

Contextualizing Personal Information: Privacy's Post-Neoliberal Constitutionalism and Its Heterogeneous Imperfections in China

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Abstract:

This article examines the evolutionary trajectory of perceptual diversification concerning Yinsi, privacy, and personal information in China. It elucidates how efforts to integrate privacy within the constitutional framework, a complex undertaking, have resulted in a heterogeneous system. This system forges an economically rational, technologically trustworthy, and socially experimental infrastructure that simultaneously embodies materialist and post-neoliberal characteristics. The study traces the transformation from collectivist and charismatic conceptualization to judicial unevenness arising from the unwritten nature of de-constitutionalized privacy. This evolution ultimately leads to digital incentive compatibility, reflecting a pressure-driven post-neoliberal economic rationale. Personal information with Chinese characteristics represents a normative construct aimed at harmonizing economic liberties and enhancing market efficiency while exemplifying sovereign statecraft of data production relations. The article underscores China's paternalist yet inertial adaptability, manifested in its pursuit of legal and institutional reforms concerning social identity, shaping socio-economic and performance legitimacy structures. Furthermore, the study introduces a tripartite cognitive and infrastructural schema of identifiability, incorporating legal, technological, and social dimensions to highlight the interchangeable roles that the state, private sector, and individuals have played in institutionalizing identities. The inherent complexities of such systems might expose them to market inefficiencies and digital harms, particularly when hierarchical interventions deviate from the original economic intention of data production and circulation. Consequently, the article advocates for elevating privacy constitutionalism to a more explicit and codified status in both legislative and judicial domains. This elevation would confer formal authority to address imbalances and unchecked competing interests in public and private stakeholderism, ultimately striving for a polycentric and proportionate (re-)equilibrium between the normative efficiency of identity infrastructures and the preservation of moral rights in digital China.

Keywords:

Generative Personal Information, Post-Neoliberal Marketization, Identity Infrastructure, Tripartite Identifiability, Privacy Constitutionalism

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1. Introduction

Probing Chinese societal transformations, privacy (隐私), as practiced in both material and digital milieus and commonly linked to the West by early orientalist consensus, possesses an ideological counterpart within Chinese clan epochs, the Republic of China era (1912-1949), and the nascent phase of the People's Republic of China (1949-). This corollary is embodied in the notions of private virtue, public interest exception, or a gender-specific collectivist indicator – Yinsi (阴私). From the lens of perceptual evolution, the establishment of privacy as a civil right in China through tort liability law signifies that, despite its introduction in early China via comparative observations, the right's underpinning remained defensive rather than affirmative.

In the modern era, China has indisputably established a comprehensive framework for data governance, surrounding both legal and institutional dimensions. Personal

information (个人信息) constitutes a contentious yet prevalent normative term within the legislative “troika” intimately associated with data governance – Cybersecurity Law, Data Security Law, and Personal Information Protection Law. A wealth of emerging literature has examined the Chinese legislative framework concerning personal information, both pre- and post-PIPL implementation, adopting doctrinal,¹ comparative,² empirical,³ and sector-specific viewpoints.⁴ In contrast, scant literature has contemplated personal information within a conceptual progression, extending from its foundational societal philosophy to a contemporary prototype of state-directed normative utility. Arguably, personal information has been devised in the context of growth by design, or specifically, economic and marketization rationality. This perspective situates the notion within an overarching historical examination of disparate stakeholders’ perspectives on the social identity infrastructure upon which personal information depends to be “generative” and self-sovereign, as explained in the following, inclusive of public, private, collectivist, or individualist facets.

This viewpoint is especially germane as it facilitates elucidating the value prioritization espoused by Chinese legislators, judiciaries, and law enforcement authorities when addressing personal data protection beyond the purview of positive law. This understanding illuminates the institutional motivations and interests underpinning, for instance, those behind campaign-like enforcement initiatives. Concomitantly, even if China’s intricate, rapidly evolving, and multifaceted data protection framework possesses a normative legal facade in written form, deconstructing this perspective aids in abstracting a data statism that hinges on sovereign control as much as on institutional inertia and pluralistic exchanges within China’s cultural, societal, and political-economic spheres.

To achieve this objective, the article initially elucidates the evolutionary trajectory and interplay of Yinsi, Privacy, and Personal Information, with the former conceptualized in a collectivist and charismatic fashion, the latter de-constitutionalized through uneven abstraction, and the final element perceived as a neoliberal strategy for

¹ Igor Calzada, ‘Citizens’ Data Privacy in China: The State of the Art of the Personal Information Protection Law (PIPL)’ (2022) 5 *Smart Cities* 1129; Chuanman You, ‘Half a Loaf is Better than None: The New Data Protection Regime for China’s Platform Economy’ (2022) 45 *Computer Law & Security Review* 105668; Peiru Cai and Li Chen, ‘Demystifying Data Law in China: A Unified Regime of Tomorrow’ (2022) 12 *International Data Privacy Law* 75; Rogier Creemers, ‘China’s Emerging Data Protection Framework’ (2022) 8 *Journal of Cybersecurity* tyac011.

² W Gregory Voss and Emmanuel Pernot-Leplay, ‘China Data Flows and Power in the Era of Chinese Big Tech’ (2024) 44 *Northwestern Journal of International Law & Business* 1; Luca Belli, ‘New Data Architectures in Brazil, China, and India: From Copycats to Innovators, Towards a Post-Western Model of Data Governance’ (2022) 18 *The Indian Journal of Law and Technology* 1.

³ Qin Zhou, ‘Whose Data is It Anyway? An Empirical Analysis of Online Contracting for Personal Information in China’ (2022) 31 *Asia Pacific Law Review* 73.

⁴ Xiaojie Li and others, ‘Research under China’s Personal Information Law’ (2022) 378 *Science* 713; Daoxin Yin and others, ‘China’s Personal Information Protection Law’ (2022) 379 *BMJ* e072619.

mandating data marketization. Subsequently, it presents a tripartite cognitive schema of identifiability, illuminating how socio-techno-legal pluralism culminates in the formation of an economically rational, technologically reliable, and socially experimental infrastructure, which simultaneously embodies materialist, post-neoliberal characteristics, while in some cases exhibiting constitutional incongruity and unreasonableness.

2. Yinsi vs. Privacy vs. Personal Information: Incentive by Design

To understand the nuanced dynamics of Yinsi, privacy, and personal information within the Chinese legal and cultural context, it is essential to explore how each concept has evolved over time, influenced by historical, social, and political factors. This exploration begins with Yinsi, rooted in traditional collectivist and Confucian values, transitions to the modern interpretation of privacy within a constitutionalist framework, and culminates in the contemporary notion of personal information, shaped by digital advancements and regulatory incentives.

2.1 Yinsi (阴私) through Collectivist and Charismatic Conceptualization

Confucianism sets up a high standard of self-cultivation, or “xiuyang” (修养), in order to support collectivism’s stringent virtue demand that, for instance, the superior man exercise caution when alone (君子必慎其独).⁵ This is the primary substance of the traditional Chinese shame culture. The standards of prudence, introspection, and self-correction are moral norms such as appropriateness, righteousness, honesty, and shame. By developing a system of “Inner Sagelihood and Outer Kingliness” (内圣外王), which, for example, requires a mind of sincerity, or more specifically “cheng” (诚) and a sense of shame, called “chi” (耻),⁶ collective Confucianists defined privateness as an endogenous vision that should be subject to publicness.⁷

The changeability of privateness to publicness was also grounded in a differential pattern that relationally and indigenously shaped the desirable priority of “Guanxi”⁸

⁵ Liji - Zhongyong (礼记 - 中庸, “The state of equilibrium and harmony”) says “on this account, the superior man does not wait till he sees things, to be cautious, nor till he hears things, to be apprehensive. There is nothing more visible than what is secret, and nothing more manifest than what is minute. Therefore, the superior man is watchful over himself when he is alone.” (Translated by James Legge)

⁶ The core of Cheng and Chi is typically reflected in Liji - Daxue (礼记 - 大学) and Liji - Zhongyong (礼记 - 中庸).

⁷ Christina B Whitman, ‘Privacy in Confucian and Taoist Thought’ in D Munro (ed), *Individualism and holism: Studies in confucian and taoist values* (Center for Chinese Studies, University of Michigan 1985) 96.

⁸ Guanxi refers to a social network of mutual beneficial relationships as some also framed it as a sense of social capital. See Nan Lin, *Social Capital: A Theory of Social Structure and Action* (Cambridge University Press 2002); Yanjie Bian, *Guanxi: How China Works* (China today, Polity Press 2019).

(关系) doctrines such as personalism, collectivism, and statism, dating back to China's native soil (乡土) eras. As Xiaotong Fei claimed,⁹ the indigenous communities in the ancient countryside were a family-centered parentalist society which, unlike a traditional democratic state, blurred the boundary between publicness and privateness in a power hierarchy of Chaxugeju (差序格局).¹⁰ Chaxugeju transformed ancient Chinese society into a feudal, clan-based society with solid kinship ties, in which individuals had intense personal bondage to their families and clans, enhancing the predominance of publicness. Meanwhile, the public sphere is enlarged and converted from or dominated by the private sphere, making the provision of publicness in Chinese society primarily dependent on an individual's or a group's morals. As the adage says, "for an upright and open-minded individual, nothing cannot be publicized to others" (事无不可对人言), personal integrity with a high standard of morality was therefore invoked to legitimize the public's intervention into private life.

In the social debates of the late Qing and early Republic, the public-private dichotomy continued to ferment, culminating in a game-theoretic constitutionalist procedure between personal reputation and public interest, which weakened the codification of Yinsi as a social norm. As a successor to Confucian etiquette at that time, Yinsi provided a method of balancing interests, such as "taboo for elders and sages," (为长者尊者讳) which was proportionately compatible with small communities in farming villages and subject to imperial authority and elders' rulings without clearly defined categorical rules or institutions.¹¹ Attempts at national legislatures to incorporate Yinsi into the press, for example, failed repeatedly, so Yinsi became a community norm and a professional ethic of the time rather than a formal binding institution for the press and journalism.¹² Formalizing the boundaries between freedom of expression and respect for Yinsi was conditioned by the political campaigns of journalist agencies, which imposed limits on the polity's power.¹³

Following the establishment of the People's Republic of China in 1949, the term "Yinsi" was transformed into an expression that encompassed incidents, disputes, and

⁹ Xiaotong Fei, *From the Soil: The Foundations of Chinese Society* (University of California Press 1992).

¹⁰ Fei used the term "Si" (私) which literally means "privateness", but it was also translated as "selfishness" in the precise contextual paragraph. See *ibid* 60.

¹¹ Li Su, '隐私侵权的法理思考——从李辉质疑文怀沙的事件切入 [Jurisprudential Thinking on Privacy Infringement: Starting from the Incident of Li Hui's Questioning Wen Huaisha]' (2019) 13 清华法学 [Tsinghua University Law Journal] 109, 125–26.

¹² Ruiqing Cao, '观念为什么难以成为制度——近代中国新闻出版领域"阴私"立法的论争与失败 [Why Ideas Can Hardly Become Institutions: The Debate and Failure of "Yinsi" Legislation in Modern China's Press and Publication Sector]' [2020] 新闻记者 [Journalism Review] 74.

¹³ *ibid* 78–82.

cases involving inconvenient and indecent behavior between men and women.¹⁴ After the Supreme People's Court (hereinafter SPC) inquired about the precise legal interpretation, the Standing Committee of the National People's Congress enacted the 1956 Decision on Cases Conducted in Public. It was the first time that Yinsi had been acknowledged in the P.R.China's legislation.¹⁵ The decision outlined three exceptions to the public disclosure of trials: state secrets, Yinsi, and juvenile delinquency involving minors under the age of 18 years. Article 111 of the then Criminal Procedure Law and Article 7 of the then Organic Law of the People's Courts, both established in 1979, continued to refer to Yinsi instead of privacy toward the end of the 1970s.¹⁶ In contrast, the People's Daily editorial used the term privacy to address possible risks of private life at having a negative impact on society, abstracting the family's social reproduction rooted in the self-government of private morality into an ideological state apparatus vulnerable to privacy.¹⁷

On this note, Yinsi contained, within the context of early P.R.China, a vital element of gendered collectivism that was an outgrowth of the victims' complex emotions of sexual shame, fear, and guilt,¹⁸ as well as a charismatic rationale, in the scholarly sense of Max Weber,¹⁹ that can direct civic perceptions on how rights were concentrated, realigned and constructed within political-social systems lacking adaptive institutions. Thus, Yinsi was once judicially interpreted as a remedy for diminished reputation and procedural justice in sexual offenses. In the early 1960s and before 1978, when political polarization was in its infancy, the principal form of criminal deterrent or degrading ceremony was arranging denunciation rallies and accusation gatherings following underpowered courts' verdicts.²⁰ Public degradation was once employed to exercise expressive punishment before and after the legal

¹⁴ Ziyuan Yang, '一字之见——建议“阴私”与“隐私”统一起来 [One-Word Opinion - It is Recommended to Unify “Yinsi” and “Privacy”]' [1982] 法学 [Law Science] 23, 23. Also see Hanhua Zhou, '个人信息保护的法律定位 [The Legal Status of Personal Information]' [2020] 法商研究 [Studies in Law and Business] 44, 49. (Citing the 1981 Preliminary Opinions of the Supreme People's Court on Open Trials to explain that Yinsi cases referred to “those concerning the privacy of individuals and generally those involving sexual acts and crimes related to insulting women”.)

¹⁵ Zhou, '个人信息保护的法律定位 [The Legal Status of Personal Information]' (n 14) 49.

¹⁶ *ibid.*

¹⁷ Zhenhao Lu, '从“阴私”到“隐私”:近现代中国的隐私观念流变 [From “Yinsi” to “Privacy”: The Evolution of the Privacy Conceptualization in Modern China]' [2022] 法学家 [The Jurist] 31, 42.

¹⁸ Jun He, '论阴私案被害人的心理特征 [On the Psychological Characteristics of the Victims of Yinsi Cases]' [1985] 河北法学 [Hebei Law Science] 20.

¹⁹ As Xueguang Zhou observed, the contemporary Chinese state claims a hybrid legitimacy of rational-legal and charismatic authorities. See Xueguang Zhou, 'Chinese Bureaucracy Through Three Lenses: Weberian, Confucian, and Marchian' (2021) 17 *Management and Organization Review* 655, 662.

²⁰ Susan Trevaskes, 'Public Sentencing Rallies in China: The Symbolizing of Punishment and Justice in a Socialist State' (2003) 39 *Crime, Law and Social Change* 359, 368; Susan Trevaskes, 'Propaganda Work in Chinese Courts: Public Trials and Sentencing Rallies as Sites of Expressive Punishment and Public Education in the People's Republic of China' (2004) 6 *Punishment & Society* 5, 14.

professionalism reforms.²¹ After the High People's Court of Liaoning Province asked the SPC if Yinsi-involved case outcomes could be made public, the SPC established procedural safeguards to protect victims' reputations in the name of Yinsi in 1964.²²

2.2 Privacy (隐私) by Constitutionalist Abstraction

Although Chinese-style privacy was believed by some to result from legal transplantation,²³ ideological transition,²⁴ and adaptation of relations of production,²⁵ privacy-embedded reasonableness included in Yinsi was rooted in the tolerance or prioritization of publicness that political morality allows private morality to be autonomous. Since Yinsi created a solid normative foundation for protecting individual reputations, albeit being gender-specific, the translated privacy was long considered a component of the civil right to fame before it was formalized by civil statute, as is explained below.

A portion of the scholarly community believed that Article 38, Article 39, and Article 40 of the Chinese Constitution established a constitutional connection between privacy and human dignity, inviolability of residence, and freedom/secretcy of communication.²⁶ In China, however, there is no overarching constitutional provision that acknowledges privacy as a written fundamental right. Moreover, commencing August 1, 2016, judicial practice explicitly stipulates that constitutional tenets cannot be directly invoked as the bedrock for adjudication.²⁷ The nexus between constitutional provisions and privacy is, arguably, unenforceable within the Chinese context.

²¹ Trevaskes, 'Propaganda Work in Chinese Courts' (n 20).

²² See the Supreme People's Court of P.R.China, '最高人民法院于阴私案件可否公开宣判等问题的批复 [Official Reply of SPC on the Public Sentencing of Yinsi Cases]' [1964] Fa Yan Zi No. 90 (CLI.3.175910).

²³ Emmanuel Pernot-Leplay, 'China's Approach on Data Privacy Law: A Third Way between the U.S. and the EU?' (2020) 8 Penn State Journal of Law and International Affairs 49, 116.

²⁴ Zhou, '个人信息保护的法律定位 [The Legal Status of Personal Information]' (n 14) 49.

²⁵ Lu (n 17) 43.

²⁶ As the term "privacy" blossomed in China's 1980s, scholars framed it as a collection of written constitutional rights. As of 2022, there is still no written right to privacy in the Chinese constitution, but the scholarly proposal that privacy should be constitutionalized has become increasingly acceptable with an intention to adapt to the rise of big data and private platforms. See Xinbao Zhang, '隐私权研究 [Research on the Right to Privacy]' [1990] 法学研究 [Chinese Journal of Law] 17, 60; Zhongxia Li, '数字时代隐私权的宪法建构 [The Constitutional Construction of the Right to Privacy in the Digital Age]' (2021) 24 华东政法大学学报 [ECUPL Journal] 42, 46; Chengfeng Yu, '信息隐私权的宪法时刻: 规范基础与体系重构 [The Constitutional Moment of Information Privacy: Normative Basis and System Reconstruction]' (2021) 33 中外法学 [Peking University Law Journal] 32, 55.

²⁷ See the Supreme People's Court of P.R.China, '最高人民法院关于印发《人民法院民事裁判文书制作规范》《民事诉讼文书样式》的通知 [Notice of the Supreme People's Court on Issuing the Specifications for Preparing Civil Judgments by the People's Courts and the Style of Civil Litigation Documents]' [2016] SPC Fa 2016 No.221 (CLI.3.274653).

On the one hand, privacy was first used as a formal legal word in the Civil Procedure Law of the People's Republic of China (trial) in 1982,²⁸ indicating that, as an enlarged vocabulary of Yinsi, individual privacy transcended gender specificity and entered the scope of private law. In view of the paucity of independent interpretative authority possessed by Chinese general courts, it may also be appropriate to distinguish between judicial empowerment and constitutionalization, the latter being the extension of constitutional rights/values to further sectors of the legal order. Initial appearance as a procedural rather than a constitutional article contributed to the harmonization of constitutionalization and judicial empowerment, both of which were enhanced to comparable degrees with regard to privacy.

On the other hand, although privacy was not explicitly included in the 1986 General Principles of Civil Law, courts increasingly regarded it as one of the components of the right to fame as interpreted in 1988 by the Supreme People's Court when it was ruled that violations of privacy (such as disclosing another person's private information in writing or orally) constitute violations of the right to fame.²⁹ Privacy was thus geared to being internalized in socialist constitutionalism in the 1980s but did not develop into a written fundamental right that could reversely exemplify the role individualism plays in clarifying the multilateral state-government-market nexus.³⁰ As some claimed,³¹

“The rise of the individual [...] is a combined result of the socialist engineering of the local moral world during the collective period and the powerful impact of commodity production and consumerism on the community in the post-collective era.”

²⁸ Privacy herein was highlighted together with state secrets to form protective exceptions for civil procedure. See Standing Committee of the National People's Congress, ‘中华人民共和国民事诉讼法(试行) [Civil Procedure Law of the People's Republic of China (For Trial Implementation)]’ [1982] Order of the Standing Committee of the National People's Congress No. 8 (CLI.1.1216).

²⁹ See the Supreme People's Court of P.R.China, ‘关于贯彻执行中华人民共和国民事诉讼法通则若干问题的意见 - 试行 [Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China – Trial]’ [1988] Fa Ban Fa No. 6, at <http://gongbao.court.gov.cn/Details/cfb9c5c25a13c7e3027a5bb0342fdb.html>.

³⁰ During the 1980s, the production relations of self-employed individuals and contractors, operating under the household responsibility system, underwent a process of re-concretization. This restoration of concreteness served to remedy the abstraction previously imposed upon the concepts of the individual and family by the ideological state apparatus. The aforementioned re-concretization played a crucial role in the restoration of a more robust sense of individualism. This was due to the re-establishment of the significance of the household as a fundamental unit of economic activity, as well as the empowerment of self-employed individuals and contractors within this context. See Lu (n 17) 43.

³¹ Yunxiang Yan, *Private Life under Socialism: Love, Intimacy, and Family Change in a Chinese Village, 1949-1999* (1st edition, Stanford University Press 2003) 235.

The absence of privacy constitutionalism in a written sense has engendered pragmatic judicial techniques and altered social perceptions. In China, privacy had often been in a state of ambiguity or equivocation prior to its designation as a civil right under the 2010 tort law.³² It could be posited that privacy in China was characterized by at least two meta-attributes during that period: firstly, it functioned as a jurisdictional surrogate for the uneven legal professionalism prevalent within the jurisdiction, and secondly, it served as an admissible adaptation to the technological and industrial revolutions that were transpiring.

Prior to the SPC's 2001 judicial interpretation of the compensation for moral damages (CMD Interpretation),³³ privacy was utilized to procedurally protect the personality interests of certain groups, such as minors,³⁴ attorneys' clients,³⁵ and physicians' patients,³⁶ in legislation. After the CMD Interpretation, privacy could, for the first time, in a sense, be priced on a quantitative basis of economic rationality, as some have termed "Harm Fiction."³⁷ As a result of the negative perception of privacy harms, privacy became a catch-all pocket terminology that was embraced by judges to extendably protect unwritten personality interests absent in the then constitution or civil law. For instance, the SPC's judge acknowledged that the 1993 Interpretation on the Right to Fame exceeded the judiciary's discretion to protect privacy.³⁸ Privacy was also extended to safeguard tranquillity as a self-determined control of information

³² See Article 2, Standing Committee of the National People's Congress, '中华人民共和国侵权责任法 [Tort Law of the People's Republic of China]' [2010] Presidential Decree No. 21 (CLI.1.125300).

³³ See Paragraph 2 of the Article 1, the Supreme People's Court of P.R.China, '关于确定民事侵权精神损害赔偿责任若干问题的解释 (Interpretation of the Supreme People's Court on Several Issues Concerning the Determination of Liability for Moral Damage in Civil Tort)' [2001] Legal Interpretation No. 7 (CLI.A.1140072) at <http://gongbao.court.gov.cn/Details/87b471350704bf50ce1f5e0f9a0e21.html>.

³⁴ See Article 30 and 31, Standing Committee of the National People's Congress, '中华人民共和国未成年人保护法 (Law of the People's Republic of China on the Protection of Minors)' [1992] Presidential Decree No. 50 (CLI.1.5369).

³⁵ See Articles 33 and 44, Standing Committee of the National People's Congress, '中华人民共和国律师法 (Lawyers Law of the People's Republic of China)' [1997] Presidential Decree No. 67 (CLI.1.14401).

³⁶ See Articles 22 and 37, Standing Committee of the National People's Congress, '中华人民共和国执业医师法 (Law on Practicing Doctors of the People's Republic of China)' [1999] Presidential Decree No. 5 (CLI.1.20221).

³⁷ Neil Richards and Woodrow Hartzog, 'Taking Trust Seriously in Privacy Law' (2016) 19 Stanford Technology Law Review 431, 441–44. ("Harm Fiction" defines that "privacy is an injury to be remedied, a cost to be balanced in the ledger book, a harm rather than an opportunity.")

³⁸ See the the Supreme People's Court of P.R.China, '关于审理名誉权案件若干问题的解答 (Answers of the Supreme People's Court on Some Issues concerning the Trial of Cases Involving the Right of Reputation)' [1993] Judicial Interpretation No.15 (CLI.3.6342). See also Mei Han, '《最高人民法院关于审理名誉权案件若干问题的解答》的理解与适用 [Understanding and Application of the Supreme People's Court's Interpretation on Trial of Cases Concerning the Right to Fame]' (*National People's Congress*, 2008) <http://www.npc.gov.cn/zgrdw/huiyi/lfzt/qqzrfca/2008-12/21/content_1462861.htm> accessed 11 December 2022.

reception,³⁹ which has been evidenced as part of the right to privacy established in the 2021 Chinese Civil Code.⁴⁰

Privacy, in the liability sense of Chinese torts, encountered a legislative and judicial transition of the state's view of digital individualism from informational damages to autonomous control as platforms proliferated and data flow became a more prevalent business model. A case of online doxing, also namely Human-Flesh Search (人肉搜索) in 2008 prompted the use of the 2001 Interpretation, giving an expanded interpretation to address online privacy liability in line with cyberspace, going beyond privacy as an auxiliary to the right to fame.⁴¹ Among the substantive scope of privacy herein was personal emotional life, including the relationship between men and women outside marriage, as well as a series of personal information.⁴²

2.3 Personal Information (个人信息) towards Digital Incentive Compatibility

Personal information (PI) is a special term in Chinese legislation, which has, however, often been understood by some non-Chinese scholarship as identical to privacy or its modernist derivation.⁴³ It is evident, however, that these views regarding personal information and privacy might not adequately explain the trade-off between authorities and rights of the state polity, private sector, and individual citizens in China's personal information legislation.⁴⁴ As a result, these emerging observations disregard, to a certain extent, the economic equilibrium rationality of personal information in a risky but regulatory society, where neoliberalism reinforces information self-determination and control and, in particular, understands privacy as an act of economic choice in the disposal of personal information.⁴⁵

It has been evidenced that before the Personal Information Protection Law (PIPL) came into force in 2021, PI-related hard and soft statutes commonly appeared in the

³⁹ Lekun Fang, '安宁利益的类型和权利化 [Types and Entitlements of Tranquillity Interests]' (2018) 36 法学评论 [Law Review] 67; Wei Zhu, "'生活安宁权'纳入隐私权, 是网络时代刚需 [The Inclusion of the "right to Tranquillity into the Right to Privacy is an Urgent Need in the Internet Age]' (*BJNews*, 2019) <<https://www.bjnews.com.cn/detail/157718540515689.html>> accessed 11 December 2022.

⁴⁰ Apparently, Paragraph 2 of Article 1032 of the Civil Code incorporates the tranquillity of private life into privacy and guarantees the right holder to be alone without being disturbed by the outside world.

⁴¹ Ling Hu, '评“人肉搜索”第一案的三个初审判决 [Comment on the Three First-Instance Judgments in the First Case of "Human-Flesh Search"]' [2009] 法律适用 [National Judges College Law Journal] 65, 65.

⁴² *ibid* 67.

⁴³ On one hand, the distinction between personal information and privacy was stressed by arguing that Chinese-sense privacy has no constitutional status compared to USA and Europe. See Creemers (n 1) 2. On the other hand, some scholarship interchangeably uses data privacy and personal information by grounding the two on constitutional and fundamental liberties. See Pernot-Leplay (n 23); Calzada (n 1); Mark Jia, 'Authoritarian Privacy' (17 February 2023), available at SSRN: <https://papers.ssrn.com/abstract=4362527>.

⁴⁴ Creemers (n 1) 8.

⁴⁵ Janice Richardson, *Law and the Philosophy of Privacy* (Routledge 2017) 69.

context of public authorities, such as administrative regulations and criminal amendments, as well as national standards. Personal information first emerged in localized legislation on informatization (i.e. IC card management, credit system construction, Internet use and management, and government office automation) and customer protection,⁴⁶ before being enshrined in central legislation on Chinese resident identity cards and passports.⁴⁷

As some observed, “criminality over civility,” rather than a co-governance of criminality and civility, characterized the early periods of personal information governance.⁴⁸ In 2009, the Criminal Law Amendment (VII) added the crime of violating citizens’ personal information, stipulating that “violation of state regulations” is required to constitute this crime.⁴⁹ Article 111 of the 2017 General Provisions of the Civil Law became a logical basis for “state regulations” eight years after the PI crime was enacted. The PIPL did the same in 2021. Although there were a number of PI-related statutes, such as the Cybersecurity Law, Provisions on the Protection of Personal Information of Telecommunications and Internet Users, and the Decision on Strengthening Network Information Protection, these “state regulations” did not specify the legal applicability of PI, rather by establishing some declarative clauses.⁵⁰ The “criminality over civility” of personal information resulted in the arbitrariness of court reasoning, showing a notable gap in PI criminal enforcement and, therefore a pressing need for a comprehensive PI framework that includes criminal, administrative, and civil co-regulation.⁵¹

Meanwhile, some studies have clarified that there is no defined word for privacy in China’s criminal substantive law, which indicates that privacy violations are not criminalized in China.⁵² In contrast, the Law on Punishment of Public Security

⁴⁶ Zhou, ‘个人信息保护的法律定位 [The Legal Status of Personal Information]’ (n 14) 50.

⁴⁷ See Article 6 and Article 19, Standing Committee of the National People’s Congress, ‘中华人民共和国居民身份证法 (Law of the People’s Republic of China on the Identity Card of Residents)’ [2003] Order of the President No.4 (CLI.1.47120); See also Article 12 and Article 20, Standing Committee of the National People’s Congress, ‘中华人民共和国护照法 (Passport Law of the People’s Republic of China)’ [2006] Order of the President No.50 (CLI.1.76284).

⁴⁸ Yanhong Liu, ‘民刑共治：中国式现代犯罪治理新模式 [Civility-Criminality Co-governance: A New Mode of Modern Crime Management in China]’ [2022] 中国法学 [China Legal Science] 27, 39–40.

⁴⁹ Criminal Law Amendment (VII) added a clause after Article 253 of the Criminal Law to establish the criminality of violating citizens’ personal information. See the Criminal Law Amendment (VII) at http://www.gov.cn/flfg/2009-02/28/content_1246438.htm.

⁵⁰ For example, Article 22 of the Cybersecurity Law stipulates: “Those involving users’ personal information shall also abide by the provisions of this Law and relevant laws and administrative regulations on the protection of personal information.” See also Liu (n 48) 40.

⁵¹ Jian Zhang and others, ‘Criminal Sanctions on Identity Theft in Shanghai: An Empirical Case Law Analysis’ (2022) 71 International Journal of Law, Crime and Justice 100562.

⁵² Hanhua Zhou, ‘平行还是交叉? 个人信息保护与隐私权的关系 [Parallel or Crossed? The Relationship between Personal Information Protection and Privacy]’ (2021) 33 中外法学 [Peking University Law Journal] 1167, 1168–69.

Management (PPSML), another primary source of punitive law solely and explicitly prohibits invasions of privacy, with the legislators, as observed, intentionally avoiding using personal information in their legal language for the PPSML.⁵³

The differential treatment of breaches of personal information and violations of privacy, with the former being penalized more severely, suggests that personal information has been abstracted within an instrumentalist and, potentially, post-neoliberal framework. This approach to legalizing personal information, which prioritizes its commercial and economic value over its intrinsic worth as a fundamental self-determination, underscores the paradoxical situation of a society in which privacy constitutionalism may be deemed of secondary importance to the economic and technological imperatives of efficiency-oriented neoliberalism.

The PIPL, as one of its founding architects and proposers – Zhou Hanhua claimed, heavily targets data controllers’ automatic data processing in their full lifecycle.⁵⁴ It was also proposed by Zhou that the concept of Digital Incentive Compatibility (数字激励相容) ought to be used to address the anti-economic rationale of data subjects’ over-control of privacy.⁵⁵ Personal information, in this vein, exemplifies the argument that the state’s regulatory entrepreneurs in entrepreneurial China mobilize the enthusiasm of data controllers and include data controllers under the evasive entrepreneurship that may trigger institutional and social norm changes of platform economy with technology welfare consequences,⁵⁶ as well as maintained comparative advantages of Schumpeterian technological leapfrogging and economic catch-up.⁵⁷

Nevertheless, neoliberalism with Chinese characteristics features a pressure-type system with a cross-sector market accelerationist state in which the lower levels of government are primarily under political-economic pressure to complete the tasks and objectives set by the higher levels of government, and both the upper and lower levels of government are under interconnected pressure.⁵⁸ Deviant from the early-stage model of ideological legitimacy involving the creation, dissemination, and advocacy

⁵³ *ibid* 1169.

⁵⁴ Zhou, ‘个人信息保护的法律定位 [The Legal Status of Personal Information]’ (n 14) 50.

⁵⁵ *ibid* 55.

⁵⁶ Niklas Elert and Magnus Henrekson, ‘Evasive Entrepreneurship’ (2016) 47 *Small Business Economics* 95.

⁵⁷ Keun Lee, *China’s Technological Leapfrogging and Economic Catch-up: A Schumpeterian Perspective* (Oxford University Press 2022).

⁵⁸ As the founder of the term – Jingben Rong and his colleagues defined in a project funded by Ford Foundation, the Pressure-type System refers to one where first-level political organizations (counties, townships) adopt quantitative task decomposition management methods and materialized evaluation systems in order to achieve economic catch-up and complete various indicators assigned by superiors. See Rong Jingben and others, *从压力型体制向民主合作体制的转变: 县乡两级政治体制改革 [Transformation from Pressure-Type System to Democratic Cooperation System: Reform of County and Township Political Systems]* (中央编译出版社 [Central Compilation and Publication Press] 1998) 28.

of political doctrines aimed at maintaining or changing institutions of the status quo through path-dependency,⁵⁹ the pressure-based system in the Chinese economic functionality subverts the efficiency of mandatory directives and administrative controls.⁶⁰ This transformation was catalyzed by the introduction of responsibility books and material incentives, which exemplified the increasing trend of endorsing exchange relationships and apportioning responsibilities between superiors and subordinates within the political apparatus.⁶¹

Arguably, it is hypothetically the state that sets priorities of normative values (for example, data security vs. economic development) to prototype a whole-of-nation system (举国体制), or as Deng Xiaoping framed as the advantage of socialism (社会主义优越性),⁶² a centralized decision-making system for swift and concerted action (集中力量办大事) that produces, pools, reassigns and recycles data resources. The soundness and validity of this assertion are substantiated by the State Council's recent restructuring efforts, which involve the centralized establishment of the State Data Bureau to integrate and oversee data institutions throughout China, whether horizontal or vertical.⁶³ In doing so, the bureau has assumed part of the distributive functions previously carried out by both the Cyberspace Administration of China (CAC) and National Development and Reform Commission (NDRC).⁶⁴

3. Identity Infrastructure Towards Data Marketization: A Socio-Techno-Legal Analysis of Identifiability

The pressure-type (post-)neoliberalism, exemplified above, is often driven by the two-way hierarchical interaction between the top and bottom of the political-economic polity, which allows the subordinate bureaucrats being outsourced to take precedence to evaluate developmental and public interests over the interests of individual citizens as per the pan-politicization of economic development targets,⁶⁵ especially when the

⁵⁹ Heike Holbig, 'Ideological Reform and Political Legitimacy in China: Challenges in the Post-Jiang Era' in Thomas Heberer and Gunter Schubert (eds), *Regime Legitimacy in Contemporary China* (Routledge 2008) 14–15.

⁶⁰ Xuedong Yang, '压力型体制:一个概念的简明史 [Pressure-type Systems: A Concise History of a Concept]' [2012] 社会科学 [Social Science] 4, 6.

⁶¹ *ibid.*

⁶² See Deng's "Southern Talks" (南方谈话) - Central Committee of the Communist Party of China Document Editing Committee, *Selected Works of Deng Xiaoping - Volume 3* (People's Publishing House 1993) 377.

⁶³ Keith Zhai, 'China to Create New Top Regulator for Data Governance', *Wall Street Journal* (6 March 2023) <<https://www.wsj.com/articles/china-to-create-new-top-regulator-for-data-governance-c9317233>> accessed 9 March 2023.

⁶⁴ Xinhua News Agency, '组建国家数据局 [Formation of the State Data Bureau]' (2023) <http://www.news.cn/2023-03/07/c_1129419141.htm> accessed 9 March 2023.

⁶⁵ Xuedong Yang, '泛政治化: 压力型体制的缺陷 [Pan-Politicization: The Flaws of a Pressure-Type System]' (*Outlook China*, 2013) <<http://www.outlookchina.net/html/news/201303/4759.html>> accessed 9 March 2023.

state is currently pushing data as a central factor of production from the top down.⁶⁶ Thus, personal information is grounded on an analogy of collective or group privacy – a state-wide group identity for economic growth, or social, commercial and epistemic benefits of data circulation,⁶⁷ which blurs the line between public and private and transforms itself into a hybrid product of state-directed public-private partnership.

3.1 The Legal Identifiability: Economic Rationality of Anonymity

Metaphorically and legally, personal data is dynamically being monetized by the PIPL, in part through the identifiability by design. Unlike the California Consumer Privacy Act (CCPA), which established direct and indirect identifiers to characterize personal data,⁶⁸ Article 4 of the PIPL deliberately examines three fundamental aspects of defining personal information: identifiability, relatedness, and anonymization.⁶⁹

On the one hand, the legislature’s intention is, in particular, to substantially abstract and coordinate the definition of personal information that exists in the cybersecurity law and the civil code, moving away from the original narrow identifiability based on the enumeration of PI categories and attaching the criterion of relatedness,⁷⁰ thus forming the broad identifiability of “identification + relatedness” in the PIPL.⁷¹ On the other hand, the PIPL advocates the inclusion of de-identified PI and the exclusion of anonymized PL when defining the enforceable scope of the PIPL,⁷² in an attempt to

⁶⁶ In October 2019, the Decision of the CCP Central Committee on Several Major Issues Concerning the Adherence to and Perfection of the Socialist System with Chinese Characteristics for Advancing the Modernization of the State Governance System and Governance Capability (《中共中央关于坚持和完善中国特色社会主义制度推进国家治理体系和治理能力现代化若干重大问题的决定》), adopted at the Fourth Plenary Session of the 19th CPC Central Committee, for the first time, proposed data as a factor of production, in line with labor, capital, land, knowledge, technology, and management. See http://www.gov.cn/zhengce/2019-11/05/content_5449023.htm. On December 19, 2022, China released the very recent Opinions of the CPC Central Committee and the State Council on Establishing a Better Data Foundational Institution to Give Full Play to Data Elements” (hereinafter referred to as “Data Twenty Articles” – 数据二十条), substantiating the supply of data elements and the structural subdivision of data property rights. See http://www.gov.cn/zhengce/2022-12/19/content_5732695.htm.

⁶⁷ Brent Mittelstadt, ‘From Individual to Group Privacy in Big Data Analytics’ (2017) 30 *Philos Technol* 475, 476.

⁶⁸ William Stallings, ‘Handling of Personal Information and Deidentified, Aggregated, and Pseudonymized Information Under the California Consumer Privacy Act’ (2020) 18 *IEEE Security & Privacy* 61.

⁶⁹ The Article 4 of the PIPL states “Personal information is all kinds of information relating to an identified or identifiable natural person, recorded electronically or by other means, excluding information that has been anonymized.”

⁷⁰ There was a consideration of relatedness since some indirect personal data can still have significant impacts on individuals even when they cannot be used to identify natural persons, for example, in automated decision-making and targeted advertising. See Liming Wang and Xiaodong Ding, ‘论《个人信息保护法》的亮点、特色与适用 [On the Highlights, Characteristics and Application of Personal Information Protection Law]’ [2021] *法学家* [The Jurist] 1, 2. (Citing Ronald E Leenes, ‘Do They Know Me? Deconstructing Identifiability’ (2007) 4 *University of Ottawa Law & Technology Journal* 135, 135.)

⁷¹ Wang and Ding (n 70) 2–3.

⁷² See Article 4, Article 51 and Article 73 of the Personal Information Protection Law.

facilitate anonymized PI to freely flow across stakeholders while encouraging data controllers to adopt encryption and de-identification as security obligations.⁷³ However, it is arguably impossible to absolutely anonymize PI, and those claimed to be anonymous can still be re-identified, although some privacy-enhancing techs like differential privacy computing or federated learning hold some promise.⁷⁴ Meanwhile, de-identification is not anonymization but a beneficial data minimization approach that may instead raise privacy concerns due to the fact that de-identified PI is subject to the PIPL and is challenging to identify and remove upon individual requests.⁷⁵

The Comparison of Identity-related Functionality Articles in and beyond the PIPL

Norms	Articles (PIPL or GDPR)	Problems
Identifiability (可识别性)	Article 4 (PIPL) - Personal information is all kinds of information relating to an identified or identifiable natural person, recorded electronically or by other means, excluding information that has been anonymized.	Relatedness (direct or indirect)
De-identification (去标识化)	Article 73(3) (PIPL) - De-identification is the process by which personal information is processed so that it cannot be used to identify a specific natural person without the aid of additional information.	Personal information vs Non-personal information
Pseudonymization (假名化)	Article 4(5) (GDPR) – Pseudonymisation means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person	No discussion in the PIPL
Anonymization (匿名化)	Article 73(4) (PIPL) - Anonymization, refers to the process by which personal information is	Re-identification and trackability

⁷³ See Article 51 of the Personal Information Protection Law.

⁷⁴ Lea Kissner, ‘Deidentification versus Anonymization’ (2019) <<https://iapp.org/news/a/de-identification-vs-anonymization/>> accessed 12 December 2022.

⁷⁵ *ibid.*

	processed in a way that does not identify a specific natural person and cannot be recovered.	
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China’s legislation on identifiability aims to create a thriving market for privacy-centric data circulation by drawing on the regulatory structures of centralized digital assets. Thus, China has attempted to somewhat monetize the anonymity derived from personal data by legislating on identifiability in order to stimulate a nationwide market for scarcity-controlled data circulation and transactions powered by privacy-enhancing techniques. This can be achieved, in part, by analogous reference to the binary intermediary structure of data protection in the centralized regulatory regimes of fiat currencies (especially digital central bank currencies),⁷⁶ and there are at least two cascading assumptions about the infrastructure of market transactions: first, the existence of a domestic state apparatus and infrastructure that can control and quantify personal information and data derived from it that relies on the functionality of static and dynamic digital identities; and second, the existence of such an infrastructure with an extensive range of centralized, open and interoperable interfaces for public-private data exchange.

3.2 The Technological Identifiability: CTID as Authentication Infrastructure

The Cyber Trusted Identity System (CTID System, 网络可信身份认证体系) was engineered to provide a multifaceted authentication infrastructure for the social identities in contemporary China, all while contending with the escalating wave of cybercrime, personal data breaches, and rapid digital transformation.⁷⁷ The CTIDs, which serve as one-to-one mapped credentials, reportedly endow users with the ability

⁷⁶ The Chinese Digital Currency and Electronic Payment (DC/EP) system employs a unique design known as “controlled anonymity” to preserve the confidentiality of users’ financial data. It is predicated on the notion that while insignificant transactions may be executed covertly, larger transactions are legally traceable. See People’s Bank of China Digital RMB R&D Working Group, ‘中国数字人民币的研发进展白皮书 [Research Progress of China’s Digital Renminbi - White Paper]’ (July 2021) 10 <<http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/4293590/2021071614200022055.pdf>> accessed 9 March 2023. As per Mu Changchun, Director of Digital Currency Research Institute, People’s Bank of China, digital RMB wallets are envisioned to be loosely coupled with bank accounts, which reduces the dependence on financial intermediaries in the transaction chain and technically permits some degree of anonymity for minor transactions. See MPAYPASS, ‘央行穆长春：数字人民币隐私与个人信息保护 [Mu Changchun, Central Bank: Privacy and Personal Information Protection of Digital Renminbi]’ (2022) <<https://www.secrss.com/article/45043>> accessed 9 March 2023.

⁷⁷ Qiu Baoli, ‘中国特色网络可信身份战略实践——互联网+可信身份认证平台 [Strategic Practice of Cyber Trusted Identity with Chinese Characteristics: Internet + Trusted Identity Authentication Platform]’ [2020] 警察技术 [Police Technology] 7, 7.

to incontrovertibly substantiate the authenticity of their identities or attributes in cyberspace.⁷⁸

The First Research Institute of the Ministry of Public Security spearheaded the launch of the CTID System in 2013 with the intent of generating offline resident card mapping files for the Second-Generation Resident ID Card Network Application Scheme, as commissioned by the Cyberspace Administration of China.⁷⁹ This project has enabled national ID cards to be utilized online in a protocol-customizable, module-programmable, and privacy-enhancing manner, with the primary objective of establishing ID cards as a veritable cornerstone for law enforcement, certification, traceability, and a plethora of other related domains.⁸⁰

3.2.1 The Three-Tier Authentication System

China has devised an intricate three-tier authentication system for digital identity infrastructure designed to reinforce secure identity management and augment credibility, as evidenced by the Graph: *The CTID Three-Level Authentication Ecosystem*. The multi-level certified ecological chain comprises three principal components: the Statutory Trust Foundational Level, the Third-Party Testimonial Level, and the Business Certificate Level.⁸¹ The Statutory Trust Foundational Level, bolstered by statutory certificates such as resident ID cards, serves as the backbone of trusted identity management, and wields legal authority. Conversely, the Third-Party Testimonial Level and the Business Certificate Level are subject to rigorous authentication procedures to establish their veracity. Notwithstanding their vital role in the authentication process, the latter two levels are bereft of legal authority.⁸²

It is readily apparent from authoritative sources that the CTID system has been derived from China's Internet Plus Action Initiative with the intention of modernizing public services and constructing a unified digital infrastructure sanctioned by the government.⁸³ China started its state informatization in the 1990s at Stage One towards office automation.⁸⁴ As a result, the Chinese state was able to establish a

⁷⁸ Lan Gao and others, '创新社会治理 赋能数字经济——可信数字身份创新成果巡礼 [Innovative Social Governance Empowering the Digital Economy - Trusted Digital Identity Innovation Achievement Tour]' [2021] 警察技术 [Police Technology] 90, 91.

⁷⁹ *ibid* 90.

⁸⁰ Qiu (n 77) 8.

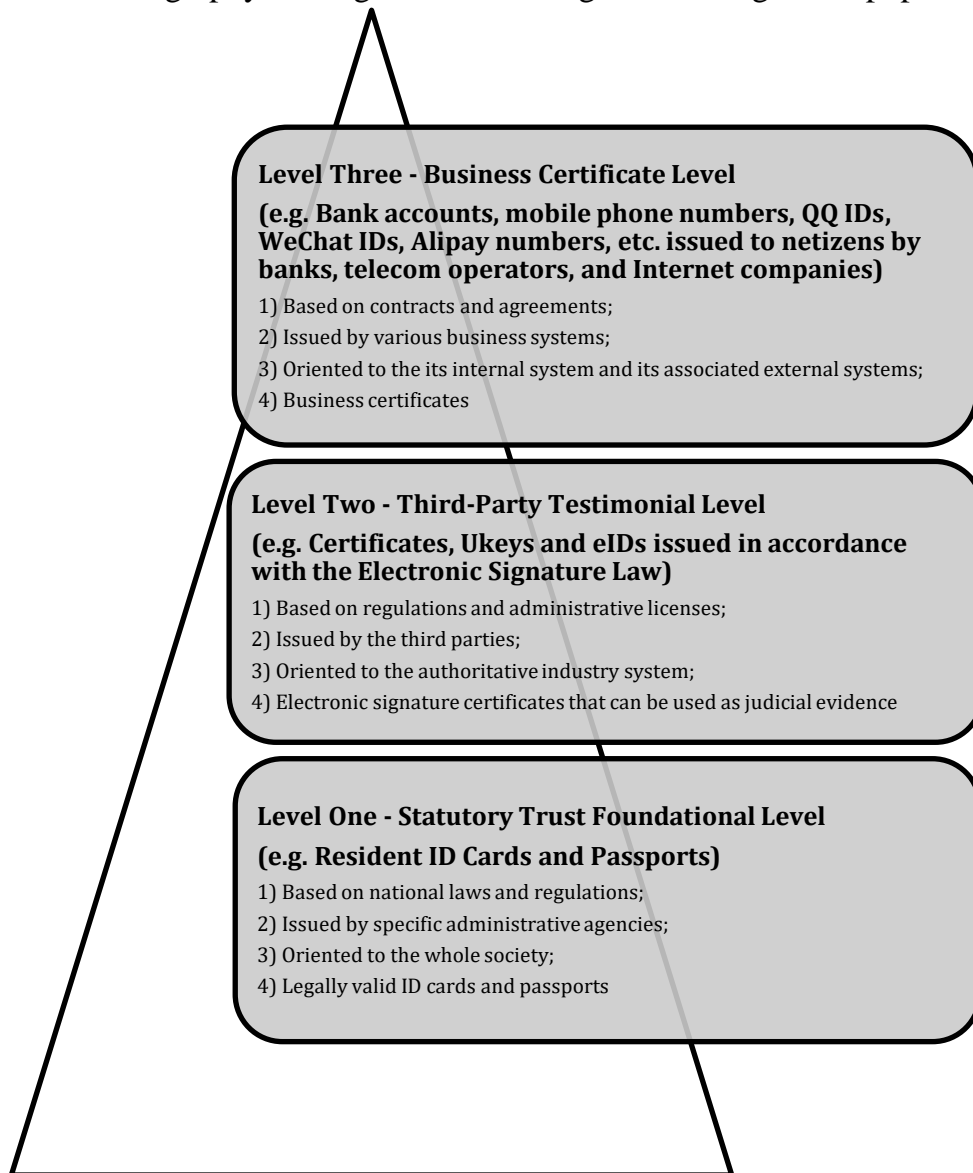
⁸¹ See the documentation on the CTID Platform at <http://www.anicert.cn/level.html>.

⁸² Tan Huang, '身份证为根，网络身份可信——专访第二代居民身份证首席安全专家、居民身份证网上应用首席科学家沈昌祥院士 [ID card is the root, and the cyber identity is credible - Interview with Academician Shen Changxiang, chief security expert of the second-generation resident identity card and chief scientist on the online application of resident ID card.]' [2016] 警察技术 [Police Technology] 4, 6.

⁸³ Gao and others (n 78) 91.

⁸⁴ Wayne Wei Wang, 'China's Digital Transformation: Data-Empowered State Capitalism and Social Governmentality' [2023] *The African Journal of Information and Communication (AJIC)* 31.

national IT infrastructure encompassing telecommunications, customs, and finance, referred to as the “Three Golden Projects,” which were later supplemented by such databases on demography and legal entities as e-government grew in popularity.⁸⁵



*The CTID Three-Level Authentication Ecosystem*⁸⁶

3.2.2 A Principal-Agent Problem in Digital Transformation

Nevertheless, there was once a deficiency in a consolidated data-sharing mechanism within the extensive data repositories upheld by various horizontal and vertical administrative entities across different echelons. As a result, authenticating and

⁸⁵ *ibid.*

⁸⁶ The author draws the graph by synthesizing the interview of CTID inventor – Changxiang Shen and the documentation on the CTID Platform (<http://www.anicert.cn/level.html>). See Tan (n 82) 6.

identifying civil participation in public services often gave rise to a principal-agent predicament.⁸⁷ An absence of cross-unit data-informed identities once led to a conflict of interest between the principal and agent, causing lackadaisical and negligent performance as well as an excessive concentration of power due to a dearth of bottom-up incentives.⁸⁸

The CTID functionally plays a catalytic and organizational role in China's decentralization reform, - namely "streamlining administration, delegating power, and optimizing services (放管服)." The reform, empowered by the Internet Plus Initiative, intensely "Internet + Regulation" and "Internet + Public Services" that fabricated the CTID, fundamentally seeks to redefine the demarcation between the market and the government and, thus, establish a synergistic relationship between a competent government and an efficient market.⁸⁹ This reform embraces the neoliberal notion that simpler de-regulations not only facilitate ease of doing business, but they also reduce the probability of rent-seeking by reinforcing the market-based resource allocation mechanism and fostering a novel regulatory mechanism that spans the entire life cycle of market entities.⁹⁰ It purportedly combines pre-, during-, and post-regulatory stages, in a bid to encourage competent government interventions that help to mitigate market failures.⁹¹

This ongoing reform, which integrates the CTID system, has been augmented through the inclusion of pilot practices at the local level, including the "One Portal for All" (一网通办) initiative in Shanghai,⁹² and Zhejiang's "Run at Most Once" (最多跑一次) campaign.⁹³ These grassroots practices aim to facilitate the refinement and development of a nationwide integrated online government service platform (全国一

⁸⁷ The problem of principal-agent conflict has been conspicuously observed to arise within the administrative apparatus of China. This has been substantiated through instances of data and statistics manipulation, particularly in the sphere of environmental governance. To alleviate this issue, a plausible solution could be the implementation of an automated monitoring system, according to some. See Michael Greenstone and others, 'Can Technology Solve the Principal-Agent Problem? Evidence from China's War on Air Pollution' (2022) 4 *American Economic Review: Insights* 54.

⁸⁸ GOV.CN, '李克强痛斥某些政府机构: 要求证明"你妈是你妈"是天大笑话 [Premier Li Keqiang Harshly Criticized Certain Government Agencies: Asking to Prove "Your Mother is Your Mother" is a Huge Joke]' (*The Paper*, 2015) <https://www.thepaper.cn/newsDetail_forward_1328582> accessed 9 March 2023.

⁸⁹ Ronghua Shen, '推进"放管服"改革:内涵、作用和走向 [Promoting the Reform of "Decentralization and Service": Connotation, Function and Direction]' [2019] *中国行政管理 [Chinese Public Administration]* 15, 16.

⁹⁰ Huaide Ma, '深刻认识"放管服"改革的重大意义 加快构建现代政府治理体系 [Deeply Recognize the Significance of "Decentralization and Service" Reform and Accelerate the Construction of Modern Government Governance System]' [2022] *中国行政管理 [Chinese Public Administration]* 6, 7.

⁹¹ *ibid.*

⁹² See Shanghai's 2018 Work Plan for Promoting "One Portal for All" Comprehensively and Accelerating the Construction of Smart Government (全面推进"一网通办"加快建设智慧政府工作方案) at <https://www.shanghai.gov.cn/newshanghai/xxgkfj/yiwangtongban.pdf>.

⁹³ See the 2018 Provisions of Zhejiang Province on Guaranteeing the "Run at Most Once" Reform (浙江省保障"最多跑一次"改革规定) at http://www.gov.cn/xinwen/2019-09/03/content_5426859.htm.

体化在线政务服务平台)。The national platform, as an institutional and infrastructural solution to the principal-agent predicament, is intended to enable cross-provincial connectivity, standardize procedures, provide government services at the fingertips of the public, and streamline critical unified identity authentication.⁹⁴

3.2.3 Data Production Infrastructure: Generative Personal Information

The standardization of CTID fell under the purview of the Ministry of Public Security, which promulgated a gamut of standards, including the “Resident Identity Network Authentication - Overall Technical Framework”, culminating in a dozen.⁹⁵ According to Zhejiang’s provincial proclamation, the Ministry of Public Security’s Standard Committee took Zhejiang’s piloted system as an exemplar to fabricate these dozen industrial standards, thus catapulting Zhejiang’s proficiency to the national level.⁹⁶ Consequently, the CTID infrastructure underwent a grassroots institutional exploration, epitomizing a proximate reverberation of municipal and central data generation associations with local administration. This facilitated the cultivation of a policy discourse between the regional government and the populace, furnishing a forum for civic inquirers to articulate their information requisites of personal data production and reuse.

Meanwhile, in 2018, when the CTID was initially launched, it was the Alipay, a behemoth in the third-party payment industry of China, that was designated as the very platform on which the CTID relied to employ biometric technologies, for example, facial recognition, to produce “Net IDs.”⁹⁷ The public-private collaboration echoed the technical unpreparedness during China’s platform urbanization of public services, which was modeled after the philosophy of product interface design that seeks user-friendliness.⁹⁸ A pre-existing electronic identity system (eID) exhibited analogous identity authentication functionality to the CTID; nevertheless, the former relied on tangible hardware infrastructure, whereas the latter was firmly rooted in the

⁹⁴ See the 2018 Guiding Opinions of the State Council on Accelerating the Construction of a National Integrated Online Government Service Platform (国务院关于印发加快推进全国一体化在线政务服务平台建设的指导意见) at http://www.gov.cn/zhengce/content/2018-07/31/content_5310797.htm.

⁹⁵ ANICERT, ‘公安部正式发布《居民身份网络认证 整体技术框架》等系列标准 [The Ministry of Public Security Officially Released a Series of Standards Such as the “Overall Technical Framework for Resident Identity Network Authentication]’ (2020) <<http://www.anicert.cn/news/newsinfo/93.html>> accessed 27 March 2023.

⁹⁶ The People’s Government of Zhejiang Province, ‘创新推行“互联网+”可信身份认证, 破解“我是我”证明难题 [Innovative Implementation of “Internet + Trusted Identity Authentication”, Cracking the “I Am Me” Proof Problem]’ (2020) <https://zld.zjzfw.gov.cn/art/2020/4/10/art_1229004464_42545491.html> accessed 27 March 2023.

⁹⁷ China News, ‘电子身份证来了! ”网证”首次亮相支付宝, 多城市启动试点 [Electronic ID Card is Here! The “Net IDs” Debuted in Alipay, Many Cities to Start the Pilot]’ (2018) <http://www.xinhuanet.com/politics/2018-04/18/c_1122700441.htm> accessed 27 March 2023.

⁹⁸ Wang (n 84).

online platform ecosystem.⁹⁹ This architecture was devised to ensure compatibility with other industrial software entities, facilitating expeditious and seamless integration.

Such technology iterations from eID to CTID as a first-mover advantage of bypassing the competitors' core infrastructure or technology resulted from a multi-level data business model dispute between hardware and software stakeholders over user data retention in the data circulation intermediaries. In August 2017, Huawei and Tencent were embroiled in a dispute regarding the retention of user data.¹⁰⁰ Tencent contended that Huawei had confiscated its data and thereby infringed upon the privacy of WeChat users. Huawei, however, maintained that it had obtained user data with due authorization from users.¹⁰¹ It was only through the intervention of the Ministry of Industry and Information Technology that the conflict was eventually mediated.¹⁰² As a result, Huawei smartphones were rendered incapable of supporting the fingerprint payment function of WeChat Pay for an extended duration.¹⁰³

On the other side, the preceding dispute was emblematic of data actors' claims of infrastructure dominance that would allow them to restrict data market entry with identity-empowered data access. In November 2017, the First Research Institute of the Ministry of Public Security launched the OIDAA Partnership in order to speed up the implementation of CTID.¹⁰⁴ The majority of the early members are Internet-embedded businesses, like significant state-owned banks, state-owned telecommunication providers, and large private platforms like Alibaba and Tencent.¹⁰⁵ In 2018, Huawei and the Third Research Institute of the Ministry of Public Security announced the launch of a pilot program for the electronic identity (eID) issued by the Ministry of Public Security and loaded onto mobile devices, enabling consumers to complete online identity authentication using a mobile device with Huawei Pay.¹⁰⁶

Personal information, thus arguably regarded as a manifestation of structural power in China, was incorporated into an authentication infrastructure that facilitated the to-

⁹⁹ MPAYPASS, 'eID 向左, CTID 向右, 网络身份认证背后的隐形战争 [eID to the Left, CTID to the Right, the Invisible War behind Network Identity Authentication]' (2018)

<https://www.sohu.com/a/250250276_223323> accessed 27 March 2023.

¹⁰⁰ China Daily, 'Dispute over Personal Data Highlights Their Value and Vulnerability of Users' (2017)

<https://www.chinadaily.com.cn/opinion/2017-08/10/content_30402256.htm> accessed 27 March 2023.

¹⁰¹ Yang Jie and others, 'Two China Tech Titans Wrestle Over User Data' (*Wall Street Journal*, 2017)

<<https://www.wsj.com/articles/two-china-tech-titans-wrestle-over-user-data-1501757738>> accessed 27 March 2023.

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ MPAYPASS (n 99).

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

and-fro interchange and sometimes the tension of public-private authority between state sovereignty and personal self-determination at the grassroots level. The confluence of public and private infrastructures, such as financial institutions, banking systems, telecommunication networks, data centers, and burgeoning digital platforms, underpins the surplus commodification of human experiences and urban existence.¹⁰⁷ This framework obliges adherence to social norms governing data generation, dissemination, and utilization, particularly as platform urbanism emerges in its incipient yet rapidly evolving phase.¹⁰⁸ Nevertheless, how personal data is produced or, more precisely, how it is generated has been underestimated in the regulatory arena of the whole data lifecycle, given that most data regulations begin to rule, when and only when personal data begins to be collected, without the Chinese jurisdiction being an exception.¹⁰⁹

3.3 The Social Identifiability: Personal Information's Efficiency Paradox

The notional model that describes personal information as generative can be corroborated in the temporal dimension by China's multiple instrumentalist evolutions of social governance, including but not limited to archives (Dang'an), Hukou System, Real-name Regime (i.e., Cyberspace Ecological Governance, 网络空间生态治理), Health Codes, Social Credit System, and the National Integrated Big Data Platform for Government Affairs that is decentralized in architecture but centrally aggregated in the data exchange structure.

3.3.1 Materialist Identities: Dang'an, Hukou and Shenfen

In China, there exists a longstanding ritual of preserving and organizing files and records, which has developed in parallel with a culture of governmental and state confidentiality. Evidence of this practice can be traced through various historical archives, such as personnel records dating back to the imperial era,¹¹⁰ the establishment of the Dang'an system since the founding of the People's Republic of China,¹¹¹ and the implementation of morality files in the contemporary variants of localized policy experiments such as the already suspended "Harmonious (Hexie)

¹⁰⁷ Shoshana Zuboff, 'Surveillance Capitalism and the Challenge of Collective Action' (2019) 28 *New Labor Forum* 10, 15.

¹⁰⁸ Federico Caprotti and Dong Liu, 'Emerging Platform Urbanism in China: Reconfigurations of Data, Citizenship and Materialities' (2020) 151 *Technological Forecasting and Social Change* 119690, 2.

¹⁰⁹ Article 4 of the Personal Information Protection Law states that "Personal information handling includes personal information collection, storage, use, processing, transmission, provision, disclosure, deletion, etc."

¹¹⁰ William W Moss, 'Dang'an: Contemporary Chinese Archives' (1996) 145 *The China Quarterly* 112, 112.

¹¹¹ *ibid* 113–19.

Hubei Initiative”¹¹² and the “Moral Pujiang Program”.¹¹³ The authorities collected limited amounts of personal information about specific populations, with ancient Chinese archival documents being predominantly administrative records of the state and its officials instead.¹¹⁴

The Dang’an paradigm, to a certain extent, emphasized metropolitan, industrial, and bureaucratic constituents,¹¹⁵ perceiving the entirety of the indexing as indispensable to the preservation of national heritage.¹¹⁶ The present Dang’an evolved from the cadre-auditing movement in Yan’an ages (延安审干运动), which incorporated personal information stratification into the danwei (unit-style) structure (单位制).¹¹⁷ Rigorous and methodical regulation and oversight of the unit’s political operations constituted the primary aim of this materially cohesive configuration.¹¹⁸

However, among the initial versions of the Dang’an system, there existed a clandestinely maintained assortment of personnel records and reference materials that were subject to inconsistent administration. One such manifestation was referred to as the “Dead Dang’an” (si dang), becoming individually untraceable, which arose during China’s early-stage ascent of the privatization and marketization since the mid-1990s,¹¹⁹ in spite of the promulgation of the National Archive Law in 1987.¹²⁰ This then nascent private sector permitted the unrestricted movement of human resources, thereby constraining the efficacy of Dang’an-enabled mobility control, through, for instance, establishing talent centers offering certain freedom of employment.¹²¹

Morality files, on the other hand, were experimentally stored in the databases of local authorities, such as the “comprehensive database of citizens’ violation of morality” (公民违德信息综合数据库) in Pujiang, Zhejiang Province, for a short-term

¹¹² Pengxiang Li, ‘湖北省建立市民道德档案激发社区和谐文明新风尚 [Hubei Province Establishes Civic Moral Archives to Stimulate the New Trend of Community Harmony and Civilization]’ (*Xinhua Net*, 2006) <http://www.gov.cn/jrzq/2006-07/25/content_345220.htm> accessed 28 March 2023.

¹¹³ Chaoxin Chu, ‘浙江浦江为县领导以外民众建道德档案无果而终 [Zhejiang Pujiang Built Moral Files for People Other than County Leaders to No Avail]’ (2012) <<http://news.sina.com.cn/c/sd/2012-05-04/113924367806.shtml>> accessed 2 March 2023.

¹¹⁴ Wenxian Zhang, ‘Dang An: A Brief History of the Chinese Imperial Archives and Its Administration’ (2004) 2 *Journal of Archival Organization* 17, 34–35.

¹¹⁵ Min Jiang, ‘A Brief Prehistory of China’s Social Credit System’ [2020] *Communication and the Public* 1, 3.

¹¹⁶ Moss (n 110) 120.

¹¹⁷ Gu Yaxin, ‘延安审干与人事档案制度的形成 [The Formation of Yan’an Cadre-Screening and Personnel Records System]’ [2017] *档案学通讯 [Archives Science Bulletin]* 96, 98.

¹¹⁸ *ibid.*

¹¹⁹ Jie Yang, ‘The Politics of the Dang’an: Specialization, Spatialization, and Neoliberal Governmentality in China’ (2011) 84 *Anthropological Quarterly* 507, 518.

¹²⁰ See Standing Committee of the National People’s Congress, ‘中华人民共和国档案法 (Archives Law of the People’s Republic of China)’ [1987] Order of the President No. 58 (CLI.1.3464).

¹²¹ Yang, ‘The Politics of the Dang’an’ (n 119) 518.

campaign-like pilot to no eventual avail, which was designed as a reference during recruitment, conscription, and the identification of virtue models.¹²² In this context, personal information used to represent a means for the public sector to leverage the intimacy of private life in order to sustain political legitimacy, particularly through the enforcement of identifiability-traced morality in the form of social norms, which was viewed as crucial for maintaining social stability and mobilizing spiritual civilization – that said revisionist voluntarism, or “systemic adjustment” that does seek to achieve socialist transformation through the will of individuals and the actions of political parties, rather than through the automatic workings of economic laws. However, those PI profiling setbacks and halting of progress, like the failure of Dang’an, served as a significant indication of the revolutionary impact of the essential economic reforms implemented in modern China, which are deeply ingrained in the process of entrepreneurial marketization.¹²³

Likewise, the Hukou (户口) - specifically, the household registration system (户籍制度) - amalgamated to solidify a compendium pertaining to sociocultural identity, epitomizing a tangible conceptualization of selfhood by privileging metropolitan inhabitants and marginalizing rural denizens in the distribution of resources.¹²⁴ The initial objective of Hukou transitioned from focusing on the “distinct populace”¹²⁵ to categorizing and regulating individuals according to their kinship and individual identities, principally for re-establishing civil equilibrium amid the nation’s inception, accentuating inducement, and deterrence over compulsion.¹²⁶ As a result, this contributed to the reconstitution of societal harmony while simultaneously engendering a potential urban-rural divide.¹²⁷ Social perceptions vis-à-vis personal information in that epoch were calibrated mainly to perpetuate the crystallization of the social stratum. Alternatively, such perceptions were entrenched through the instrumentality of social(ist) engineering that as briefed previously, labelled the local morality. Personal information, which possessed a semi-public character and bore the stamp of social identity recognition, was subsumed within the political and economic components of the individual.

¹²² Chu (n 113).

¹²³ Yang, ‘The Politics of the Dang’an’ (n 119) 522.

¹²⁴ Farzana Afridi and others, ‘Social Identity and Inequality: The Impact of China’s Hukou System’ (2015) 123 *Journal of Public Economics* 17.

¹²⁵ The hukou system was initially reinstated in 1951 to document the domicile of the urban populace and to ascertain any lingering counter-polity elements. See Kam Wing Chan, ‘The Chinese Hukou System at 50’ (2009) 50 *Eurasian Geography and Economics* 197, 200.

¹²⁶ Lu Yilong, ‘1949 年后的中国户籍制度:结构与变迁 [The Household Registration System in China after 1949: Structure and Changes]’ [2002] *北京大学学报(哲学社会科学版)* [*Journal of Peking University (Philosophy and Social Sciences Edition)*] 123, 124–25.

¹²⁷ Fang Cai, ‘Hukou System Reform and Unification of Rural–Urban Social Welfare’ (2011) 19 *China & World Economy* 33, 37–38.

From a demographic vantage point, this assemblage exhibited an inclination to delimit domestic social elevation and internal (rural-urban) population migration by instituting Hukou Categories (agrarian versus non-agrarian) and associating residential locale with migrants' entitlement to community amenities and welfare provisions.¹²⁸ Personal information, in consequence, incarnates the crux of production interrelations within quasi-planned or predominantly public-ownership economies. It signifies a static and sometimes solidified accreditation bearing socio-normative import, which substantiates resource distribution contingent upon identity and is conferred with the state apparatus's endorsement. Semi-public personal data facets, including ethnicity (i.e. minzu), age, gender, and family lineage, were informally classified by the administrative framework, culminating in the establishment of quasi-customary norms. By impinging with the public power of authentication upon the citizenry's political existence – shenfen, namely social status/identity, such components concurrently obstructed the allocation of societal resources and hampered economic fecundity or, more specifically, the efficacy of social capital.

3.3.2 Cyberspace Ecosystem Identifiers: The Real-Name System

However, with the reform and opening up signaling an adaptive transition from ideological legitimacy to performance legitimacy,¹²⁹ where idealism and the cult of personality were substituted for programatism and technology, political legitimation became an active force for utilizing social big data exhaustively to support the “utilitarian justification” of China's political authority.¹³⁰ Simultaneously, the politico-economic paradigm premised on shenfen-oriented resource distribution stimulated informal economies predicated on social identities, which appraised symbolic markers of identity and abused administrative authority.¹³¹ This phenomenon precipitated the implementation of Resident ID cards, initially piloted in the mid-1980s. The ensuing compilation of social big data, emanating from national initiatives such as the online real-name system, eID, and CTID, then contributed to buttressing the foundations of performance legitimacy, with economic growth bearing significant import.

The transformations that unfolded as a consequence of the reform and opening up, particularly the entrance of private actors in assembling a socialist market economy, have ushered in a novel and correlated impact of economic status on social class mobility,¹³² running parallel to the traditional political considerations. Nonetheless,

¹²⁸ Chan (n 125) 201–06.

¹²⁹ Yuchao Zhu, “Performance Legitimacy” and China's Political Adaptation Strategy' (2011) 16 *Journal of Chinese Political Science* 123, 127.

¹³⁰ Baogang Guo, 'Political Legitimacy and China's Transition' (2003) 8 *Journal of Chinese Political Science* 1, 21.

¹³¹ Lu (n 126) 128.

¹³² Barry Naughton, *The Chinese Economy: Transitions and Growth* (MIT Press 2007) 128.

the materialist political economy that has long dominated China's ideological entrepreneurship remains steadfast in its dictum that the economic foundation determines the superstructure – a stable developmental state model in tension with the forces and relations of production.¹³³

With the private sector's share and influence on the national economy expanding at an exponential pace, particularly given the substantial modifications brought about by the Internet economy, the conventional top-down method of social(ist) engineering-like identity classification has been rendered obsolescent for both self-identification and identification with others.¹³⁴ In contrast to some jurisdictions, wherein platform corporations claim a certain form of sovereignty, whether extractive or transformative, have been empowered to assume political and social data power equivalent to, or even surpassing, that of the public sector by building infrastructural interdependence through their technological dominance of critical software and hardware, and the resulting behavioral impact on humans, such as the deployment of exploitative business models for personal data,¹³⁵ Chinese regulators have championed the principle of public ownership, thereby curtailing the exploitation of technology to maintain its sway through political authority in accordance with Marxist perception and at least narrative of capital.¹³⁶ The aforementioned regulatory philosophy has been prominently manifested in the dynamic oscillation between regulatory and de-regulatory measures implemented towards platforms in China since the year 2020.¹³⁷ Those measures were founded upon the objective of exerting regulatory authority, in

¹³³ Chris Freeman, 'History, Co-Evolution and Economic Growth' (2019) 28 *Industrial and Corporate Change* 1, 4. For a China-specific instance, Mao Zedong critiqued the Soviet political economy for prioritizing economics while neglecting the significance of politics and ideology. He emphasized the need to examine the impact of political and ideological frameworks on the economic foundation. Concurrently, China's economic growth has been steered by a stable development model that highlights stability distracting from national priorities and holds a few apprehensions regarding market-oriented reforms and liberalization. See Nick Knight, 'Mao Zedong and the Chinese Road to Socialism' in *Marxism in Asia (RLE Marxism)* (Routledge 1985) 104–05; Nikolaos Karagiannis and others, 'Growth and Development of China: A Developmental State "With Chinese Characteristics"' (2021) 50 *Forum for Social Economics* 257.

¹³⁴ For example, it was evident in China that online communities might produce two forms of social identity – self-categorization and social identification. See Tian-Chao Guo and Xuemei Li, 'Positive Relationship Between Individuality and Social Identity in Virtual Communities: Self-Categorization and Social Identification as Distinct Forms of Social Identity' (2016) 19 *Cyberpsychology, Behavior and Social Networking* 680.

¹³⁵ Maryanne Kelton and others, 'Virtual Sovereignty? Private Internet Capital, Digital Platforms and Infrastructural Power in the United States' (2022) 98 *International Affairs* 1977, 1996–98.

¹³⁶ Chang Che, 'China's "Big Tech Crackdown": A Guide' (*The China Project*, 2 August 2021) <<https://thechinaproject.com/2021/08/02/chinas-big-tech-crackdown-a-guide/>> accessed 4 April 2023.

¹³⁷ Angela Huyue Zhang, 'Agility over Stability: China's Great Reversal in Regulating the Platform Economy' (2022) 63 *Harvard International Law Journal* 457; Angela Huyue Zhang, 'The Good Old Days Will Not Be Back for China's Internet Companies' (*Nikkei Asia*, 2023) <<https://asia.nikkei.com/Opinion/The-good-old-days-will-not-be-back-for-China-s-internet-companies>> accessed 4 April 2023; Thomas Hale and others, 'China Truce with Business — for Now', *Financial Times* (31 March 2023) <<https://www.ft.com/content/23d08688-fbf8-46fa-bb1e-674be9ff6452>> accessed 4 April 2023.

the name of “common prosperity” over the tumultuous capital flow that had been endemic within the socialist market economy.¹³⁸

A mindset focused on industrial self-reliance, especially through indigenization, has been a key motivator for China’s forming digital sovereignty while maintaining technical interoperability with the worldwide Internet.¹³⁹ This approach has enabled the country’s innovation system to reduce dependency on foreign competitors who lead the global digital economy and exercise platform imperialism.¹⁴⁰ By promoting e-entrepreneurship with a growth-centric strategy, informal economic ecosystems like Taobao villages emerged, captured by laxly regulated online environments.¹⁴¹

Consequently, while big digital enterprises such as Tencent and Alibaba experienced meteoric ascension within a permissive regulatory landscape during their nascent stages, attributable to delayed legislative ramifications of accelerated technological advancement, China’s cyberspace ecosystem governance framework, predicated upon the real-name system, has imposed stringent public governance mandates upon platforms through persistent legislation and enforcement.¹⁴² Within this milieu, private platforms are perceived as an augmentation of the state’s public authority, engendering a distinctive personal data architecture and fostering a symbiotic public-private normative apparatus.

The rationale of the real-name system - “anonymity in the foreground and real names in the background” (前台匿名 + 后台实名) has allowed the state to gather data through public services and, in parallel, via the data exchange system of third-party platforms, leading to an upward concentration of power and, in some instances, asymmetry.¹⁴³ However, the implementation of the real-name system has engendered a paradox that the more detailed personal data is amassed, the more vulnerable the database becomes to exploitation by the public sector and private sector platforms that are closely linked with the public sector, resulting in data breaches.

¹³⁸ Rogier Creemers and others, ‘Is China’s Tech “Crackdown” or “Rectification” Over?’ (*DigiChina*, 2023) <<https://digichina.stanford.edu/work/is-chinas-tech-crackdown-or-rectification-over/>> accessed 4 April 2023.

¹³⁹ Rogier Creemers, ‘China’s Conception of Cyber Sovereignty: Rhetoric and Realization’ (Rowman & Littlefield 5 February 2020) 109., available at <https://papers.ssrn.com/abstract=3532421>.

¹⁴⁰ Haiqing Yu, ‘Beyond E-Commerce: The Social Case of China’s Digital Economy’ [2017] *China Perspectives* 3, 3.

¹⁴¹ Anthony HF Li, ‘E-commerce and Taobao Villages: A Promise for China’s Rural Development?’ (2017) *2017 China Perspectives* 3, 57.

¹⁴² Kong Xiangwen, ‘网络平台信息内容规制结构的公法反思 [Public Law Reflection on the Structure of Information Content Regulation on Online Platforms]’ (2020) 42 *环球法律评论 [Global Law Review]* 133, 136–39.

¹⁴³ Tamar Giladi Shtub and Michal S Gal, ‘The Competitive Effects of China’s Legal Data Regime’ (2022) 18 *Journal of Competition Law & Economics* 936, 947–48.

Indeed, both the public and private sectors in China have experienced vast-scale breaches of personal information, leading to an informal economy focused on trading and the illegal exploitation of personal information, such as fraudulent activities in dark web markets.¹⁴⁴ Hence, the Chinese state, in its quest for performance legitimacy and to uphold the order of the formal economy and the government's credibility, has reinforced criminal amendments to govern offenses harming personal information.¹⁴⁵ The state has broadened the scope of the concept of "security interests," such as cybersecurity and data security, in its legislation, the technical implementation of the CTID, and the manufacture of a national integrated government service platform and a national data exchange platform in partnership with national informatization projects.¹⁴⁶ Meanwhile, the national digital identity authentication service (国家网络身份认证), proposed in 2024 and implemented through a government-developed app, aims to centralize online identity verification, encouraging the voluntary use of the app across various sectors to reduce the collection and retention of personal information as per the data minimization principle.¹⁴⁷

3.3.3 The Social Identity Experimentalism, Proportionality, and Reasonableness

National informatization epitomizes a manifestation of materialism, whereby private platforms have evolved into an extension of the state's public dominion, equipping the state with essential governance tools and concurrently permitting platforms to capitalize on the state's regulatory prowess. Consequently, the platform-state symbiosis has emerged as a crucial determinant in the evolution of China's cyberspace ecological landscape, with the state harnessing its regulatory clout to propel platform growth. This, to a degree, presages a form of identity ossification contingent upon private platforms, wherein personal data attains sociocultural and economic significance solely upon being emblematically articulated through digital identity as the ingress point, subsequently coursing through platforms and public institutions.

Particularly, personal information generated through authentication has a material, infrastructural dependence after being given economic market circulation properties. State power shapes a data cycle, or life cycle, of personal information during this

¹⁴⁴ Amy Qin and others, 'Chinese Police Database Was Left Unsecured Long Before Hackers Seized It', *The New York Times* (7 July 2022) <<https://www.nytimes.com/2022/07/07/business/china-police-database-hack.html>> accessed 4 April 2023.

¹⁴⁵ Creemers (n 1) 4.

¹⁴⁶ Wang (n 84).

¹⁴⁷ Ministry of Public Security and Cyberspace Administration of China, '国家网络身份认证公共服务管理办法（征求意见稿）[Measures for the Administration of Public Services for National Network Identity Authentication (Draft for Comments)]' (26 July 2024) <https://www.cac.gov.cn/2024-07/26/c_1723675813897965.htm> accessed 28 July 2024.

period. Personal information takes on a general purposive character in this cycle, with networked scale effects that intensify the localized knowledge of law-policy interaction for small-scale pilots in a sui generis symbiosis between central and local legislative and policy experimentation in China – a bottom-up model of data governance and a model of using data to govern. This Chinese prototype embodies a fusion, facilitating the examination of data-driven governance potential while concurrently allotting room for localized experimentation. Instances of this data-centric approach encompass the evolution of a social credit system (SCS), health codes, and the execution of substantial data sharing to fortify public services.

Indeed, those experiments upon data-centric societal administration reveal two salient attributes: the prevalence of grassroots-originated, geographically circumscribed pilot initiatives and the reliance on the Cyber Trusted Identity System (CTID) as the foundational social identification architecture, which facilitated a multi-tiered, polycentric, and integrative approach to datafication.

Taking the Social Credit System as an example, prior to the initial manifestation of the “Social Credit” (社会信用) concept in an economic working document during the 16th National Congress of the Communist Party of China,¹⁴⁸ numerous commercial credit rating enterprises had pioneered “Credit Systems” (征信系统) that concentrated chiefly on the market conduct of corporations and their capacity for debt repayment.¹⁴⁹ Patently, throughout the nascent phases of the Social Credit System’s evolution, dating back to 1999, the SCS was conceived as a societal apparatus exerting influence upon a nation’s market mores.¹⁵⁰ Some Chinese governmental protagonists, in the very beginning, demonstrated cognizance of a comprehensive worldview –

“Instituting a sophisticated social credit infrastructure necessitates transcending mere adherence to moral precepts of veracity and fidelity; it is of vital consequence to devise an intricate matrix of jurisprudential, regulatory, and organizational apparatuses, alongside efficacious credit

¹⁴⁸ It highlighted the necessity to form a social credit system supported by morality, based on property rights, and guaranteed by law. See The 16th Central Committee of the Communist Party of China, ‘中共中央关于完善社会主义市场经济体制若干问题的决定 [Decision of the CPC Central Committee on Several Issues Concerning the Improvement of the Socialist Market Economy System]’ (2003) <http://www.gov.cn/test/2008-08/13/content_1071062.htm> accessed 6 April 2023.

¹⁴⁹ Chun Cheng Liu, ‘Multiple Social Credit Systems in China’ (2019) 21 *Economic Sociology* 22, 23.

¹⁵⁰ Lin Junyue, ‘社会信用体系:中国高效建立征信系统的模式 [Social Credit System:A Model for Efficient Credit System Establishment in China]’ (2011) 29 *征信 [Credit Reference]* 1, 5.

market stratagems, to adeptly govern credit interrelations amid market entities.”¹⁵¹

Contemplating this foundational reasoning, the SCS was originally proposed as an instrument of financial stability to address the emerging quandaries in the “modern market economy” – diminished credit consciousness and ethical principles engendered by the erstwhile Soviet-style planned economy, the inadequate market-oriented transformation of credit intermediary services ostensibly necessitating transparency pursuant to China’s commitments post-WTO accession, the dearth of licit avenues for overseeing personal and corporate data, and ineffectual enforcement for discreditable conduct.¹⁵² In a sense, the inception of the SCS was predicated upon engendering a credit marketplace by entitling public actors to legitimate access to certain types of personal information.

Subsequent to the inauguration of the People’s Bank of China’s credit reporting framework for individuals and corporate entities, regional pilot initiatives, such as those in Suining and Rongcheng, introduced their quantified municipal mass credit systems.¹⁵³ Concomitantly, a burgeoning multitude of regional pilot initiatives and legislative measures – predominantly at the provincial echelon,¹⁵⁴ including both social credit-specific and social credit-integrated regulations – adopted a behavior-modulatory archetype, extending their purview to encompass reward-punishment mechanisms, bespoke credit scoring schemas, and analogous instruments.¹⁵⁵ This stratagem rendered the Social Credit System susceptible to deployment as a grassroots governance device, with a jurisprudential nucleus of the Rule of Trust or,¹⁵⁶ more prevalently, an ideological predisposition towards Socialist Core Values (社会主义核心价值观), inclusive of Chengxin (Trustworthiness),¹⁵⁷ to modulate unscrupulous behavior whilst surpassing conventional law enforcement. This enforcement, nonetheless, should adhere to proportionality and reasonableness, rather than

¹⁵¹ Research Group on ‘Policy Research on the Establishment of China’s Social Credit System’ of the Market Economy Research Institute of the Development Research Center of the State Council, ‘加快建立我国社会信用管理体系的政策建议 [Policy recommendations for accelerating the establishment of China’s social credit management system]’ [2002] 经济研究参考 [Review of Economic Research] 2, 4.

¹⁵² *ibid* 4–7.

¹⁵³ Liu (n 149) 30.

¹⁵⁴ By mid-2022, a minimum of thirteen territorial divisions had promulgated social credit regulations at the provincial stratum. See Adam Knight, ‘Basket Case: Reform and China’s Social Credit Law’ (2023) 6 *China Law and Society Review* 181, 182.

¹⁵⁵ Zhang Tao, ‘个人信用评分的地方实践与法律控制——以福州等7个城市为分析样本 [Local practice and legal control of personal credit score - taking 7 cities including Fuzhou as an analysis sample]’ [2020] 行政法学研究 [Administrative Law Review] 116.

¹⁵⁶ Yu-Jie Chen and others, ‘Rule of Trust: The Power and Perils of China’s Social Credit Megaproject’ (2018) 32 *Columbia Journal of Asian Law* 1.

¹⁵⁷ Knight (n 154) 186–87.

becoming entirely subsumed within a network ideology of politico-economic, infrastructural, and institutional interwovenness characterized by the dual exertion of material and ethical dominion.¹⁵⁸

Simultaneously, the marketization architecture of the SCS has persisted in its entrenchment within the private domain of digital payment, with the government maintaining intimate collaboration with eight private entities since 2018.¹⁵⁹ Illustrative of this alliance are Alipay and WeChat – specifically, Sesame Credit and Tencent Credit. The former depoliticizes, or more precisely marketizes the SCS via gamification elements and a fidelity-incentive schema comprising regulations, remunerations, and sanctions,¹⁶⁰ whereas the latter, as the preeminent protagonist in quotidian social media behind the Great Firewall, wields dominance and possesses the lion’s share of consumer data.¹⁶¹

However, The People’s Bank of China (PBoC), in fact, authorized the eight private companies to devise comprehensive personal credit scoring models in 2015 but later revoked permissions for Tencent Credit and Sesame Credit in 2018, the two that had refused to disclose loans data to the regulator, consequently establishing Baihang Credit, a government-backed company in which these tech behemoths were made shareholders to dismantle their credit data oligopoly.¹⁶² The bargaining between public and private actors escalated, as the PBoC unveiled in 2022 a novel regulation stipulating that beyond its intrinsic system (Central Bank Credit System), any legally obtained personal information intended for creditworthiness assessment in financial activities must now be channeled through two entities – Baihang Credit and Pudao Credit.¹⁶³ Regarded as de facto regulators, these entities maintain affiliations with both public and private stakeholders and ensure compliance with guidelines concerning data acquisition, compilation, storage, processing, and utilization, particularly in

¹⁵⁸ As expounded by some, elucidating Bory’s conceptualization of “network ideology,” network ideologies illuminate the manifestation of infrastructural power via the normalization and systematization of digital infrastructures. See Paolo Bory, *The Internet Myth: From the Internet Imaginary to Network Ideologies*, vol 14 (University of Westminster Press 2020) 5; Niels ten Oever, ‘5G and the Notion of Network Ideology, or: The Limitations of Sociotechnical Imaginaries’ (2023) 47 *Telecommunications Policy* 102442.

¹⁵⁹ Grace Li, ‘State Control by Stealth in the Big Data Era – From WeChat to the Social Credit System in China’ (2021) 9 *Journal of Telecommunications and the Digital Economy* 4, 88, 89.

¹⁶⁰ Gladys Pak Lei Chong, ‘Cashless China: Securitization of Everyday Life through Alipay’s Social Credit System—Sesame Credit’ (2019) 12 *Chinese Journal of Communication* 290, 296–99.

¹⁶¹ Li, ‘State Control by Stealth in the Big Data Era – From WeChat to the Social Credit System in China’ (n 159) 90–91.

¹⁶² Yuan Yang and Nian Liu, ‘Alibaba and Tencent Refuse to Hand Loans Data to Beijing’, *Financial Times* (19 September 2019) <<https://www.ft.com/content/93451b98-da12-11e9-8f9b-77216ebe1f17>> accessed 10 April 2023.

¹⁶³ Yuzhe Zhang and others, ‘How China’s Personal Credit Reporting Rules Upended Industry’ (*Nikkei Asia*, 2023) <<https://asia.nikkei.com/Spotlight/Caixin/How-China-s-personal-credit-reporting-rules-upended-industry>> accessed 9 April 2023.

relation to personal information.¹⁶⁴ Additionally, they oversee access to salient details, such as credit data sources, assessment models and dimension variables employed by big data intermediaries.¹⁶⁵

These institutional experiments, founded upon digital identities – for instance, the CTID, may be perceived, to a certain degree, as instructive insights emanating from a nation’s central system toward local administration. This specifically encapsulates an institutionalized, structured upward concentration predicated upon personal information, serving as an alternative to the bureaucratic, agency-driven grassroots feedback characteristic of the pre-digital era. Within this administrative process, the state chiefly facilitates market-oriented and private-sector engagement and collaboration, manifesting either through the prevalence of reputational assessment mechanisms in social credit infrastructures,¹⁶⁶ or the stratified, taxonomical administration of risk mitigation within health code systems.¹⁶⁷ This exemplifies a leaning towards employing economic rationale, grounded in commerce or efficacy, to confront ethical and moral concerns. The public sphere, nevertheless, co-opts the private sector to exert cohesive power over individuals, disproportionate and unreasonable sometimes, primarily discernible in the platform economy, thereby bypassing constitutional review, of which the “Recording and Review” regime (R&R, 备案审查) has been traditionally perceived as a governance instrument to address citizen petitions and assuage “public indignation,” whilst adhering to the tenet of non-contradiction with the trajectory of the nation’s significant reforms,¹⁶⁸ the SCS included self-evidently.

4. Conclusion

By delineating the evolution of the Chinese perceptual diversification between Yinsi, Privacy, and Personal Information, the article demonstrates how the efforts in privacy constitutionalization have manifested heterogeneous imperfections in China. This is depicted through a transformative perspective, transitioning from a collectivist and charismatic conceptualization in bygone eras to judicial asymmetry stemming from the unwritten, abstract nature of constitutional privacy, and culminating in digital

¹⁶⁴ *ibid.*

¹⁶⁵ See Article 31, People’s Bank of China, ‘征信业务管理办法 (Measures for the Administration of the Credit Reporting Business)’ [2021] Order No. 4 of the People’s Bank of China (CLI.4.5077378).

¹⁶⁶ Xin Dai, ‘Toward a Reputation State: The Social Credit System Project of China’ (10 June 2018), available at SSRN: <https://ssrn.com/abstract=3193577>.

¹⁶⁷ Fan Liang, ‘COVID-19 and Health Code: How Digital Platforms Tackle the Pandemic in China’ (2020) 6 *Social Media + Society* 205630512094765, 1–2.

¹⁶⁸ Changhao Wei, ‘Reining in Rogue Legislation: An Overview of China’s Invigoration of the “Recording and Review” Process’ (*Made in China Journal*, 19 September 2021) <<https://madeinchinajournal.com/2021/09/19/reining-in-rogue-legislation/>> accessed 10 April 2023.

incentive compatibility as a pressure-driven neoliberal manifestation of economic rationality.

Data sovereignty, in the Chinese context, is a post-neoliberal symbol that personal information with Chinese characteristics embodies a normative construct, encapsulating an agile comprehension of harmonizing economic liberties and augmenting market efficacy, exemplifying a sovereign statecraft of data production relations as infrastructural power-embedded digital identities with the capacity to galvanize societal resources through a distinctly “generative,” materialist and post-neoliberal approach. By dynamically adapting and experimenting with legal and institutional reforms, such as the intentional or unintentional norms of politics with legal identity regimes to influence citizens’ self-determination regarding social identity, the informal culture or institutions that develop around identity infrastructures shape from the top down the structure of socio-economic and performance legitimacy with normative efficiency at its core.

Also, this article, as an inaugural endeavor, contextualizes the emergence of the concept of personal information in China within the proposed tripartite cognitive schema of identifiability, comprising legal, technological, and social dimensions. This theorization transcends the prevailing socio-legal research paradigm of distilling Chinese-sense personal information and/or privacy, which predominantly focuses on China’s social credit system, consequently overlooking the digital identity infrastructure that undergirds it and thereby undervaluing the efforts of data legislators and regulators in establishing and revitalizing privacy constitutionalism that may have been otherwise structured in unproductive entrepreneurship and regulatory arbitrage by means of state-platform symbiosis.

Of the tripartite cognitive schema, the three facets are arguably of commensurate significance to China’s data governance model, as they attain an equal or superior degree of applicability in comparison to statutory norms concerning data-related legal enforcement and policy standardization. This consideration arises from China’s pronounced historical proclivity for “institutional inertia” or “path dependency” predicated upon entrenched norms and practices, as well as stakeholder cohorts – the propensity of institutions or systems to oppose transformation and persist in their extant trajectories, irrespective of whether those patterns remain efficacious or advantageous.

In specific terms, legal identifiability was ingrained in China’s legislative framework on identification and relatedness, exemplified by the PIPL – a nationwide collective identity fostering economic growth, as well as social, commercial, and epistemic

advantages of data circulation. This aimed to engender a flourishing market for privacy-focused data exchange, drawing upon the regulatory edifices of centralized digital resources and the economic rationality of personal information anonymity. Technological identifiability, concretized as National Informatization evolved to tackle the principal-agent dilemma inherent in digital metamorphosis, epitomizes a manifestation of structural power in China. This power was integrated into a three-tier authentication and data production infrastructure, expediting bidirectional interchange and, at times, tension between public-private authority, balancing state sovereignty and individual self-determination at the foundation of social trust. Lastly, social identifiability unveils the evolutionary aspect of personal information generalization from materialist identities (consolidation of social identity, class, and mobility) to the real-name system as a conduit for public-private power transference and augmentation. This culminates in social identity experimentalism, which exhibits an institutionalized, structured upward concentration between central and local authorities, contingent upon personal information and serving as an alternative to the bureaucratic, agency-driven grassroots feedback emblematic of the pre-digital epoch.

Nevertheless, the exchange of cross-level and cross-departmental data between the public and private sectors, heavily reliant upon digital identity infrastructure, yields externalities of behavioral regulation that entail material control from an ecosystem perspective, resonating with the tenets of Chinese-style cybernetics. However, such controls may be susceptible to market failures and could infringe on moral rights within non-material spaces, mainly when data exchanges are subject to bureaucratic intervention that deviates from their original economic rationale by design striving to maintain an equilibrium between the normative efficiency of identity infrastructures and the preservation of individual moral rights in digital China. In this vein, elevating privacy's constitutional value – privacy constitutionalism to an overarching, explainable, and codified/written aspect in both legislative and judicial domains can wield formal authority to reassign the imbalanced and unchecked competing and collusive interests rooted in public and private efficiency-driven stakeholderism. China needs a transformative moment of privacy constitutionalism.