

Beyond Transplantation: A Study on the International Reference Path of China's Digital Economy Legislation

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Abstract: China's digital economy legislation has entered the deep water area of "system construction" from the early stage of "blank filling." In this process, how to scientifically handle the localization transplantation of international experience has become a core issue related to the quality of legislation and the national digital competitiveness. This paper holds that the fundamental dilemma faced by digital legislation at present is not the lack of overseas institutional resources, but the "adaptive trap of legal transplantation." By comparing and analyzing typical models such as European Union's General Data Protection Regulation (GDPR) and California Consumer Privacy Act (CCPA), and combining the legislative practice of China's Personal Information Protection Act, this paper refines the evolution logic of the international reference path from "passive acceptance" to "selective absorption" and then to "institutional feedback." The article further points out that in frontier fields such as algorithmic governance, cross-border data flow and artificial intelligence legislation, China should abandon the dual thinking of "total copying" and "blind exclusion" and turn to a deep integration model based on "rule compatibility" and "sovereignty strengthening" to build a digital economy legal system with both international discourse power and local effectiveness.

Keywords: Digital economy legislation; Legal transplantation; International reference; Cross-border data flow; Institutional feedback

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1. Introduction

The iteration of digital technology is reshaping global production and social organization with unprecedented strength: "the globalization of the digital economy makes the role of data elements in the global market more and more prominent"^[1], bringing mankind into a new economic era dominated by data, algorithms, and platform architecture. In the face of this profound change, the legal system has encountered a serious "adaptability crisis": traditional legal concepts such as ownership, privacy, monopoly, etc., are facing the dilemma of explanatory power dissipation in the digital context. In response to this crisis, major jurisdictions around the world have launched large-scale legislative actions. From the EU's General Data Protection Ordinance to the US's California Consumer Privacy Act, and then to China's governance framework with Network Security Law, Data Security Law and Personal Information Protection Law as the core, digital economy legislation has become the forefront of the big country system game.

In this global legislative competition, the late-developing countries inevitably face a classic legal proposition-legal transplantation. However, the international reference of digital economy legislation is by no means a simple copying of Western commercial codes in the industrialized era. The fluidity of data and the multilateralism of the platform make the origin and application of legal rules highly separated, showing a complex pattern of “system spillover” and “rule competition.” In this context, simple “takenism” may lead to unfamiliar rules and even fall into the trap of the cost of the rule of law outside the country; Sticking to closure may face the risk of being excluded from the global data circulation circle. Therefore, exploring the international reference path of China’s digital economy legislation is essentially asking: how to absorb the outstanding achievements of human civilization ruled by law to the maximum extent and realize the modernization transformation of the local system under the premise of maintaining the sovereign independence of the legal system?

This paper attempts to construct an analytical framework that spans the binary opposition between “transplantation” and “spontaneity.” The research holds that the international reference of China’s digital economy legislation has and should continue to follow an evolutionary path from “technical reference” to “structural embedding” and finally to “institutional feedback.” The article will first clear up the unique paradox faced by the transplantation of digital legislation, then examine the logic of China’s legislation choice through specific system comparison and case analysis, and finally put forward specific strategies to achieve transcendence and guidance in future legislation at the moment of fierce reconstruction of international rules.

2. The paradox of legal transplantation in the digital age: the tension between adaptability and hegemony

Legal transplantation usually refers to the transfer of legal rules or systems from a specific jurisdiction to another jurisdiction. “Legal transplantation is an important formal dimension of legal culture communication, dissemination and reconstruction”^[2]. In traditional comparative law, the criterion of successful transplantation lies in “functional adaptation,” that is, whether the transplantation system can effectively solve the specific social problems faced by the importing country. However, the unique technical architecture and operational logic of the digital economy endow legal transplantation with a brand-new paradox color: the transplantation activity faces both the “adaptation failure” caused by the rapid iteration of technology and the hegemonic risk that the exporter realizes “system locking” through rule output.

2.1. Locking of technical architecture and hollowing out of rules

Traditional legal transplantation mostly occurs in areas with clear boundaries of physical space, and legal rules are closely combined with social production relations in specific regions. The operation of the digital economy is based on codes, network protocols, and data standards, and the technical architecture itself is a kind of “unelected power.” When we draw lessons from the “forgotten right” or “data portability right” abroad in legislation, we transplant not only the legal provisions, but also the technical execution environment presupposed behind the provisions.

Taking data portability as an example, the right created by Article 20 of the GDPR of the European Union highly relies on standardized API interfaces and decentralized data structures. If this right is forcibly implanted in a jurisdiction with centralized data storage and a lack of interoperability standards, it will not only lead to extremely high costs of exercising the right, but also make the legal provisions fall into a “cultural” empty state because of the infeasibility of technical realization. This leads to the first paradox of transplantation in the digital age: the literal transplantation of legal rules is extremely convenient, but the technical ecological

environment on which the rules are effective is extremely difficult to reproduce. Without an in-depth grasp of the underlying technical logic, legislative reference is likely to become a “text trip” that is superficial. This is the reason why Professor Shen Zongling insists that all social and natural conditions in the country of origin and its own country should be carefully studied ^[3].

2.2. “Brussels effect” of standard export and sovereignty erosion

Different from enterprises passively following high standards in the industrialized era, legal transplantation in the digital age is deeply influenced by the “Brussels effect.” Due to the huge scale of the EU market and its strict compliance requirements, multinational companies tend to unify their global business under the EU privacy standards, thus promoting the global diffusion of EU rules without the assistance of national coercion. This market-based rule export mechanism poses subtle pressure on the legislative reference of late-developing countries.

On the one hand, it reduces the compliance complexity of enterprises and provides a seemingly ready-made legislative blueprint. On the other hand, the legal transplantation of “borrowing the market” implies the risk of sovereignty erosion. When a country’s data legislation fully meets the standard of GDPR, it essentially transfers its discretion to the European Commission on the “adequacy determination” of the level of personal information protection. In recent years, some countries have translated GDPR almost one by one when formulating personal information protection laws, which has led to the passivity of domestic law enforcement agencies in the face of cross-border data retrieval, and local digital sovereignty has been dispelled by high standards outside the country. This reveals the second paradox: the more we pursue legal transplantation in line with “international high standards,” the more likely we are to lose our autonomy in the interpretation of rules and the jurisdiction of law enforcement.

2.3. Rejection reaction caused by cultural value embedding

Digital legislation is by no means a purely technical norm, and its core is deeply embedded with the cultural values and political ethics of a specific society. For example, based on the historical reflection after World War II, the European Union highly ideologically elevated the right to personal information to an irreducible basic human right. Under its free market tradition, the United States tends to regard data as property rights that can be traded through the “notice-consent” mechanism. These two paths are rooted in the big philosophical differences between “personal dignity” and “individual freedom,” respectively.

Chinese society’s cognition of privacy and data not only attaches importance to individual dignity, but also has distinct collectivist characteristics and public safety considerations. If we ignore this basic difference of cultural value in legislative transplantation and simply apply the narrative of privacy rights in Europe and America based on individual against state power, it will inevitably lead to serious “institutional rejection reaction” For example, if the framework of “inform-consent” is transplanted too rigidly as the sole legal basis, it will show logical inconsistency when dealing with the collective needs such as public health monitoring and financial risk prevention and control brought by the super-large population in China. Therefore, it is a key watershed to distinguish which of the extraterritorial rules are universal technical specifications and which are special value presuppositions.

3. Multiple references and path demarcation: A comparative mirror image of GDPR and CCPA

In order to deeply understand the internal mechanism of international reference, it is necessary to analyze the

two most influential legislative models in the world. GDPR of the European Union and CCPA of California respectively represent the legislative poles of “right standard” and “market standard,” which provide a very tense reference mirror image for China.

3.1. EU GDPR: Vertical supervision under the basic rights approach

GDPR is the benchmark of global privacy protection legislation, and its core feature lies in “giving priority to privacy protection and personal data security”^[4]. This legislative approach presents a strong color of integration and vertical supervision:

Uniform high-standard substantive obligations. GDPR not only provides a detailed list of individual rights, but also imposes positive obligations on data controllers and processors, such as “privacy protection through design” and “data protection impact assessment,” which run through the whole life cycle of data processing.

Strong independent regulatory agency. Each member state must set up an independent regulatory body, which enjoys extensive powers of investigation, correction and high fines. This “super-supervision” mode ensures that the law is not discounted at the implementation level.

Extraterritorial effect of long arm jurisdiction. Article 3 breaks through the principle of territoriality, and brings all acts of monitoring or providing services to data subjects within the EU under its jurisdiction, showing a strong intention to expand the rules.

The reference value provided by GDPR for China lies in its completeness of systematization and thoroughness of rights protection, but its disadvantages are also obvious: the high compliance cost has brought a disproportionate burden to small and medium-sized enterprises, and some rigid consent mechanisms have hindered the logical flow and value mining of data elements, and even strengthened the oligopoly status of technology giants to some extent.

3.2. American CCPA: Horizontal constraints under the approach of consumer rights

Different from the integration of the European Union, the federal privacy legislation in the United States has been absent for a long time, and the CCPA in California has played the role of the de facto American standard. However, there is a fundamental difference between its approach and GDPR:

Consumer protection, not basic rights. CCPA defines privacy issues as consumer protection matters, and gives consumers the right to know, the right to delete, and the right to opt out, and the opt-out mode gives more acquiescence space for data flow.

Decentralized law enforcement mechanism. Only the state attorney general exercises law enforcement power, without setting up a special data protection agency, and relies more on the “reputation mechanism” of the market and class actions to restrain it.

Liability logic based on damage. The focus of legislation is not to impose comprehensive preventive obligations beforehand, but to punish specific damages such as “data leakage” afterward.

The market-driven path represented by CCPA shows a more friendly attitude towards technological innovation. However, its limitations are equally significant: the lack of independent regulators makes law enforcement resources seriously insufficient, consumer rights are easily overshadowed by lengthy privacy policies, and substantive fairness issues are difficult to solve.

3.3. Deep dialogue between two paths and China coordinates

The difference between GDPR and CCPA is essentially their different diagnosis and remedy schemes for the imbalance of the “power-right” relationship in the digital age. The former is afraid that private power will devour individual dignity, and it is strongly corrected by state regulatory power; The latter is wary of the

intervention of state power in market freedom, and mainly relies on the market competition mechanism to adjust.

In the process of reference, China did not choose a single topic between these two roads, but embarked on the third road based on its own tradition of administrative leadership and efficient governance. Taking the Personal Information Protection Law as an example, it absorbs the rights list system of GDPR, such as adding sensitive personal information rules and introducing the embryonic form of data portability, showing the reference color of “complete rights”; However, in the implementation mechanism, it relies on the multi-department joint law enforcement system with the network information office as the core, which is significantly different from the independent supervision mode of GDPR and the decentralized law enforcement of CCPA. At the same time, the law explicitly adds exemptions such as “to deal with public health emergencies,” which reflects the priority consideration of public interests, which is not fully developed in the European and American legislative models. China has chosen a path of localization and reconstruction, in which “right absorption” and “sovereignty strengthening” go hand in hand, and sufficient administrative flexibility is reserved.

4. Practical logic of localization reconstruction: from selective absorption to institutional nesting

The practice of digital legislation in China reveals that international reference does not take place in a vacuum of theoretical comparison, but is carried out under the constraints of a specific governance structure and reform rhythm. This process can be condensed into two core links: “selective absorption” and “system nesting.”

4.1. Autonomy setting of legislative agenda

The first prerequisite for successful reference is not to be captured by the agenda of others. The strong attraction of EU legislation makes it easy for late-developing countries to unconsciously regard their problem consciousness as their own problems. China’s digital legislation has always adhered to the agenda-setting right of “paying equal attention to development and security.” Network Security Law originated from the strategic needs of network sovereignty and key information infrastructure protection; The Data Security Law takes the lead in legislating the independent value of data security on a global scale, jumping out of the single narrative of privacy protection.

This autonomy enables China to make a decisive “exclusionary choice” when learning from it. The most typical example is the firm refusal to leave data governance entirely to neutral and independent regulators. China is well aware that it is unrealistic to “depoliticize” the issue of personal information protection, which involves a fierce game of multiple interests, into a purely law enforcement issue during the complex transition period. The system interface between political coordination and administrative overall planning must be maintained to ensure that the implementation of the law will not lead to systemic financial risks or social governance disorder. This is in obedience to the deep logic of China’s governance system, not a blind obedience to the international model.

4.2. Connotation transformation of key concepts

Drawing lessons from foreign legal terms without connotation transformation is the technical root of legal exclusion. The genius of China’s legislation lies in the transformation of key concepts into “new wine in old bottles,” which enables them to be embedded in the local legal obligations and value network.

Taking “informed consent” as an example, this mechanism, which originated from the principle of contract autonomy in the West, has undergone a profound re-institutionalization process in the Personal Information Protection Law. The law does not regard consent as the sole legal basis for handling personal information, but

juxtaposes various situations such as “necessary to conclude or perform a contract” and “necessary to perform legal duties or obligations.” The pluralistic legitimacy foundation of Article 13 essentially reconstructs the function of consent, transforming it from a right tool that embodies the priority of individual will to a procedural negotiation mechanism that is included in the consideration of multiple interests balance. This not only responds to the call for the protection of personal information, but also avoids hindering the necessary use of public data because of the infinite expansion of individual atomization rights.

Another example is the governance of “algorithm recommendation.” Instead of transplanting the right relief path, the West pays attention to individual anti-discrimination litigation; China requires service providers to inform users in a significant way and provide convenient closing options through the Administrative Regulations on Algorithm Recommendation of Internet Information Services. This “strong intervention and easy exercise” model transforms algorithmic governance from a highly technical and extremely high-threshold judicial case discretion into a universal and low-cost administrative supervision mechanism, which is more in line with the actual cognitive level and rights protection ability of ordinary people.

4.3. Structural embedding of executive mechanism

The effectiveness of law lies not in expression, but in implementation. The survival of extraterritorial rules depends on whether they can be embedded in the domestic law enforcement power structure. Digital law enforcement in China is deeply embedded in the network comprehensive governance system of “centralized leadership and sub-domain supervision.”

At the top level, the central network information office coordinated and coordinated, avoiding the disadvantages of multiple political affairs and jurisdiction conflicts in Europe and America; At the executive level, the departments of industry and information technology, public security, and market supervision carry out fine management according to industries and functions. This structure makes China prefer those systems that can match the existing administrative toolbox when making international reference. For example, the step-by-step disposal methods such as “notification,” “taking off the shelf,” and “suspending the registration of new users” are far faster and more direct than the EU’s high fines, and are more effective in deterring the platform economy. Similarly, China’s cross-border data security management draws lessons from international system modules such as “white list” and “standard contract terms,” but embeds them under the pre-procedure of “security assessment” and “negative list” management unique to China, forming a closed loop of “pre-review and post-filing and continuous supervision,” and internalizing external experience into a more controllable institutional tool. This is not only a reference, but also a deep institutional transformation and upgrading.

5. Transcendence and guidance: A new paradigm of international reference in future legislation

With some areas of China’s digital economy moving from “running with” to “running with” or even “leading,” the external environment for legislation is undergoing qualitative change. In frontier no-man’s land, such as artificial intelligence and cross-border data, mature blueprints for reference are increasingly scarce, so China needs to build a new paradigm of international reference from “passive input” to “active shaping.”

5.1. From rule receiver to rule co-builder: The field competition of cross-border data flow

Cross-border data flow is the focus of international digital games. For a long time, the rules have been dominated by Europe and the United States, forming closed circles such as “sufficiency determination” and

“APEC cross-border privacy rules.” China’s strategy in this field should go beyond passive compliance with existing standards and turn to building a multilateral and mutually beneficial “rule-building” platform.

The specific paths include: First, under the multilateral framework that has been reached, such as the regional comprehensive economic partnership agreement, actively promote the refinement and landing of the facilitation clauses of cross-border data flow, and “Established a three-dimensional dynamic governance paradigm of ‘security-openness-development’”^[5]; The second is to launch the Global Data Security Initiative, emphasizing the principle of data sovereignty and national security exception, striving for the recognition of developing countries, and forming a “data security” discourse alliance that checks and balances with the “privacy protection” discourse system in Europe and America. This is not behind closed doors, but to transform the international one-way mechanism of “adequacy identification” into a two-way reciprocal “safety mutual trust authentication” mechanism. The future reference is no longer to get the other party’s list and do it, but to work out the standard of the list through consultation and realize the paradigm shift from “benchmarking” to “dialogue.”

5.2. Agile governance and institutional experiment of artificial intelligence legislation

At present, the global artificial intelligence legislation has entered an explosive period, and the European Union is trying to play the role of standard exporter again through the Artificial Intelligence Act based on risk classification. However, the emergence of general artificial intelligence makes this static hierarchical list model face the danger of being outdated in advance. China’s artificial intelligence legislation should not transplant this “risk catalog” based on specific scenarios in a hurry, but should turn to learn from the emerging international concept of “agile governance” and conduct institutional experiments.

This means that in future legislation, there should be less strict product access rules and more procedural institutional frameworks such as a supervision sandbox, algorithm filing, and safety assessment. Legislation should authorize the regulatory authorities to intervene immediately with flexible “guidelines” instead of rigidly applying specific risk levels. This highly dynamic rule generation mechanism is itself a governance model worth exporting to the world. China’s huge and complex application scenarios provide the best experimental field for this kind of system experiment, and the accumulated governance experience of “from sandbox experiment to large-scale deployment” will be the biggest feedback to the global artificial intelligence legislation in the future.

5.3. Deep discourse construction and value feedback of rule of law ethics

The highest level of international reference will eventually touch on the dialogue between law and ethics. Western discourse on data privacy and artificial intelligence ethics is based on its philosophical tradition of “individual dignity first.” If China only defends under this framework for a long time, it will be easy to be passive.

The practice of digital rule of law in China contains the potential to export new ethical paradigms. “China’s remolding of the international rules of digital economy aims at eliminating the accumulated disadvantages of world development with institutional norms and promoting the progress of human production and life with joint efforts”^[5]. For example, the requirement of “upward goodness” for algorithm recommendation and the obligation of “promoting socialist core values” for deep synthesis service are actually exploring an ethical path that transcends the protection of individual rights and emphasizes the influence of technology on social unity and public virtue. In the future, we should systematically construct this set of legal and ethical discourses focusing on “relational dignity” and “social responsibility of technology.” This is not a denial of international universal values, but a dimension that emphasizes common goodness and community harmony. When the ideas of “science and technology for goodness” and “people-oriented” originated from China can be transformed into a rule module that can be used for reference through concrete and operable system design (for example, the impact of algorithmic auditing requirements on social public interests), China has realized the deepest “system feedback.”

6. Conclusion

The international reference of China's digital economy legislation is a history of institutional evolution from "imported" to "conscious." Practice has proved that the complete transplantation of technology logic, governance logic and value logic from China will only lead to the invalidation of rules and the marginalization of sovereignty. The effective path must be based on profound self-awareness, and through precise selective absorption and exquisite structural embedding, the overseas experience will be deeply reorganized and turned into our own use.

Looking into the future, as digital technology enters the deep water area, the chances of simply "taking it" will decrease day by day. Legislators in China need to complete a key transformation of mentality and ability—from a humble student to a partner in building rules together, and even a pioneer in providing public goods under the new system. This requires us to continue to observe and learn from the world, firmly base ourselves on the rich local practice, and bravely carry out institutional innovation and ethical expression. Only in this way can we create a good law and good governance that has a profound world vision and is full of Chinese wisdom, which can not only protect civil rights for the micro, but also defend national sovereignty for the macro and contribute to the construction of human digital civilization. This road beyond transplantation, towards integration and guidance, is the ultimate direction of the international reference path of China's digital economy legislation.

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