



A Study on the Rules for Determining Parent-Child Relationships under Assisted Reproductive Technologies

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Abstract. This article aims to address the fundamental challenges posed by assisted reproductive technologies (ART) to traditional rules for determining parent-child relationships. By examining the limitations of single-factor models such as biological parentage, gestational motherhood, and intention-based approaches, this paper proposes an integrated adjudicative model that takes the “best interests of the child” as its core normative value and adopts a “three-tier progressive judicial review” as its operational framework. This model conducts dynamic and hierarchical assessments of reproductive intention, de facto caregiving, and biological connection, thereby transforming abstract principles into practicable judicial guidance. In doing so, it offers a solution that combines theoretical innovation with practical operability for resolving current judicial dilemmas and promoting the systematic reconstruction of future legal rules.

Keywords: Assisted reproductive technologies; determination of parent-child relationships; best interests of the child; judicial review

1 Introduction

The rapid development of assisted reproductive technologies (ART) is profoundly reshaping the traditional mechanisms through which parent-child relationships are formed. Technologies such as in vitro fertilization, sperm or oocyte donation, and surrogacy have rendered biological connection, gestational fact, and reproductive intention no longer necessarily unified, thereby exposing the growing inadequacy of traditional single-factor rules for determining parent-child relationships in both normative interpretation and judicial application. In China, the current legal system has yet to establish a systematic and explicit normative framework for determining parent-child relationships under ART conditions. Judicial practice is characterized by fragmented standards and divergent adjudicative approaches, which not only undermine the predictability of legal application but may also adversely affect the stability of identity and the protection of interests of children born through assisted reproduction^[1]. However, existing scholarship has largely focused on advocating for one of the single standards—“biological connection,” “gestation,” or “intention”—while lacking an operational frame-

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work capable of systematically integrating multiple factors and subjecting them to dynamic assessment under the principle of the best interests of the child. Accordingly, this article seeks to propose and substantiate a layered and integrated adjudicative model, in order to fill this research gap and provide a concrete theoretical tool for resolving dilemmas in judicial practice^[2].

Based on the foregoing problem awareness, this article takes surrogacy—the context in which conflicts over parent-child relationships are most concentrated—as its analytical entry point. It encompasses various forms of assisted reproductive technologies, including in vitro fertilization as well as sperm and oocyte donation, and comprehensively employs normative analysis, typological analysis, and value-based analysis to examine the institutional logic and practical limitations of existing models for determining parent-child relationships^[3]. On this basis, the principle of the best interests of the child is introduced as an overarching standard of assessment, and a multi-factor, multi-layered integrated adjudicative model for determining parent-child relationships is proposed. This model aims to provide a structurally clear and operational analytical framework for the systematic reconstruction of rules governing the determination of parent-child relationships under assisted reproductive technologies^[4].

2 The Foundations of Traditional Rules and the Deconstructive Impact of ART

2.1 The Dual Foundations of Traditional Rules for Determining Parent-Child Relationships

In a social context where natural reproduction has long occupied a dominant position, the formation of parent-child relationships has been characterized by a high degree of factual certainty and structural stability. The traditional civil law rules for determining parent-child relationships are constructed upon this factual premise, and their normative foundation may be summarized as a dual structure grounded in biological connection as the factual basis and oriented toward the maintenance of family order as a value objective. Specifically, biological parentage doctrine, gestational motherhood doctrine, and the marital presumption rule together constitute the core institutional framework of traditional parent-child relationship determination^[5].

Biological Parentage: Biological Connection as the Basis for Determining Parent-Child Relationships.

Biological parentage doctrine takes biological parent-child relationships as the primary basis for determining legal parental status. Its institutional logic lies in confirming the natural causal relationship between parents and children through genetic connection^{[6][7]}. Under conditions of natural reproduction, the genetic connection between parents and children is characterized by uniqueness and exclusivity. Biological ties are not only highly objectively verifiable, but also provide a relatively stable factual foundation for parent-child identity^[8].

In Chinese judicial practice, biological factors have long played a significant role in actions for the confirmation or denial of parent-child relationships, as well as in parentage testing. Although current law does not explicitly designate biological connection as the sole criterion, it continues to hold foundational significance in the determination of paternity^[7]. The implicit premise underlying biological parentage doctrine is that biological parents and legal parents who bear caregiving responsibilities substantially coincide as subjects.

Gestational Motherhood: Determining the Mother-Child Relationship Based on the Fact of Birth.

In the determination of mother-child relationships, traditional rules place greater emphasis on the fact of childbirth, directly confirming maternal identity through the principle that “the woman who gives birth is the mother”^[9]. Compared with the father-child relationship, the mother-child relationship exhibits stronger identifiability under conditions of natural reproduction, as the act of childbirth itself constitutes a direct factual basis for the establishment of the mother-child relationship^[9].

The institutional rationality of gestational motherhood doctrine lies in the fact that, under natural reproduction, the woman who gives birth is typically also the provider of the oocyte and the primary caregiver, resulting in a high degree of unity among the fact of birth, biological connection, and caregiving behavior. Against this background, the law is able to confirm maternal identity without the need to further distinguish among different subjects.

The Marital Presumption Rule: A Value Orientation Toward Family Order.

The marital presumption rule constitutes an important institutional arrangement within traditional parent-child relationship determination, bearing attributes of both status law and family law. By presuming that children born during the subsistence of a marriage are the joint children of the spouses, this rule reduces the evidentiary costs of parent-child relationship determination and preserves the stability of family relationships^[10].

Compared with biological parentage doctrine and gestational motherhood doctrine, the marital presumption rule does not rely solely on biological facts, but places greater emphasis on the normative values of family order and social ethics^[10]. However, its institutional premise likewise rests on the assumption that reproductive behavior within marriage is typically based on the joint intention of both spouses and carried out through natural reproduction.

2.2 The Thorough Deconstruction of Traditional Foundations by ART

The intervention of assisted reproductive technologies (ART) has disrupted the traditional structure in which biological connection, gestation, and marriage were highly overlapping elements in the determination of parent-child relationships, thereby fundamentally destabilizing the factual premises upon which existing rules were established.

The Separation of Biological Parents, Gestational Mothers, and Intended Parents.

Under ART conditions, the reproductive process is disaggregated into several relatively independent stages: the biological parents who provide sperm or oocytes, the woman who undertakes pregnancy and childbirth, and the intended parents who direct the reproductive process based on reproductive planning and caregiving intention. These roles may be assumed by different subjects^[11]. For example, in surrogacy arrangements, the gestational mother does not provide genetic material, while the commissioning parents, although genetic contributors, do not participate in the process of pregnancy^[12].

This multi-subject separation renders the traditional logic of “fact equating to status” difficult to sustain, as no single factor can independently fulfill the function of determining parent-child relationships.

Parent-Child Relationships from “Natural Unity” to “Artificial Differentiation”.

Under the model of natural reproduction, the formation of parent-child relationships exhibits clear characteristics of naturalness and integrity; under ART conditions, however, their formation displays pronounced features of artificial design. Reproductive behavior is no longer a natural outcome but is realized through technological means, medical procedures, and reproductive planning, transforming parent-child relationships from “natural facts” into the products of “institutional construction”^[13].

This transformation means that parent-child relationships are no longer merely biological or ethical issues, but rather institutional matters requiring legal value balancing and normative allocation.

The Failure of Traditional Rules under Technological Intervention.

When the elements of biological connection, gestation, and marriage become separated, the factual foundations upon which traditional rules for determining parent-child relationships rely cease to exist. A mechanical application of biological parentage doctrine may neglect the child’s actual caregiving and attachment relationships; rigid adherence to gestational motherhood doctrine may result in manifest injustice in surrogacy cases; and the marital presumption rule likewise encounters difficulties in application in cases of non-marital reproduction or cross-border surrogacy^[14].

Table 1. Comparison of Parent-Child Relationship Determination Elements under Traditional Reproduction and ART-Induced Role Separation

Determination Elements	Natural Reproduction Context	ART Context	Institutional Implications
Biological Connection	A unique genetic correspondence between parents and children	Genetic providers may not participate in caregiving	Biological connection no longer automatically equates to legal parenthood ^[11]
Gestational Fact	The woman who gives birth is typically the genetic mother	The woman who gives birth may be only a surrogate	The normative foundation of gestational motherhood doctrine is undermined ^[12]

Marital Relationship	Childbirth is closely associated with marriage	Reproductive behavior may occur outside marriage	The applicability of the marital presumption rule is restricted ^[10]
Caregiving Intention	Typically aligned with biological connection and marriage	Becomes a core but not exclusive factor	Necessitates the introduction of a value-based assessment mechanism ^[2]

Accordingly, ART does not merely constitute a partial modification of traditional rules, but rather effects a systematic deconstruction of their institutional foundations, thereby posing concrete demands for the reconstruction of rules governing the determination of parent-child relationships. The comparison of determining factors for parent-child relationships under the role separation induced by traditional fertility and assisted reproductive technology (ART) is shown in Table 1.

3 The Dilemmas of Existing Norms and a Comparative Evaluation of Theoretical Models

3.1 The Dual Dilemma of China's Existing Norms and Judicial Practice

Against the background in which assisted reproductive technologies have become widely embedded in social life, China's normative response to the determination of parent-child relationships has lagged behind. This delay manifests as a dual dilemma characterized by normative absence at the legislative level and fragmented adjudicative approaches at the judicial level.

Legislative Vacuum and the Administrative Prohibition of Surrogacy.

From a normative perspective, the Marriage and Family Book of the Civil Code of China does not provide specific provisions for determining parent-child relationships under assisted reproductive technologies. Its relevant rules continue to presuppose natural reproduction, making them difficult to apply directly to new reproductive practices such as surrogacy and sperm or oocyte donation. At the same time, the administrative regulatory system adopts an explicit prohibitive stance toward surrogacy. Regulatory instruments such as the Measures for the Administration of Assisted Reproductive Technologies and the Technical Specifications for Assisted Reproductive Technologies exclude surrogacy from the scope of lawful medical practices^[15].

However, the administrative prohibition of surrogacy does not eliminate the identity determination issues faced by children who have already been born through surrogacy arrangements. The legislative avoidance of establishing rules for parent-child relationship determination leaves judicial practice without clear normative guidance when resolving related disputes, forcing courts to rely on case-by-case interpretations within existing doctrinal frameworks^[11].

Inconsistent Judicial Standards: Oscillation between Gestational Fact and Biological Connection.

Judicial practice exhibits a marked oscillation between the "gestational approach"

and the “child-interest approach.” Taking the landmark “Shanghai surrogacy child guardianship case” as an example, the court of first instance strictly adhered to the traditional doctrine of gestational motherhood and awarded guardianship to the surrogate mother. By contrast, the appellate court innovatively introduced the principle of the best interests of the child, comprehensively considering the intended mother’s caregiving intention, economic capacity, and the stable living environment already formed for the child, and ultimately reversed the original judgment. This case illustrates both the limitations of single-factor standards and the necessity of comprehensive assessment. Some judgments take the fact of childbirth as the core basis for confirming the mother-child relationship, thereby continuing the traditional gestational motherhood approach; others emphasize the importance of biological connection and treat genetic ties as a key reference in determining parental status.

In the absence of unified adjudicative rules, different courts may reach markedly divergent conclusions in similar cases, rendering judicial outcomes highly case-specific. Such uncertainty not only undermines the predictability of judicial decisions but also fails to provide stable behavioral guidance for similar disputes.

The Systemic Insufficiency of Child Interest Protection.

From a value-oriented perspective, existing norms and judicial practice remain insufficient in protecting children’s interests in the determination of parent-child relationships under assisted reproductive technologies. Although the “principle of the best interests of minors” has been repeatedly emphasized in various laws and judicial interpretations, in concrete adjudication children are often relegated to a subsidiary position in parental status disputes. Their actual caregiving conditions, emotional attachment relationships, and long-term interests have not been sufficiently or systematically considered^[16].

In cases involving surrogacy or sperm and oocyte donation, a mechanical reliance solely on biological connection or gestational fact may place children at a disadvantage with respect to identity determination, the allocation of caregiving responsibilities, and the protection of inheritance rights.

3.2 Comparative Analysis of Major Theoretical Models and Insights from Foreign Jurisdictions

In response to the challenges posed by assisted reproductive technologies to traditional rules, academic discourse has developed multiple theoretical approaches to the determination of parent-child relationships, among which the most representative are biological parentage, gestational motherhood, and intention-based models.

Comparative Analysis of the Three Major Theoretical Models.

The biological parentage model emphasizes the foundational role of genetic connection in determining parent-child relationships. Its advantage lies in its relatively objective and stable standard, which helps preserve the natural attributes of parent-child re-

relationships^[8]. However, under assisted reproductive conditions, this model may overlook caregiving relationships in the child's actual life and give rise to the institutional risk of "biological connection without corresponding responsibility."

The gestational motherhood model takes the fact of childbirth as the core basis for determining maternal identity and is highly operable. In surrogacy contexts, however, this model may negate the reproductive plans and caregiving intentions of the commissioning parents, thereby resulting in manifest injustice.

The intention-based model regards reproductive intention and caregiving plans as the core foundation of parent-child relationships, emphasizing respect for reproductive autonomy and family planning. However, if insufficiently constrained, this model may weaken the status of children as independent rights holders and lead to the excessive contractualization of parent-child relationships^[4].

Insights from Foreign Legislative Practices.

In foreign legal practice, different countries have adopted differentiated approaches to determining parent-child relationships under assisted reproductive technologies. For example, some states in the United States have clarified the legal status of intended parents through legislation, emphasizing the decisive role of reproductive intention in parent-child relationships^[5]; While recognizing the legality of surrogacy, the United Kingdom facilitates the transfer of parental status between the gestational mother and the commissioning parents through a court order mechanism.; Germany adopts a more conservative approach, continuing to treat the fact of childbirth as an important basis for determining the mother-child relationship, while supplementing it with strict institutional constraints^[1].

Despite differences in institutional design, a shared trend can be observed: the gradual recognition of the limitations of single-factor standards and efforts to achieve a balance of interests through multi-factor assessment.

The Necessity of Proposing an Integrated Adjudicative Model.

A comparison of China's existing normative dilemmas with the major theoretical models reveals that no single determination standard can fully address the complex realities of parent-child relationships under assisted reproductive technologies. Biological connection, gestational fact, and reproductive intention each possess their own rationality, yet none is sufficient on its own to fulfill all the functions required for determining parent-child relationships.

Therefore, it is necessary—while adhering to the principle of the best interests of the child—to construct a parent-child relationship determination model capable of comprehensively considering multiple factors, so as to provide a more stable and reasonable institutional response to parent-child relationships under assisted reproductive technologies. The comparative analysis of the main models for determining paternity under assisted reproductive technology is shown in Table 2.

Table 2. Comparative Analysis of Major Models for Determining Parent-Child Relationships under Assisted Reproductive Technologies

Determination Model	Theoretical Basis	Applicable Contexts	Advantages	Limitations
Biological Parentage Model	Genetic determinism	Natural reproduction; selected ART contexts	Objective and stable	Neglects caregiving relationships and children’s actual interests ^[7]
Gestational Motherhood Model	Primacy of gestational fact	Natural reproduction; certain surrogacy cases	High operability	May lead to manifest unfairness in surrogacy contexts ^[12]
Intention-Based Model	Reproductive autonomy and family planning	Lawful ART with clear reproductive agreements	Respects intention and planning	Tends to weaken the child’s status as an independent subject ^[3]
Integrated Adjudicative Model	Best interests of the child	All ART contexts	Balances interests; flexible application	Requires a clearly articulated rule structure (discussed below)

In summary, both traditional rules for determining parent-child relationships and the major theoretical models developed in response to assisted reproductive technologies face problems of limited applicability or value imbalance to varying degrees. In order to present more intuitively the adjudicative logic and institutional limitations of various determination models in the context of assisted reproductive technologies, the following Table 3 provides a comparative analysis of traditional rules and existing theoretical models.

Table 3. Comparative Analysis of Traditional Rules and Existing Theoretical Models for Determining Parent-Child Relationships

Determination Model	Theoretical Basis	Core Determinative Factors	Primary Applicable Contexts	Institutional Advantages	Primary Limitations
Biological Parentage Doctrine	Biological determinism	Biological connection (DNA)	Natural reproduction; selected ART contexts	Objective and stable standards; facilitates fact-finding	Neglects actual caregiving relationships and may result in “biological connection without corresponding responsibility”
Gestational Motherhood Doctrine	Primacy of gestational fact	Fact of childbirth	Natural reproduction	Highly operable; clear identification of the mother-child relationship	May deny reproductive plans and caregiving intentions in surrogacy cases, leading to manifest unfairness
Marital Presumption Rule	Maintenance of family order	Subsistence of marriage	In-marriage natural reproduction	Reduces evidentiary costs; preserves family stability	Difficult to adapt to non-marital reproduction and ART contexts

Intention-Based Model	Reproductive autonomy and contract theory	Reproductive intention; reproductive agreements	Lawful ART with clear reproductive arrangements	Respects party autonomy and family planning	May excessively contractualize parent-child relationships and weaken the child's status as an independent subject
Common Features of Existing Models	Single-factor dominance	One of biology, gestation, or intention	Specific categories of cases	Relatively clear adjudicative pathways	Inadequate to address complex reproductive structures involving multiple factors
Integrated Adjudicative Model	Best interests of the child	Comprehensive multi-factor assessment	All ART contexts	Balances interests; enhances institutional flexibility	Requires further specification of rule structure (see below)

It can thus be observed that, although traditional rules and existing single-factor theoretical models each possess their own rationality, none is capable of independently fulfilling the institutional function of determining parent-child relationships under assisted reproductive technologies. Against this background, it is necessary to move beyond determination approaches dominated by a single factor and to construct an integrated determination model centered on the best interests of the child, one that is capable of dynamically weighing multiple factors. On this basis, the following sections will systematically demonstrate the structure, theoretical foundations, and concrete application of the integrated determination model.

4 An Integrated Determination Model with Multi-Level and Dynamic Assessment

Building upon the foregoing analysis of the dilemmas of existing norms and the limitations of single-factor theoretical models, it is necessary to move beyond the traditional approach of treating a single element as the sole standard and to construct a framework for determining parent-child relationships that is capable of responding to the complex realities of assisted reproductive technologies. The “integrated determination model” proposed in this article is not a simple aggregation of existing standards, but rather a dynamic model that takes the best interests of the child as its core value, conducts comprehensive multi-factor assessment, and is supplemented by a layered adjudicative mechanism.

4.1 The Design of the Integrated Determination Model

Taking the “Best Interests of the Child” as the Core Principle.

The primary feature of the integrated determination model lies in establishing the principle of the best interests of the child as the overarching value standard governing the determination of parent-child relationships. Whether in cases of natural reproduction or assisted reproductive technologies, the ultimate purpose of determining parent-

child relationships should not be limited [14] to the formal confirmation of parental status, but should serve the child's overall interests in identity stability, daily care, and personal development.

This position is also consistent with the fundamental spirit established by the Convention on the Rights of the Child, which requires that the best interests of the child be treated as a primary consideration in all institutional arrangements concerning children.

Comprehensive Multi-Factor Assessment: Biology, Gestation, Intention, and Caregiving.

The integrated adjudicative model constructed in this article takes the best interests of the child as an inviolable ultimate value criterion and a benchmark for resolving conflicts. Under this overarching principle, a three-tiered adjudicative structure is established: first, priority is given to examining clear, voluntary reproductive intention agreements that conform to public order and good morals (such as notarized agreements); second, where intention is absent or conflicting, emphasis is placed on assessing the stability and continuity of de facto caregiving relationships; finally, biological connection and the fact of gestation are treated as auxiliary and presumptive reference factors. This structure aims to transform abstract principles into judicially operable review steps with an explicit order of priority. The relevant factors mainly include:

First, the factor of biological connection, as the natural foundation of parent-child relationships, retains important referential value but no longer automatically determines legal parental status^[7];

Second, the fact of gestation continues to possess foundational significance and, particularly in the absence of conflicts among other factors, may serve as an important basis for determining the mother-child relationship^[12];

Third, reproductive intention and reproductive planning reflect the degree of subjective commitment of the relevant parties to the reproductive outcome and constitute important factors in assessing the assumption of parental responsibilities^[3];

Fourth, actual caregiving behavior and its continuity reflect the child's attachment relationships in real life and have a direct impact on the assessment of the child's long-term interests.

The integrated determination model emphasizes that these factors are not to be mechanically aggregated, but should instead be substantively balanced under the overarching consideration of the child's best interests.

A Layered Adjudicative Structure: General Rules and Exception Mechanisms.

To avoid excessive reliance on judicial discretion in adjudicative outcomes, the integrated determination model incorporates a layered adjudicative mechanism in its structural design.

At the level of general rules, priority is in principle given to recognizing as legal parents those subjects who possess clear reproductive intention and have already assumed, or are continuously prepared to assume, caregiving responsibilities;

At the level of exception mechanisms, where such determinations would clearly harm the child's interests or result in manifest injustice, deviations from the established arrangement are permitted in order to adjust the parent-child relationship.

This structure helps to achieve a balance between stable expectations and case-specific justice.

4.2 The Theoretical Foundations of the Integrated Determination Model.

The Normative Spirit of the Convention on the Rights of the Child.

Article 3 of the Convention on the Rights of the Child explicitly requires that, in all actions concerning children, the best interests of the child shall be a primary consideration. The integrated determination model precisely operationalizes this principle of international human rights law within the context of determining parent-child relationships under assisted reproductive technologies, transforming it from an abstract value into a practical adjudicative standard.

The Pursuit of Substantive Justice in Family Law.

Modern family law has gradually moved beyond traditional approaches centered on formal equality and status presumptions, placing greater emphasis on relational substance and the balancing of interests. Under assisted reproductive conditions, the mechanical application of formal standards often fails to achieve justice in individual cases. By introducing multi-factor assessment, the integrated determination model reflects the shift in family law from formal justice toward substantive justice.

Adaptive Requirements in the Interaction between Technology and Law.

The development of assisted reproductive technologies demonstrates that technological progress continually reshapes the structure of social relationships, and that law, if it rigidly adheres to existing paradigms, will inevitably lag behind institutionally. By responding to technological change in a dynamic and open manner, the integrated determination model accords with the fundamental requirement of "adaptive adjustment" in the interaction between technology and law.

4.3 Application of the Integrated Determination Model in Different ART Contexts.

To enhance the operability of the integrated determination model, it is necessary to distinguish among different types of assisted reproductive technologies and to concretize the applicable factors and adjudicative logic for each context. The exemplary application of the comprehensive judgment model in different assisted reproductive technology (ART) scenarios is shown in Table 4.

Table 4. Illustrative Applications of the Integrated Determination Model across Different ART Contexts

ART Context	Core Conflicting Factors	Specific Emphases in the Best Interests of the Child	Dynamic Illustration of Factor Weighting	Presumptive Outcome Orientation
Surrogacy	Gestational mother v. intended parents	Stability of living arrangements; continuity of emotional attachment	Intention (high) + caregiving in fact (high) > gestation (medium) > biological connection (variable)	Presumption favors intended parents with caregiving capacity
Sperm Donation	Genetic father v. social father	Paternal role identification; family integrity	Intention/caregiving (high) > biological connection (low)	Legal status granted to the caregiving father
Post-divorce Disputes over Cryopreserved Embryos	Reproductive rights between former spouses	The right not to be compelled into parenthood	Mutual consent of both parties (required) > unilateral intention	No parental status imposed absent mutual consent
Embryo Donation	Genetic parents v. caregiving parents	Right to identity awareness; non-harmful environment	Intention/caregiving (high) > gestation (medium) > biological connection (low)	Legal status granted to the caregiving parents

5 Conclusion

Assisted reproductive technologies have fundamentally undermined the factual foundation upon which traditional rules for determining parent-child relationships rely—namely, the unity of biological connection, gestation, and intention—thereby rendering those traditional rules ineffective in contexts such as surrogacy and gamete donation.

Each single-factor determination model—whether based on biological connection, gestation, or intention—suffers from inherent deficiencies: it may neglect children’s actual caregiving relationships, lead to unjust adjudicative outcomes, or excessively contractualize parent-child relationships in ways that weaken child protection. In light of these limitations, this article proposes an “integrated adjudicative model” governed by the principle of the best interests of the child. By subjecting multiple factors—including biological connection, gestation, intention, and caregiving—to structured assessment and layered adjudication, this model seeks to transcend single-standard approaches and achieve a balance between the protection of children’s rights and institutional flexibility.

To improve the institutional framework, China should, while adhering to existing policy boundaries, clarify the core principles and elements for determining parent-child relationships through legislative or judicial means. This would guide judicial practice away from mechanical reliance on isolated facts toward substantive consideration of children’s long-term well-being, thereby promoting the systematic adaptation of legal rules in the technological era.

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