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General articles

Digital progress and property rights

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Abstract

In the course of digital progress, many terms and issues are discussed, but the right of ownership is not discussed at all. Moreover, many players in the financial industry are striving to become the *first movers* in the digital evolution and are relying increasingly on electronic and networked systems. But, in doing so, they might forget that they also make themselves and the clients' private sphere more vulnerable. The aim of this article is to sharpen the understanding of the purpose of private wealth and financial privacy and the importance of property rights. Especially with a view to the next generation of clients and employees, these issues will increase in importance.

Progress versus security

Today's advancements in the digital domain dominate discussions and stir emotions. Numerous articles and speakers at public events refer to neologisms, such as *blockchain*, *Cloud computing*, *artificial intelligence*, *robotics*, *the Internet of Things*, and many more. They also discuss the opportunities, risks, and consequences of digital progress. But it is striking that one essential concept is not being discussed: the basis for digital ownership. This is quite irritating, especially in view of the fact that the importance of property rights will only intensify in our digital future. As everyday systems and processes become increasingly interlinked with each other, as relentlessly increasing quantities of sensitive company and customer data flow into the Worldwide Web via Cloud and blockchain systems, get stored there, and are ultimately exchanged with others, it practically goes without saying that questions concerning ownership sovereignty and the protection of the right to digital property also need to be addressed.

In this regard, it should be noted that the quest for security is indeed omnipresent. For example, the desire for security against terrorism, crime, accidents, and illness causes most people to be quite willing to exchange their personal freedom for the purported security offered by the state or other entities. However, when it comes to the protection of private property or of one's personal and financial privacy, this security-mindedness often fades rather quickly. Could this indicate that only the fewest people are yet aware that digital progress (and also government regulation) will further undermine financial privacy and heighten the vulnerability of private property, even as it encroaches upon the sovereignty over personal data and discloses personal behaviour patterns for the exploitation by others? Not to mention that the human being becomes more and more predictable and thus more controllable as a result?

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In 2016, the European Parliament, with very good intent, passed the so-called General Data Protection

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Regulation for the purpose of protecting natural persons when it comes to the processing and free movement of personal data. However, the protection of private data—and with that, private wealth—is in fact undermined due to the complexity of the new regulation on one hand and, on the other, by separate legislation such as the Automatic Exchange of Information. Under the pretext of transparency—which means nothing less than data ownership—and the effort to fight crime and terrorism, the human right to (financial) privacy is being violated. It is therefore crucial that, in the course of digital progress, the importance and protection of property rights is also discussed.

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The purpose of property rights

Private property is a very worthy goal. Not only does it increase one's sense of responsibility—after all, if something belongs to you, you deal with it more carefully than you would perhaps otherwise—but even more importantly, it also makes a significant contribution to the well-being of society as a whole, for example by giving rise to innovative products and services, creating jobs or launching joint projects from which the general public also benefits. In addition, private property is used in a much more focused and sustainable manner than, for example, public capital. Nevertheless, especially in the Western world, private property—and together with that, also financial privacy—is viewed with a great deal of suspicion, and its important economic role is discussed hardly at all or only marginally by the broader public. Instead, continuous attempts are made by the public to malign private property as an allegedly 'immoral end in itself' and to put great wealth under general suspicion. In this context, however, it needs to be emphasized that it is widely ignored that data also has owners.

However, private property is never an end in itself. In this respect, the vast majority of people are victims of a misconception that likely has to do with the fact that property and wealth are almost exclusively perceived, quantified, and qualified in terms of numbers. This inclination reveals a hierarchical view of the world that gains expression in, among other things, the numerous discussions on social inequality. To draw on the words of Aristotle: property, or the fact of being wealthy, is not what is desirable. Basically, it is meaningless. Only the purposes that can be fulfilled by making use of a property or a fortune gives it meaning. Hence, private property should be seen as a tool with which man can develop further. It follows that private wealth has also always had a social function; but this does not automatically grant the general public a right to dispose of it.

Under the rule of law, property is a fundamental right enshrined in the constitution, and the realization of it is governed by various laws and regulations. The idea behind this is to preserve, clearly define, and to protect personal property from arbitrary expropriation by authorities or the state. The legally anchored right to property forms the basis for individual freedom of scope and choice as well as for self-determination and personal responsibility. It is therefore an essential factor for social prosperity.

Blockchain and IT: the fourth industrial revolution?

The interplay between the concept of ownership and digital progress can be explained rather lucidly by using *blockchain* as an example. *Deloitte Insights*,[1] a publication of Deloitte Development LLC, provides the following definition of blockchain:

1. *Deloitte Insights*, 'Blockchain: A Technical Primer' 6 February 2018 <https://www2.deloitte.com/content/dam/insights/us/articles/4436_Blockchain-primer/DI_Blockchain_Primer.pdf > accessed 27 March 2018.

> A blockchain is a digital and distributed ledger of transactions, recorded and replicated in realtime across a network of computers or nodes. Every transaction must be cryptographically validated via a consensus mechanism executed by the nodes before being permanently added as a new 'block' at the end of the 'chain'. There is no need for a central authority to approve the transaction, which is why blockchain is sometimes referred to as a peer-to-peer trustless mechanism.

The authors call blockchain:

> . . . one of the biggest technology breakthroughs in recent history, similar to the advent of the Internet in the early 1990s. At that time, the Internet provided a new and more sophisticated way to search and share information, a way that was much more efficient and transparent. Today, blockchain presents a similar value proposition and provides a way to transact in a secure, immutable, transparent, and auditable way.

Blockchain certainly can be seen as a revolutionary transaction system. It will eliminate certain intermediaries such as banks or insurers, thereby reducing costs and increasing efficiency and work speed. The most advantageous change, however, will take place in the manufacturing, services, and logistics sectors. Furthermore, via blockchain the use of smart contracts and deeds will be facilitated by providing a fully automated solution, which means that a contract or deed is confirmed and stored directly by the parties and that any modification or customization can be conducted immediately. During this process, lawyers and notaries will not be needed.

However, new technologies such as blockchain not only come with advantages but also risks. Theoretically at least, damaging and corrupt monopolies can be created, with the objective to manipulate blockchain in favour of certain third parties. However, this is not worse than some of the already existing oligopolies created through overregulation. Furthermore, today's society is still suspicious of new technologies, especially with a view to the anonymity afforded by blockchain, which could ultimately lead to criminal misuse. We need to acknowledge one thing, however: namely, that any system can be abused by criminals. Nonetheless, the fact that blockchain inscriptions remain undeletable can be of vital help to prosecutors. And here is where property rights come into play: regulations and legal restrictions can reduce the risks, but they will also facilitate the undue violation of the right to (financial) privacy by the authorities. Blockchain, just like any other new technology, can be attacked and hacked. In theory, given its fundamental structure, blockchain should have the capacity to reinforce property rights. But it requires certain security and governance standards that generally should and must be devised, not (only) at the legislative level. That being said, the most important means of safeguarding private property in a blockchain environment is the digital key. The challenge here will be in how to store and protect this key so that nobody else can misuse it.

Blockchain makes it easier to determine ownership, as everything is stored in unchangeable transaction chains. But it also makes property more vulnerable and encroaches upon financial privacy. This is precisely why property rights should be addressed equally with all other topics when the discussion turns to digital progress. Because, as in the past, property rights will be the biggest driver of digital progress. At this point it is also important that we remind ourselves yet again that each of these new digital technologies will develop into what people make of them. After all, humans are not helplessly delivered to the mercy of algorithms, machines, and artificial intelligence.

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Wake-up call for trustees

Rather than fearing the digital developments and consequences, trustees and their staff should explore objectively the opportunities and pitfalls of these new technologies for the sake of their clients:

- Blockchain and other evolving technologies like artificial intelligence will certainly change the organizational structure, especially that of banks and insurance companies.
- Digital progress will alter work methods and the way services are offered, but it will also create new jobs and services even as it makes operational procedures a lot more efficient and productive.
- Digital advances will not replace the human factor per se in the economic value chain, but they will make the human factor even more productive.
- Accounting and controlling mechanisms will change radically in terms of their simplification and application.
- Legal, audit, and tax services will be 'streamlined' and become more focused.
- Awareness of the need for cybersecurity and data protection will increase and become a top priority.

Also in the trust business, digitalization will lead to change in certain service areas. But the function of trustee, ie as an intermediary between clients and their asset structures, will continue to exist. The understanding that it takes to assess the entirety of a client's wealth matrix, as well as the skill necessary to tailor advice to their individual needs, cannot be replaced by machines and algorithms. Nor will the questions essential to the trust business ever change: what is the purpose of a personal fortune? Which asset structure is best suited to fulfilling that purpose? Which expectations, needs, and visions need to be taken into account? How does the family and entrepreneurial environment in which the assets are embedded present itself? What are the transgenerational goals of the family, and can the assets be aligned accordingly? The trust business is not about numbers or performance statistics; rather, it is about the people behind a private fortune. Each asset matrix is different—because it reflects the real-life situation of people. This is why it takes human expertise and experience to address the relevant (and very specific) matters and questions. This is also why comprehensive advice and the development of suitable asset structures cannot be replaced by new technologies. Needless to say, though, the latter can be very helpful tools in this process.

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Many players in the financial industry are striving to become the *first movers* in the digital evolution and are relying increasingly and sometimes too carelessly on electronic and networked systems. But in doing so they forget that they also make themselves more vulnerable. The trust business should calmly but resolutely embrace digital progress—in order to make the best possible use of the opportunities that present themselves (eg for more efficient administration) and to identify at an early stage those risks that could run counter to the protection of clients, beneficiaries, and asset structures.

Awareness leads to safety

The aim here is to sharpen our industry's understanding of the meaning and purpose of private wealth as well as the importance of property rights. Especially with a view to the next generation of clients and employees, this will be of particular importance, given that in certain instances there may be a somewhat perfunctory sense of what private wealth means or what the purpose of family and entrepreneurial property really is.

Protecting and preserving wealth is much more than just managing money. This is why digital progress becomes such an important topic for trustees. Wealth protection in the age of digitalization means that trustees not only have to deal with the political, economic, and family risks and threats that can affect assets, but also have to identify at an early stage the opportunities as well as the downsides associated with digitalization and to integrate the knowledge gained from this into their own service areas, processes, and risk management. The increasingly sophisticated cyber attacks of late illustrate just how vulnerable and penetrable today's digitized systems actually are. This means that, going forward, the advantages and disadvantages of digital progress and the prudent handling of customer and asset data must be anchored much more firmly in the minds of current and future staff members at all levels. The best preventive measures are of no use if they fail due to a lack of understanding and awareness on the part of employees. Trust and security will become even more important as the digital age evolves. And as trustworthiness forms the very foundation of our business, this claim must continue to be borne out also in the digital age.

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