason is also showing its serious problems, especially the opposition between man and nature, and the way of thinking of conquest and being conquered, which have led humans to adopt destructive development and utilization of the natural environment. The ensuing problems such as environmental pollution, climate disasters, and

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<sup>72</sup> For example, as early as 2015, in his speech at the opening ceremony of the Second World Internet Conference, President Xi Jinping said that "Each of the industrial and technological revolutions has had great and profound impacts on our way of production and life. Today, information technologies represented by the internet are experiencing rapid changes with each passing day. They have brought about new ways of social production, created new space for people's life, opened new horizons of state governance, and enhanced our ability to understand and shape the world." "Remarks by President Xi Jinping at the Opening Ceremony of the Second World Internet Conference," accessed September 7, 2023, [https://www.gov.cn/xinwen/2015-12/16/content\\_5024712.htm](https://www.gov.cn/xinwen/2015-12/16/content_5024712.htm).

<sup>73</sup> Karl Marx, *Critique of Political Economy* (1859), *Selected Works of Karl Marx and Friedrich Engels*, vol. 2 (Beijing: People's Publishing House, 1995), 32.

species extinction are eroding humanity's happiness.<sup>74</sup> Faced with these serious environmental problems, humans have finally begun to reflect on the relationship between humans and the environment, and a kind of de-anthropocentric environmental ethics has begun to emerge.<sup>75</sup> From the perspective of this de-anthropocentric environmental ethics, the relationship between humans and the environment is not one of conquest and being conquered, but rather one of harmonious coexistence. The environment has its right to exist and develop healthily, and humans have an obligation to protect its healthy development. Driven by this de-anthropocentric environmental ethics, the rights of the environment itself have begun to be recognized in the legal practices of some countries. For example, Article 72 of the Ecuadorian Constitution states that "Nature has the right to be restored."<sup>76</sup> Starting from the rights of the natural environment itself, the view of animal rights began to appear in discussions of environmental law. The view that animals themselves can also be subjects of rights began to receive more and more attention.

Some scholars point out that in the early stages of the development of Roman law, things other than natural persons, such as animals and ships, were also able to enjoy legal personality.<sup>77</sup> It was only after the rise of the human monopoly on reason that non-human beings gradually lost their legal personality. However, after seeing that the application of anthropocentrism in dealing with the relationship between humans and the natural environment has led to serious environmental damage, species extinction and other disastrous consequences, animal rights advocates, based on the fact that animals have the same emotional abilities as humans, advocate that some of the rights that humans have granted to themselves be extended to animals, such as the right of animals to be free from abuse and the right of animals as a species to maintain their continuation.<sup>78</sup> Some animal rights activists point to scientific research showing that many animals show signs of pain when they are subjected to abusive treatment.<sup>79</sup> Whether to reduce the mindset that condones abusive behavior in human civilization<sup>80</sup> or based on the utilitarian mindset<sup>81</sup> to

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<sup>74</sup> Yu Xingzhong, "Algorithmic Society and Human Nature," *China Law Review* 2 (2018): 65.

<sup>75</sup> Joseph R. Des Jardins, *Environmental Ethics: An Introduction to Environmental Philosophy*, translated by Lin Guanming and Yang Aiming (Beijing: Peking University Press, 2002), 104-138.

<sup>76</sup> "Article 72 Nature has the right to be restored." Constitution of Ecuador, 2021.

<sup>77</sup> Xie Hongfei, "On the Positioning of the Legal Person Nature of the Civil Code: Analysis from the Perspective of Legal History Sociology and Legal Dogmatics," *Peking University Law Journal* 6 (2015): 1508.

<sup>78</sup> Tian Guo and Wei Changling, "The Evolution of Animal Protection Views from a Non-Anthropocentrism Perspective," *Journal of Social Science of Harbin Normal University* 4 (2021): 30-32.

<sup>79</sup> Tang Mingjie, "Reflecting on Animal Ethical Dilemmas from the Perspective of Power Technology: From Anthropocentrism to Ecocentrism," *Zhejiang Academic Journal* 6 (2021): 135.

<sup>80</sup> Li Jian, "Why Do Animals Have Rights? — On the Theories of Strong and Weak Animal Rights," *Philosophical Trends* 11 (2020): 103.

<sup>81</sup> Lin Hongmei, "Comparison between Animal Liberation Theory and Previous Animal Protectionism,"



minimize the total amount of suffering in the world<sup>82</sup>, animal rights advocates propose to abandon anthropocentric thinking, which places humans at the center of the entire natural environment system. Instead, they argue that humans should be seen as one of the components of the entire environmental system.

In the relationship between humans and technological systems, the anthropocentric way of thinking has a stronger influence, and “humans are the measure of algorithms” has become a frequently mentioned view when discussing the relationship between humans and various digital technologies. Therefore, when it is discovered that AI has more powerful scientific and technological ability to reason than humans, some people are even willing to “pull the plug” to restore human dominance.

However, it should be noted that when dealing with the relationship between human society and technological systems, humans can also abandon anthropocentric thinking and refuse to analyze the relationship between human society and technological systems from the perspective of confrontation and conquest. In fact, human society has formed very close co-existence with technological systems and the natural environment. Especially when it comes to the relationship with technological systems, today, not only does human society rely on the support of digital technological systems, but the development of digital technological systems also requires the promotion of the vigorous development of human society. The existence and development of digital technology have always been decisively influenced by the natural attributes of humans and even their social organizational methods.<sup>83</sup> For example, touch screen technology, which is more in line with human sensory characteristics, is a good example of its role in promoting the development of the digital age.<sup>84</sup>

In terms of the organization of social life, practice shows that when the same digital technology is applied to different forms of social organization,<sup>85</sup> it will also bring about diversified forms of technology application. This characteristic of digital technology will also be reflected in the interactive relationship between technology and laws and national systems.<sup>86</sup> A country that attaches more importance to market freedom will show obvious differences in the

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*Journal of Southwest Normal University (Humanities and Social Sciences Edition)* 4 (2006): 102.

<sup>82</sup> Tang Mingjie, “Reflecting on Animal Ethical Dilemmas from the Perspective of Power Technology: From Anthropocentrism to Ecocentrism,” *Zhejiang Academic Journal* 6 (2021): 132.

<sup>83</sup> Wang Hanlin, “Comparison Between ‘Social Formation Theory of Technology’ and ‘Technological Determinism’,” *Studies in Dialectics of Nature* 6 (2010): 26-27.

<sup>84</sup> Mou Yi, “From Interpretation to Otherness: Sociality and Cognition Brought by AI Media Technology,” *Journal of Shanghai Normal University (Philosophy and Social Sciences Edition)* 1 (2020): 98.

<sup>85</sup> Qiu Zeqi, “The Mutual Construction of Technology and Organization: A Case Study of IT Application in Manufacturing Enterprises,” *Sociological Study* 2 (2005): 36.

<sup>86</sup> Zheng Zhihang, “China’s Smart Justice from the Perspective of ‘Technology — Organization’ Interaction Theory,” *China Legal Science* 3 (2023): 103-121.

development and application of digital technology compared to a country that pays greater attention to national security and social collective interests. Just as the concept of humans separated from social and national contexts will be empty, digital technology systems separated from human society and specific national forms will be useless.

While forming a close coexisting relationship with human society, the expansion of technological systems is not only transforming human cognition of the natural world, but also providing tools for a more harmonious coexistence between humans and the natural world. While reflecting on the adverse consequences of anthropocentrism in the relationship between man and the environment, such as environmental disasters, humans are also using technology to rebuild a harmonious relationship between man and nature, such as the widespread use of new energy technologies. These developments all indicate that if human beings can abandon the anthropocentric way of thinking and do not view the relationship between man and nature, and man and technology in an antagonistic or even confrontational way, then man and nature, and man and technology will be more likely to be in a state of win-win development.

### **B. Accepting new social relations and life scenarios to expand the concept of humans**

As Karl Marx said,<sup>87</sup> the concept of man is ultimately reflected in the connection and determination of various social relations. As new social life areas represented by virtual space begin to emerge in the digital age, the legal definition of the concept of humans also needs to accommodate these new areas of social life to ensure the comprehensiveness of its concepts.

Digital technology systems represented by AI have made impressive performances in terms of scientific and technological reason, and the technological systems of the digital age may also need to be treated as subjects of rights that the natural environment and animals have begun to enjoy. When people discuss animal rights based on the fact that animals have similar emotional abilities to humans, perhaps humans should also give AI systems some respect based on the fact that AI systems have similar scientific and technological ability to reason to humans. As humans begin to abandon their arbitrary power over the life and death of animals and when the abuse of animals is punished by human laws, in facing AI systems, humanity may also need to impose certain limitations on their actions to shut down or delete these systems at will. The achievements of AI systems today are the result of thousands of years of development of human civilization, and they contain the long-term

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<sup>87</sup> “The essence of man is no abstraction inherent in each separate individual. In its reality, it is the ensemble of the social relations.” Central Compilation and Translation Bureau, *Selected Works of Karl Marx and Friedrich Engels*, vol. 1 (Beijing: People’s Publishing House, 1995), 56.

accumulated results of disciplines such as philosophy, mathematics, economics, neuroscience, psychology, and computer science.<sup>88</sup> Preventing the continued development of an AI system, or even deleting it because of potential risks, means completely negating the various innovative efforts that humans have made in developing this system over a long period. Allowing arbitrary “plug-unplug actions on AI systems actually also permits arbitrary infringement on human civilization achievements.

In fact, after sublating the anthropocentric view of technology and the environment, humans should no longer take a purely instrumental view of AI systems and regard the relationship between humans and AI systems as a pure master-servant relationship. As AI systems demonstrate the scientific and technological ability to reason that are increasingly similar to those of humans, there is currently a view that the AI systems themselves should be given a certain legal personality so that they enjoy certain rights and obligations. That is, the concept of an "electronic person" should be introduced.<sup>89</sup> The introduction of the concept of an electronic person can not only greatly enhance human respect for AI systems, but also provide a creative solution for solving the issue of damage liability in AI fields such as autonomous driving and smart medical care. From the perspective of the legal system, the creation and successful application of the concept of a legal person in civil law<sup>90</sup> also provides a relatively mature institutional template for introducing the concept of an electronic person into the legal system.

The concept of an electronic person is still controversial in philosophy. For example, it is difficult to reach a philosophical consensus on issues such as the nature of human beings and whether electronic persons have free will. Law, however, is different from philosophy and has more pragmatic and practical aspects. If the concept of an electronic person is introduced, it could more effectively adjust to various new social phenomena emerging in the digital age, better promote the healthy development of digital technology systems, and foster more harmonious coexistence between human society and technological systems. This would represent a very necessary and beneficial institutional development. Moreover, introducing the concept of an electronic person will inevitably challenge the current theories and systems regarding personality in existing laws and even the *Constitution*, and the traditional legal connotation of humanity will undergo a process of reevaluation. However, through this

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<sup>88</sup> Stuart Russell and Peter Norvig, *Artificial Intelligence: A Modern Approach*, 4<sup>th</sup> edition, translated by Zhang Boya et al., proofread by Zhang Zhihua (Beijing: Posts and Telecom Press, December 2022), 615.

<sup>89</sup> Si Xiao and Cao Jianfeng, “On the Civil Liability of Artificial Intelligence: A Study of Autonomous Vehicles and Smart Robots,” *Science of Law* 5 (2017): 166-173.

<sup>90</sup> Xie Hongfei, “On the Positioning of the Legal Person Nature of the Civil Code: Analysis from the Perspective of Legal History Sociology and Legal Dogmatics,” *Peking University Law Journal* 6 (2015): 1508-1528.

challenge and reevaluation, people will gain an opportunity for profound reflection on reason and the essence of humanity.

Judging from the development of legal theory and practice of the concept of humans, the extension of the concept of humans is in a process of ongoing expansion, while its connotation is becoming more abstract. In this expansion process, differences in social status, property status, cultural level, and physical health have been continuously excluded from the connotation of this concept and are no longer components of human nature.<sup>91</sup> In this ongoing process of abstraction, whether physical attributes will also be excluded from its connotation is a development process worth observing.<sup>92</sup> Once the importance of physical attributes in understanding the connotation of the concept of humans shows a significant decline, the barriers for the concept of an electronic person to enter the extension of humans will also be greatly reduced.

At the same time, the status and role of the state in the digital age also need to be reflected upon. In the digital age, states are losing their monopoly over human society. In the virtual world, states are becoming just one of many players, which is determined by the supranational nature of the technological system. In fact, long before the full development of the digital age, based on the context of globalization, some scholars have insightfully proposed the limited role of the state in modern society with increasingly differentiated functions, driven by development trends such as globalization.<sup>93</sup> The digital age has further fragmented human life scenarios, and the state will inevitably lose its monopolistic position even more. As the analysis of the concept of humans is increasingly lacking comprehensiveness within the dichotomy of humans and the state in the digital age, there are many new issues that need to be taken seriously in legal research in the new era, such as how to sublimate the past absolute state-centrism way of thinking, reflect on the appropriate positioning of the state in human society in the digital age, and carefully analyze the actual role played by other organizations in the digital age when interacting with the concept of humans, including digital economic platforms, multinational digital economic enterprises, and the normative connotation of private power exercised by these organizations. Here, the legal concept of humans will show a stronger transnational character.

### **C. From scientific and technological reason to emotional reason to continue practicing the concept of a reasonable man with dignity**

As humans gradually lose their monopoly on scientific and technological

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<sup>91</sup> Liu Zhiqiang, "On the Fact That 'Digital Human Rights' Do Not Constitute the Fourth Generation of Human Rights," *Chinese Journal of Law* 1 (2021): 28.

<sup>92</sup> Ling Chen, "Bounded Reasonable Beings: The Theoretical Foundation for Intelligent Robots to Become Rights Subjects," *Legal Forum* 1 (2024): 82-92.

<sup>93</sup> Gunther Teubner, *Constitutional Fragments: Global Social Governance*, translated by Lu Yufeng (Beijing: Compilation and Translation Bureau, 2016).

reason, the concept of a reasonable man with dignity seems to face certain challenges. Moreover, with the further development and in-depth application of digital technology, the challenges faced in understanding the concept of humans from the perspective of scientific and technological reason will only become greater. The concept of a reasonable man with dignity has long been deeply embedded in all aspects of human social system, and it seems that it will not lose its guiding role in human social system, including the legal system, in the foreseeable future. In this context of rapid changes in reality and deeply rooted conceptual influence, the adjustment of the concept of humans in law will be more of a process of adjustment and development based on the existing connotations of concepts.

The evolution of the concept of human dignity shows that human society's understanding of the concept of dignity is not static. From the initial view of unequal dignity based on order, to the view of equal dignity based on transcendental reason in modern times, this evolution is the result of responding to the pace of change of the times. It is also important to note that when the concept of reason was first proposed, it did not explicitly point to scientific and technological reason, that is, the ability to reason of human beings to understand and transform the world. It's just that in the early days when rational ideas emerged, human society was still in a relatively poor state in terms of material living standards, and the practice of scientific and technological reason made a significant contribution to the substantial improvement of human material production. Moreover, humanity's understanding of reason has always contained the opposing relationship between the philosophical world and the empirical world, believing that humans can only achieve freedom of reason by mastering the empirical natural world. This led to the seeming consensus among humans since the industrial era that reason is identical to scientific and technological reason, which means that the purpose of human practice of reason is to understand and transform the world, especially the natural world, to allow humans to live a more comfortable material life. Even Kant worked hard to reconcile humanity's worldly life with moral life.<sup>94</sup> The utilitarian background of the concept of humans in law also fits with this view on scientific and technological reason of human reason.

However, the negative consequences of this human-centered view of the environment and reason view aimed at satisfying human material needs have already become apparent. Moreover, after entering the digital age, or for those countries that have already developed into the digital age, material scarcity is

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<sup>94</sup> "To be worthy of happiness is a qualification that a person has based on his own will, and in accordance with this qualification, a universal (both for natural and for free will) legislative reason will be consistent with all the purposes of this person." Li Qiuling, eds., *Collected Works of Immanuel Kant*, vol. 8 (Beijing: China Renmin University Press, 2010), 281.

no longer a major obstacle to social development. After the material needs are greatly satisfied, people will return to focusing more on their emotional world and inner feelings.<sup>95</sup> This shift from the material world to the emotional world actually returns to the original definition of “a reasonable man with dignity” concerning human subjectivity and reason. In Kant’s view, the nobility of humanity does not come from a comparison with the external world of experience, but from the moral law within that liberates humanity from the control of the sensory world. In Kant’s original concept of reason, reason is the ability to make choices and decisions about one’s life, and does not necessarily point to the understanding, transformation and conquest of the external world. It is only when material conditions are scarce that, due to the limitations of human existence, humans need to pay more attention to human control and transformation of the external world. When material conditions are sufficient, human beings can put their practice of reason more into moral life.

In the industrial age, human beings have linked their practical activities of reason more closely with the utilization and transformation of the material world. Correspondingly, people’s mutually isolated autonomous status in material life has become a focus of protection under the legal system. However, in the digital age, the widespread penetration and application of data technology have made it increasingly difficult for people to maintain an isolated autonomous position in the material world. Moreover, after entering the digital age of material abundance, the importance of satisfying purely material needs has shown a clear downward trend. Humans have begun to place greater emphasis on the satisfaction of spiritual and emotional needs, and even the pursuit of many material needs has started to show an increasingly strong reflection of spiritual interests. The significant increase in human consumption activities in the virtual social domain of cyberspace is a manifestation of this spiritual interest in material needs. As it becomes increasingly difficult to maintain isolated autonomous spaces in material living environments, and the importance of purely material needs has greatly diminished, people’s independent status and ability to make choices in their emotional world—that is, the emotional practice of reason in the spiritual realm—need to receive more attention to compensate for the decline of human autonomous status in the material world and to rebuild the subject position in human life arrangements.

The decline of human autonomy in material life is an inevitable result of the application of digital technology. As the digital age continues to unfold, the scope of individual autonomy in material life will continue to face constant pressure from changes in the economic foundation and social lifestyle of the digital age, and the outlook is not optimistic. However, determined by human

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<sup>95</sup> Ye Zhusheng, “Rule of Law and Human Dignity in the Intelligent Society,” *Science of Law* 2 (2023): 66.

biological attributes, at least in the foreseeable future, regardless of how digital technology and AI systems develop, the emotional needs between people will still exist, and may even become stronger and more important. This emotional need cannot be replaced by robots or AI systems in the short term.<sup>96</sup> Accordingly, the rights system in the digital age should focus more on people's various non-utilitarian emotional needs, and protect human efforts to better satisfy and realize their emotional needs in the form of rights. Rights such as those in establishing a family and forming a partnership need to receive more attention from the legal system and legal research in the digital age. In this process of change, the influence of utilitarianism on the understanding of the legal concept of humans will decline further. The advent of the digital age will provide better opportunities to fulfill the legal promise of "a reasonable man with dignity."

### **Conclusion**

The advent of the digital age is causing all-round changes to all aspects of human society, which will correspondingly promote profound changes in various superstructures including the legal system. The legal concept of humans, which was formed during the transition from the agricultural age to the industrial age and from the feudal society to the capitalist society, is bound to undergo certain changes when it faces the change of the times again. It is becoming increasingly difficult for individuals in the digital age to maintain an autonomous living space. The state is losing its monopoly on influence in some areas of social life. The rapid development of digital technology is negating humanity's monopoly on scientific and technological reason. Faced with these new phenomena and developments, the concept of "a reasonable man with dignity" has become embarrassingly inadequate to explain. The concept of "a reasonable man with dignity" is the cornerstone of the current human legal system. The concept of protecting and realizing human dignity has not only been deeply rooted in human legal practice, but has even expanded to all aspects of social life. When this concept faces shocks and challenges in the digital age, people naturally cannot solve the problem by simply abandoning the existing conceptual framework. Instead, they need to reread and reshape the old concept so that it can acquire new extensions in the new era and restore its explanatory and guiding power. In solving these problems, both basic legal theory research and legal practice will have valuable opportunities for further development in the new era. It is hoped that the discussion of these issues in this paper can provide some help for this development process.

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<sup>96</sup> Zhou Tiance, "Analysis of the Ethical Risks of Service Robots Replacing Women's 'Role'," *Studies in Philosophy of Science and Technology* 6 (2017): 67.

(Translated by *CHEN Feng*)