

## **On the Legitimacy Basis of Local Social Credit Legislative Power**

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**Abstract:** Before China did not carry out unified legislation on social credit, local governments have carried out relevant work on social credit legislation. With the continuous development of society, relevant legislative work has entered a mature stage and gradually formed a complete system structure. From the perspective of the legislative model, China 's social credit adopts the model of local first legislation, and there are some doubts about its legitimacy and rationality. In theory, it still leads to disputes over the legislative power of local society. In practice, there is a certain improper expansion or restriction of the legislative power of local social credit. This paper focuses on the basis of its legitimacy, based on China 's unitary state structure and legislative system, systematically sorts out the controversial views of sisters, and then systematically demonstrates the legitimacy of the local social credit first legislative power from the four dimensions of local governance autonomy, constitutional principles, ' legislative law ' first legislative rules, existing single law basis and realistic governance needs. It will improve the legal support for local social credit legislation, provide empirical reference for national unified credit legislation, and help the legal construction of social credit system.

**Keywords:** Local Legislative Power; Social Credit; Local Prior Legislation

### **1. Proposing the Problem**

With the continuous development of China 's social and economic system, the construction of social credit system has gradually become more and more important, and has become an important starting point for promoting the modernization of national governance system and governance capacity. In recent years, from the central to local governments are accelerating the construction of the rule of law in the social credit system, especially in the ' State Council on

the issuance of social credit system construction plan ( 2014-2020 ) notice ' put forward in 2020 social credit basic laws and regulations and standard system is basically established, all over the country to speed up the social credit legislation process. From the perspective of jurisprudence, there are two legislative models : top-down and bottom-up. The social credit legislation chooses the bottom-up method, and the local government first carries out the practice of social credit legislation. This practice also raises questions at the theoretical and practical levels. Does the local government have the legislative authority to formulate social credit regulations ? Does this legislative activity meet the requirements of China 's legislative system ? Where does the legitimacy of local social credit legislative power come from ? These problems are not only related to the effectiveness foundation of the existing local credit legislation, but also affect the overall promotion path of the rule of law construction of China 's social credit system. Therefore, it is necessary to carry out a systematic discussion on this issue.

### **2. Local Social Credit Legislative Legitimacy Debate**

Local social credit legislation has gradually formed a complete system structure from the initial stage to the mature stage. In the context of the absence of legislation at the national level, the local government has completed the specific work of social credit, but there is a lack of legal argumentation on the legitimacy of local legislative power, which leads to the academic circles. There is still a debate on whether the local government enjoys the legislative power of social credit.

#### **2.1 Affirmative**

Scholars who hold the affirmative view believe that the place enjoys the legislative power of social credit, which is an inevitable choice for the place to fulfill its governance responsibilities and match the actual needs of release, and has certain rationality and necessity. Some scholars

have incorporated social credit into the scope of urban and rural construction and management, and believe that in accordance with the statutory authority, local governments actively carry out pilot legislation on matters that have not yet been legislated by the state, give full play to the role of local legislation ' experimental fields ', and accumulate experience for national legislation. Some scholars only discuss that the city with districts has the legislative power of social credit. They believe that the credit legislation of the city with districts should follow the positive restriction of its own legislative power and the reverse restriction of the legislative power involved in the specific content of credit legislation. Within the scope of " urban and rural construction and management, environmental protection and historical and cultural protection, " the core systems such as credit information norms, credit punishment and credit relief should be improved to give full play to the governance efficiency of local credit legislation. This paper argues that as the main body of grassroots governance, local governments enjoy local legislative power according to law, and formulate corresponding social credit laws and regulations in combination with local credit governance practices. It is a concrete manifestation of local exercise of autonomy and can be targeted to solve outstanding problems in the field of local credit. At the same time, the experience accumulated in the practice of local social credit legislation can also provide a useful reference for the unified legislation at the national level and promote the improvement of the national social credit system.

### **2.2 Negative Theory**

The scholars who hold the negative view explicitly oppose the legislative power of local social credit. The core reason is that the local social credit legislation lacks the authorization of the superior law and has the risk of exceeding the power of legislation. Some scholars believe that the social credit system covers four major areas of government affairs, business, society and justice, and has complex and systematic characteristics across different regions and industries. Its matters are related to the basic rights of all citizens, and do not belong to local exclusive management matters. It is not suitable for local legislation. More importantly, credit punishment can limit the basic rights of citizens

such as personal freedom, property rights, and business qualifications. According to Article 8 of the " Legislative Law, " such matters can only be stipulated by national laws, and localities have no right to create disciplinary rules. In addition, the negative theory holds that in practice, local social credit legislation has the phenomenon of expanding the scope of credit punishment and infringing on citizens ' personality rights and property rights, which further confirms the legitimacy and feasibility of local lack of social credit legislation. If local self-legislation is allowed, it may lead to confusion in the rules of national credit governance and damage the unity of the rule of law.

### **2.3 Compromising Said**

The scholars who hold the compromise theory take into account the rationality of the first two viewpoints, and advocate that the exercise of local social credit legislative power follows the principle of limited authorization and reasonable boundary. They neither deny the necessity of local legislation nor recognize the unlimited exercise of local legislative power. At the national level, in the transitional stage when the " Social Credit Law " has not yet been formally promulgated, local governments exercise the legislative power of social trust in accordance with local actual needs within the framework of principles that do not violate laws and administrative regulations, but need to strictly limit the scope and content of legislation. Specifically, it should be combined with the actual specific problems of local credit governance, focusing on standardizing the exercise of power such as credit evaluation and credit recovery that do not involve major adjustments in the basic rights of citizens, and local legislation needs to be reviewed for legality to ensure consistency with the spirit of the higher law and avoid ultra vires legislation and rule conflicts. After the introduction of unified legislation at the national level, local legislation should be timely connected with it, adjusted and improved.

### **3. The Legitimacy of Local Social Credit Legislation is Proved**

The legitimacy and legitimacy of local social credit legislation is not generated out of thin air, but has a certain legal logic, and it is in line with the spirit of the constitution, legal norms and the multiple support of realistic governance needs.

Theory and practice are mutually printed, which together constitute the complete legal basis for local social credit legislation and provide solid support for the exercise of local social credit legislative power.

### **3.1 Inherent Requirements of Local Governance and the Principle of Rule of Law**

China is a unitary state structure. It is a system combining central unified leadership with local hierarchical governance. Local governance autonomy is an extension of this institutional logic and an important legal basis for the proper exercise of local legislative power. Social credit governance is rooted in local specific governance scenarios and is closely related to local regional economic operation, market order management and social relationship coordination. Therefore, it has significant regional and complex characteristics. There are obvious differences between social integrity and dishonest governance. In this context, the local government formulates social credit norms according to its own actual situation, which is essentially a reasonable extension and proper exercise of local governance autonomy in the field of credit governance, in line with the rational use of local governance autonomy.

As the core principle of administrative law, the principle of proportionality requires that the exercise of public power must take into account the public interest and individual rights and interests, match the means with the purpose, and take the minimum infringement as the bottom line. The core goal of social credit governance is to regulate dishonesty and maintain public order, which is essentially a public interest-oriented governance behavior. In the process of local social credit legislation, following the principle of proportionality, combining with the type of local specific dishonesty and the degree of social harm, the standard of dishonesty identification and the degree of punishment are reasonably defined, which avoids the blind norm of 'one size fits all' to a great extent. Therefore, the flexibility of local legislation can accurately match the needs of governance, not only effectively curb the phenomenon of dishonesty, but also avoid excessive restrictions on the legitimate rights and interests of citizens and legal persons, so that the goal of public governance can be balanced with the protection of individual rights and interests, which fully conforms to the core essence of the principle of

proportionality.

### **3.2 Constitutional Basis of Local Social Credit Legislation**

Local legislation can be divided into four categories : implementation legislation, autonomous legislation, special authorization legislation, and prior legislation or prior trial legislation. For the local legislation of social credit, first of all, China has not formally introduced a unified social credit legislation, and there is no problem in implementing its superior law, so it is not an implementing legislation. Secondly, the matter of social credit has the characteristics of national universality, so it is not an autonomous local legislation. Finally, social credit legislation is not unique to special economic zones, nor does it require special authorization from the National People 's Congress and its Standing Committee, so it does not belong to special authorized legislation. From the above mentioned, China 's social credit legislation is a bottom-up legislative model, so it belongs to local advance legislation. Therefore, the granting of local legislative power provides a normative basis for it. Article 100 and Article 16 of the Constitution of China provide the corresponding constitutional basis for the creation and exercise of local legislative power. Therefore, in the process of local social credit legislation, as long as it does not conflict with the constitution, laws and administrative regulations, local laws and regulations can be formulated. When the legislation at the national level is vacant, provinces, municipalities directly under the central government and cities divided into districts can naturally legislate first, which does not constitute unconstitutional. For ethnic autonomous areas, it is possible to make flexible provisions on laws and administrative regulations. As long as it does not violate the basic principles of the Constitution and the law, it does not change the special provisions on ethnic autonomy in the Constitution, the Law on Regional National Autonomy and other laws and administrative regulations. Of course, it can also be legislated first.

China 's constitution clearly stipulates that the state respects and protects human rights, and puts forward the value goal of promoting the modernization of national governance system and governance capacity. Social credit legislation is highly consistent with the constitutional goal. Local social credit

legislation regulates the collection of credit information, refines the boundary of dishonesty punishment, and improves the relief channels for citizens' power. In essence, it is the respect and guarantee of basic human rights such as citizens' personality rights and property rights. On the other hand, social credit legislation is an important practice for local governments to promote the modernization of governance by formulating relevant laws and regulations to govern the difficulties of market dishonesty, which is in line with the national development direction established by the constitution. The goal of constitutional value is to define the value boundary and provide direction guidance for local social credit legislation, and to endow legislative behavior with legitimacy and constitutionality.

### **3.3 The Legal Basis of Local Social Credit Legislative Power**

From the perspective of China's legislative authority division system, legislative matters can be divided into three categories: central exclusive legislation, central and local common legislation, and local affairs legislation. According to the provisions on the division of powers between the central and local legislation in the current Constitution and relevant legal texts, China adopts the criteria of 'importance' for central legislation and 'scope of influence' for local legislation. The 'importance' standard refers to the fact that legislative matters are all related to the major interests of the country as a whole and the basic rights of citizens. The "scope of influence" standard refers to whether the external influence of legislative matters involves a specific region, multiple regions or the whole country. Therefore, although there are some disputes on the ownership of social credit legislation, its nature, scope of influence and the importance of legislative matters all determine that it belongs to the central-led legislative matters. From the perspective of importance, the setting of rules such as punishment for dishonesty directly involves basic rights such as personal dignity and property rights. It belongs to matters that have a significant impact on citizens' rights and interests. In principle, it should be unified and standardized at the national level. At the same time, social credit legislation does not belong to the category of legal reservation. According to the ten exclusive legislative matters listed in Article 11 of the "

Legislative Law, " the establishment of social credit rules neither involves the core reservations such as national sovereignty, political power organizations, penalties, nor belongs to the category of civil and economic basic systems. It does not constitute a legal reservation and reserves institutional space for local legislation. The 'legislative law' also has a clear institutional arrangement for the prior legislation. In the second paragraph of Article 73 of the Legislative Law, in addition to the exclusive legislative matters of the central government stipulated in Article 8 of the Legislative Law, provinces, autonomous regions, municipalities directly under the Central Government and cities and autonomous prefectures divided into districts, in areas where the state has not yet formulated laws or administrative regulations, local laws and regulations may be formulated in combination with local reality. Article 82, paragraph 5, further stipulates that when local regulations are absent and there is an urgent need for administrative management, the people's governments of provincial-level cities and autonomous prefectures may first formulate government regulations. At present, there is no unified basic law on social credit at the national level. The field of credit governance is in the blank period of national legislation, which fully conforms to the applicable conditions of local advance legislation. Local credit legislation has a clear legal authorization basis.

At the same time, although many existing laws and administrative regulations do not directly give local credit legislative power, they all contain the principled norms of credit governance, providing important content guidance for local legislation and the basis for the convergence of higher-level laws. The "Civil Code" establishes the principle of good faith as the basic principle of civil activities. The "Administrative Punishment Law" sets the authority for disciplinary punishment and provides the basic regulatory logic for the design of the disciplinary system for dishonesty. The "Regulations on the Administration of Credit Investigation Industry" systematically regulates the rules of credit investigation activities and provides reference standards for the collection and use of public credit information. The above-mentioned separate laws together constitute the upper-level legal basis for local credit legislation, ensuring that local legislation does not deviate from the spirit of the national

rule of law, and achieving effective convergence and coordination with the current legal system. The State Council has issued a series of policy documents such as the Outline of the Construction Plan of the Social Credit System (2014-2020), " on the establishment and improvement of the joint incentive system for trustworthiness and the joint punishment system for dishonesty to accelerate the construction of social integrity, " and clearly put forward " encouraging local governments to explore credit governance practices first " and " supporting local governments to formulate supporting laws and regulations. " The policy orientation at the national level provides important guidance for local governments to carry out social credit legislation, reflects the recognition and support of the state for local governments to try first, further consolidates the legitimacy basis of local legislation, and provides policy guarantee for local legislative practice.

### **3.4 Real Needs of Local Social Credit Construction**

From the perspective of development history, the construction of China 's social credit system started earlier than the legislative process. The long-term governance exploration and practice accumulation at the local level has provided sufficient realistic conditions and experience reserves for subsequent credit legislation. Under the background that the national unified credit legislation has not yet been introduced and the policy framework has been gradually improved, various regions have carried out institutional exploration and practical innovation based on local reality. As early as 2014, before the State Council 's " Outline for the Construction of Social Credit System " was issued and credit legislation was comprehensively promoted, many places have issued relevant government regulations and normative documents to explore credit management rules in specific areas such as enterprise credit, personal credit and industry credit. These early practices and system attempts, although relatively fragmented and unsystematic, have accumulated valuable experience for the follow-up systematic local credit legislation, formed a preliminary system prototype, and also provided a practical basis and institutional bedding for the subsequent introduction of more comprehensive, mature and standardized local credit regulations.

### **4. Summary**

Based on the legitimacy and rationality of the legislative power of local social credit, this paper systematically combs the affirmation, negativity and compromise of the academic circles on the legislative power of local social credit, and demonstrates the legitimacy of the work of local social credit legislation in advance from the four dimensions of jurisprudence, constitution, legal norms and practical needs. For the first time, under the premise that the state has not formulated the " social credit law, " it should be affirmed that the local government should carry out credit legislation according to the spirit of the constitution, the legislative rules of the " legislative law " and the autonomy of local governance. However, in the process of local legislation, we must always adhere to the principle of proportionality and the principle of human rights protection, and ensure that its legislation conforms to the goal of governance modernization, which is legitimate and necessary. Secondly, return and practice, there are still some problems in the current local social credit legislation. The unclear boundary of authority and the fragmentation of local legislation are typical manifestations, which can easily lead to ultra vires legislation. In the future, we can refine the scope of local credit legislation through legislative interpretation and guidance documents, strictly limit the creation of disciplinary measures involving personal freedom and major property rights, and strengthen the application of the principle of legal reservation. At the same time, at the national level, the ' social credit law ' should be implemented as soon as possible to clarify the application of core rules such as the determination of dishonesty and the application of disciplinary punishment, and to eliminate the fragmentation of local legislation.

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