

On Several Issues Concerning the Moderate Codification of Education Law in China

Qian Zhao

College of Arts and Law, Chengdu College of Arts and Sciences, Chengdu, Sichuan, China

Abstract: *The compilation of the education code is a key task for many countries to promote the revitalization of education, and it is also an inevitable trend of education development. Determining the path, choosing the compilation model, designing the structural framework, and technical positioning are the key issues in realizing the compilation of the education code. In terms of the path, it is recommended to adopt the "two-step" approach of drafting the general provisions first and then compiling the specific provisions. In terms of the selection of the compilation model, it is recommended to adopt the idea of "moderate compilation" to balance the characteristics of my country's existing legal system in the field of education. Under the framework of "general provisions + specific provisions", the general provisions should be structurally arranged around the right to education, and the specific provisions should be logically arranged according to the type of education. In terms of structural framework and reconstruction, a system that meets the unique system logic requirements should be considered to achieve the scientific nature of the education code. The "common element extraction method" should be selectively used to summarize and generalize legal norms.*

Keywords: Compilation Model, Structural Framework, Legislative Techniques, Common Factor Extraction.

1. Introduction

The Civil Code of the People's Republic of China is the first law in the history of New China to be named as a "Code," marking a milestone in the codification of legislation in China. President Xi Jinping emphasized that the Civil Code "provides a good example for the codification of legislation in other fields. We must summarize the experience of drafting the Civil Code and promote codification in legislative areas that are ripe for development." The report of the 20th National Congress of the Communist Party of China laid out a strategic plan to "improve the socialist legal system with Chinese characteristics, with the Constitution at its core," calling for coordinated efforts in legislation, amendment, repeal, interpretation, and codification to enhance the systematic, holistic, coordinated, and timely nature of legislation. Following the 2021 Legislative Work Plan of the Standing Committee of the National People's Congress, which emphasized the need to "explore and initiate the codification of administrative legislation in areas ripe for codification, such as environmental law, education law, and general administrative law," the 2022 and 2023 legislative work plans reiterated the importance of studying and initiating the codification process in relevant fields. The education code is tasked with achieving the goals set out in China's Education Modernization 2035, which include "improving the rule of law in education, establishing a comprehensive system of education laws and regulations, and enhancing legal support for school governance." Addressing current issues in education law through codification has become a key initiative in China's efforts to advance the rule of law in education. Clearly, the drafting of an education code is now on the horizon.

With the promulgation of the Degree Regulations in 1980, China's education sector entered a new era of state regulation and legal framework establishment. The enactment of laws such as the Compulsory Education Law (1986), the Teachers Law (1993), the Education Law (1995), the Vocational Education Law (1996), the Higher Education Law (1998), and the Law on the Promotion of Private Education (2002) marked

the initial formation of the socialist system of education laws and regulations with Chinese characteristics. However, China's education laws are still at an early stage of systematization. "The legislative model at this early stage, although well-defined, is overly fragmented. Furthermore, due to the rapid social transformation in China over the past few decades, standalone laws have inherent shortcomings in addressing different periods and issues, leading to potential overlaps, gaps, fragmentation, conflicts, and contradictions in specific regulations. Additionally, many guiding norms were left behind as part of exploratory reforms [1]." Therefore, it is necessary to "achieve codification of education law by reviewing all existing legal norms, amending outdated or conflicting provisions, and introducing new provisions, ultimately creating a unified education law based on shared principles, with consistent content and an organic connection [2]."

Regarding the major issue of how to achieve codification of education law, scholars have pointed out that it is a massive, complex, and highly challenging task [3]. This requires clarifying the fundamental conditions, current status, and challenges of codifying education law in China, as well as exploring solutions [4]. It is also necessary to draw insights from the Civil Code for the codification of education law in China, learn from the basic forms of education codes in other countries, and clarify the fundamental functions, value goals, legislative principles, and core elements of China's education code [5]. Furthermore, summarizing China's more than 40 years of experience in the development of the rule of law in education [6] is essential for developing an education code structure and action plan that is compatible with China's practical foundation [7].

2. Legislative Path: A "Two-Step" Legislative Framework

During the drafting of the Civil Code, various proposals were put forward by scholars. These included a "one-step approach" that would introduce a complete Civil Code all at once, a "two-step approach" that would first compile the General

Provisions and then each of the specific sections, and even a "three-step approach" that would insert the drafting of a Personality Rights Law between the two steps. In 2016, the Legislative Affairs Commission of the Standing Committee of the National People's Congress clarified the adoption of the "two-step" approach. The first step was the compilation of the General Provisions of the Civil Code, followed by the second step of drafting the specific parts of the Civil Code. The development of this two-step legislative process not only reflects the phased achievements of adopting the seven-part system of the Civil Code but also aligns with the roadmap for achieving the high-quality legislative goals set by the Central Committee of the Communist Party of China. Thus, scientifically determining the legislative steps in codification is a prerequisite for ensuring the success of the codification process.

Given the fragmentation and gaps that still exist in China's education legislation, scientifically defining the legislative path for the codification of education law is a critical first step in guiding the proper initiation of the codification process. The determination of the steps for compiling the education code must also be tailored to China's actual circumstances. Based on the experiences and lessons learned from codification efforts in other countries, the scientific arrangement of the steps in the codification process is one of the essential conditions for ensuring the success of the codification endeavor.

Currently, an analysis of codification efforts in different countries with diverse legal systems—such as France, Moldova, Russia, and the United States—reveals varying approaches in the content and scope of education law codification. For instance, at the beginning of the 21st century, Russia, aiming to address the problem of scattered legal sources in the field of education, set out to draft a Russian Education Code by revising the country's basic education laws. However, for various reasons, the Federal Law on Education in the Russian Federation was eventually enacted in 2012. The Federal Center for Educational Legislation, when initially drafting the Education Code, aimed to establish educational relations as a distinct type of social relation, thus seeking to rationalize education as an independent legal sector. The first step involved reducing the number of outdated or unreasonable legal norms in the field of education, filling gaps between various legal norms, resolving contradictions, and reducing redundancies. The second step optimized the relationship between education law and other legal sectors, consolidating legal provisions related to education that were scattered across different sectors. However, in practice, this legislative intent led to a draft education code that was exceptionally large—just the General Provisions consisted of 21 chapters. In 2010, during the first round of discussions, the voluminous structure was heavily criticized by the expert committee. After adjustments, the 2012 Federal Law on Education in the Russian Federation adopted a framework of 15 chapters and 111 articles. This structure showcased certain innovative features of codification, significantly revising existing laws, filling legal gaps, and enhancing the authority and coherence of Russian education law based on a more rational structure and unified values.

From the perspective of China's actual situation, after more

than 40 years of development since the beginning of the reform and opening-up period, China's education legislation has achieved preliminary but notable success. At present, China has largely established a socialist legal system with Chinese characteristics, centered on the Constitution and supported by over a dozen education-specific laws, more than 200 administrative regulations related to education, and over 12,000 local education regulations (as of August 2019) [8].

Table 1: Statistics on Education Laws

Legal Sources	Title of Laws and Regulations
Law	1. Law of the People's Republic of China on Academic Degrees (1980 2004)
	2. Compulsory Education Law of the People's Republic of China (1986 / 2018)
	3. Teachers Law of the People's Republic of China (1993 / amended in 2009)
	4. Education Law of the People's Republic of China (1995 / amended in 2015)
	5. Vocational Education Law of the People's Republic of China (1996 / 2021)
	6. Higher Education Law of the People's Republic of China (1998 / 2018)
	7. National Defense Education Law of the People's Republic of China (2001 / 2018)
	8. Law on the Promotion of Private Education of the People's Republic of China (2002 / 2018)
	9. Family Education Promotion Law (2021)
	10. Patriotic Education Law of the People's Republic of China (passed in 2023 / implemented in 2024)

In the compilation of the Civil Code, there were different proposals, including a "one-step" approach for introducing the entire Civil Code at once, a "two-step" approach starting with the General Provisions followed by separate chapters, and even a "three-step" approach with an additional phase for the codification of personality rights law. In 2016, the Legislative Affairs Commission of the National People's Congress Standing Committee formalized the "two-step" approach. The first step involved the codification of the General Provisions, and the second step involved the codification of the various chapters of the Civil Code. This "two-step" legislative strategy resulted in a Civil Code structure consisting of seven sections, fulfilling both the innovative compilation and the high-quality completion of the tasks set by the Central Government. Clearly, a well-defined legislative process is a prerequisite for the successful codification of a code.

Considering the fragmented and incomplete state of China's current education legislation, it is critical to determine a scientific legislative path for the codification of education law. This step is key to guiding the proper implementation of the education law codification process. The steps for codifying education law should also be tailored to China's actual circumstances. Experiences from foreign countries show that a scientifically arranged process is essential for the successful codification of law.

For instance, in the early 21st century, Russia initiated a reform of its basic education law in an attempt to consolidate fragmented sources of educational law under a unified Education Code. However, the resulting draft became overly complex, and after substantial criticism, Russia ultimately adopted the Federal Law on Education of the Russian Federation in 2012. The simplified structure, consisting of 15 chapters and 111 articles, represented an innovation in codification, significantly improving the authority and

coherence of Russian education law.

In China, after over 40 years of reform and development, an education law framework has emerged. This framework includes the Constitution and over ten education-specific laws, 200 administrative regulations, and more than 12,000 local education regulations (as of August 2019).

3. Legislative Model: "Moderate Codification" as a Substantive Codification Approach

Codification can be classified into substantive and formal approaches. Substantive codification requires a mature body of statutory law, which serves as both the foundation and the guiding principles for codification. China's Civil Code was compiled using a substantive codification approach, building on various civil laws enacted over different periods—such as the General Principles of Civil Law, Property Law, Contract Law, Marriage Law, and Tort Liability Law—as well as extensive judicial and quasi-judicial interpretations that reflect current social realities.

Similarly, in the field of education law, China has already established a preliminary legal framework. This framework is centered on the Education Law and supported by laws such as the Teachers Law, Compulsory Education Law, Higher Education Law, Vocational Education Law, Law on the Promotion of Private Education, Law on the Protection of Minors, and the Regulations on Academic Degrees. Additionally, administrative regulations, departmental rules, and judicial interpretations further support this framework. This foundational structure suggests that China is well-positioned to undertake the substantive codification of education law.

The codification of education law must be guided by the constitutional guarantee of the right to education, while adjusting legal relationships within the education system to reflect the diverse interests of various stakeholders. The complexity of the legislation is thus significantly heightened.

It is worth noting, however, that the current classification of education law remains a matter of debate. The White Paper on the Socialist Legal System with Chinese Characteristics classifies education law as a subfield of administrative law, a view referred to in academic circles as the "subordinate theory" [9]. In contrast, others advocate for the independent status of education law. China's existing education laws, most of which were enacted in the 1990s, primarily regulate administrative relationships within the public education sector. Public management of education has historically been carried out through administrative, financial, and personnel management. However, the scope of public management has now expanded to include private schools, extracurricular tutoring, partnerships between schools and enterprises, online education, international schools, and more. These developments have created a more complex and diverse set of social relationships that require regulation, necessitating a broader and more integrated legislative approach.

Therefore, the challenge of achieving "moderate codification" in education law requires addressing two fundamental questions: (1) Can a single Education Code adequately

regulate all aspects of education? (2) Which parts of the current education laws and regulations can be integrated into this Education Code?

As to the first question, some scholars support the idea of compiling a unified Education Code that consolidates all existing education-related laws [10]. However, given the complexity of educational activities, it seems overly idealistic to expect a single code to govern every aspect of education. Thus, the author argues that it would be necessary to allow room for special laws, creating space for administrative regulations, departmental rules, local regulations, and other regulations to complement the Education Code.

For the second question, based on over 40 years of legislative development, the substantive foundation for codification is already in place. Laws such as the Education Law, Compulsory Education Law, Higher Education Law, National Defense Education Law, Law on the Promotion of Private Education, Vocational Education Law, Teachers Law, Regulations on Academic Degrees, and draft laws such as the Preschool Education Law and Academic Degrees Law should be integrated into the Education Code. Since the Education Code will be a form of central legislation, local regulations, autonomous regulations, and departmental rules can be excluded from the codification process. According to Article 80(2) of the Legislation Law, "Matters prescribed by departmental rules should be those that implement laws, administrative regulations, decisions, and orders of the State Council." Therefore, departmental rules should refine the provisions of higher-level laws and need not be included in the Education Code.

4. System Structure: A Chinese-Characteristic System Based on Types of Education

The codification system is the essence of legal codification, composed of institutions and norms with an internal logical connection and structured around values that are inherently consistent. During the drafting of the Civil Code in China, the Standing Committee of the National People's Congress emphasized the goal of compiling a code that "meets the requirements of developing socialism with Chinese characteristics, suits China's national conditions, is scientifically structured, rigorously organized, and contains reasonable and consistent norms." This reflects the aim of constructing a scientifically reasonable Civil Code tailored to China's realities. "Experience from various countries' codification of education laws also proves that a scientifically structured system is the soul of codification."

Regarding the structural arrangement of the Education Code, Professor Zhan Zhongle, based on existing Chinese education laws, suggested that the Education Code should consist of eight parts: general provisions, preschool education, compulsory education, higher education, private education, vocational education, national defense education, and school operations. Ma Leijun, Deputy Director of the Institute of Education Law and Standards at the Chinese Academy of Educational Sciences, proposed that the general provisions of the Education Code should focus on the right to education, structured around the administrative authority of education, school educational rights, family educational rights, and

societal educational rights. The specific sections of the code should include special provisions that are not suitable for inclusion in the general provisions, addressing areas such as preschool education, compulsory education, secondary education, higher education, lifelong education, special education, minority education, and private education. Professor Sun Xiaobing and others advocated that protecting the right to education is a systematic project, requiring the exercise of responsibilities and obligations by different educational entities. They suggested constructing a comprehensive system from the perspectives of state guarantees, school establishment, student development, teacher quality, and social support to ensure the realization of the right to education, thereby forming the national education system of the People's Republic of China. Professor Ren Haitao proposed that the content arrangement of each section of the Education Code should be based on core principles. In addition to general provisions, the specific sections should include provisions on educational entities, school education, education and family/society, and special matters [11].

Given that "the current education law system has scientific defects both in terms of logic and values," the codification of the Education Code should reasonably arrange its system structure by drawing on the successes of the Civil Code and foreign education law codifications. This will ensure that it maintains both systemic coherence and logical consistency with Chinese characteristics. The general provisions of the Education Code should establish a system that is both systematic and logical, incorporating features specific to China. Since the general provisions serve to guide the application of legislation, they should standardize universally applicable and leading rules within the education legal system, clarify basic provisions, and construct a structural system that defines the functions and obligations of educational entities—such as the state, state organs, schools, other educational institutions, teachers, educational staff, students, and the relationship between education and society—in realizing the right to education.

For the specific provisions of the Education Code, a design that integrates China's existing education legal system should be adopted. This could encompass areas such as preschool education, compulsory education, higher education, vocational education, national defense, and patriotic education, while taking various perspectives on educational work. The form and structure of each section can also follow a general-specific approach depending on the needs of each part.

5. Legislative Technique: Selective Application of the "Extraction of Common Elements" Method

The structural design of a legal code refers to the logical arrangement and overall design of legal provisions in terms of parts, chapters, sections, articles, clauses, items, and objectives that regulate corresponding social relationships [12]. Among countries that have codified education laws, the main legislative structural techniques used are: extraction of common elements, hierarchical structuring, and parallel structuring. Taking the compilation of China's Civil Code as an example, China adopted the "extraction of common elements" technique from the traditional Pandect system of

the continental law system. This method was not only applied to the "general provisions—specific parts" structure but also extensively used within each part for classifying and refining similar norms and institutions. General rules are extracted as "general provisions" at the beginning of each part, and specific norms are further classified and detailed according to the similarity of their content.

However, considering the foundational, universal, and stable characteristics of civil legal relations, the Civil Code does not include provisions that pertain to special groups or areas that are still evolving, where the relevant experience is immature, or where the content cannot be covered by or integrated into existing parts. In countries that have codified education law, for instance, Moldova's Education Code adopts a three-tier structure of parts, chapters, and articles. The first level is the "General Provisions," followed by chapters that begin with general provisions at the start of each subsequent part. Under the framework of the general provisions, the code is logically divided into parts based on types of education, covering areas such as the education system, general education, vocational education, and higher education. Similarly, the Education Law of the Russian Federation is divided into fifteen chapters, with the first chapter on "General Provisions" leading the remaining fourteen chapters, which form the specific parts.

The experience of China's Civil Code in using the "extraction of common elements" technique, as well as the typical practices from countries that have codified education laws, provide valuable guidance for the legislative technique in the process of codifying China's Education Code. First, the "extraction of common elements" method can be used in drafting the general provisions of the Education Code. Essentially, this technique is a form of inductive reasoning—it involves summarizing and extracting common rules from the existing education law framework to form the content of the general provisions of the Education Code. As a systematic interpretive technique, it requires careful consideration of the internal connections between legal norms and integrates all legal systems and rules into a cohesive whole.

It is important to note that China has entered a new era, where the principal social contradiction has evolved, posing new demands on governance capabilities and the level of governance in the education sector. The shift from "providing access to education" to "providing high-quality education," from "focusing on educational development and improving conditions" to "ensuring fairness in educational opportunities and rights," and from "fairness in opportunity" to "fairness in process and outcome" reflects new challenges and changes in education. These challenges require more reliance on legal thinking and approaches, as simply pursuing development is no longer sufficient. Greater emphasis must be placed on the fairness and justice of development, as well as on institutional justice and the rule of law in education. "The legislative task has become more complex, and the demands are higher [13]."

Based on the principle of substantive codification, the process of codifying China's Education Code must first clarify which aspects should be treated as fundamental categories. How should common elements be extracted? What kind of system should be formed? And how can it meet the unique characteristics and requirements of the new era in China?

6. Conclusion

Education legislation has evolved and improved alongside China's reform and opening-up process. Over more than 40 years, a socialist education legal system with Chinese characteristics has gradually taken shape. The annual legislative work plan of the Standing Committee of the National People's Congress has also driven theoretical research and legislative activities regarding the codification of the Education Code, accelerating the pace of research in this area.

The path to achieving the codification of the Education Code requires thoughtful discussion on several key issues, including determining the legislative pathway, choosing the codification model, designing the system structure, and identifying the appropriate legislative techniques. In terms of legislative pathways, a "two-step" approach should be taken: first, drafting the general provisions, and then compiling the specific provisions. Regarding the choice of codification model, a moderate and substantive codification approach should be adopted, taking into account the existing legislative system in the education sector. Within the framework of a "general provisions + specific provisions" system, the general provisions should set out the basic norms, with the logical structure built around the duties and responsibilities of different entities in realizing the right to education. The specific provisions should be structured based on existing education laws and draft laws, with educational types as the guiding logic for the structure.

As for system design and reconfiguration, a system with Chinese characteristics that balances systemic coherence and logical consistency should be constructed, ensuring that the structure is scientifically sound while meeting both the theoretical requirements of "scientific organization and rigorous structure" and the practical needs of China's socialist legal system. In terms of legislative technique, selective use of the "extraction of common elements" method is recommended. Common rules should be summarized and extracted from the existing education legal system to form the general provisions, while the specific provisions should use substantive legislative techniques for mature areas, clearly defining the special content of each section.

References

- [1] Zhou Hongyu, "Suggestion to Include the Compilation of an Education Code in the '14th Five-Year' Legislative Plan," accessed July 15, 2021, https://m. thepaper.cn/ baijiahao_11525356.
- [2] Zhan Zhongle, "On the Status and Form of the Education Code," *Oriental Law*, no. 6 (2021): 111.
- [3] Sun Xiaobing and Ma Leijun, *The Jurisprudence of Education Law*, Education Science Press, 2017, p. 27.
- [4] Ma Leijun, "On the Codification of China's Education Law," *Educational Research*, no. 6 (2020).
- [5] Sun Xiaobing and Liu Lanlan, "The Codification of China's Education Law in the Context of the Civil Code," *Fudan Education Forum*, no. 1 (2021): 31.
- [6] Qin Huimin and Wang Jun, "Comparison and Reference: Basic Functions and Paths for the Codification of China's Education Law," *Journal of East China Normal University (Educational Sciences)*, no. 4 (2022): 28.
- [7] Duan Binbin, "The Structure of the Education Code: Foreign Models and the Chinese Approach," *Journal of East China Normal University (Educational Sciences)*, no. 5 (2021): 118.
- [8] Ma Huanling, "Codification of Education Law: Possibilities, Difficulties, and Necessities," *Juvenile Delinquency Issues*, no. 6 (2021): 4.
- [9] Gao Hang & Wang Ziyuan, "Moderate Codification of Education Law from the Perspective of Sectoral Law," *Education Research*, no. 8, 2023, p. 143.
- [10] See Ma Leijun, "On the Codification of Education Law in China," *Education Research*, no. 6, 2020, p. 148.
- [11] Ren Haitao, "The Specific Provisions of the Education Code: Concepts, Systems, and Contents," *Journal of East China Normal University (Educational Sciences)*, no. 2022, p. 66.
- [12] See Wang Zejian, *Legal Thinking in Civil Law: The Theory of Claim Basis*, Peking University Press, 2009, p. 176.
- [13] See Wang Daquan, Deputy Director of the Department of Policies and Regulations, Ministry of Education, "Changes in Legislative Concepts and Tasks in the New Era," *China Higher Education Research*, No. 3, 2019, p. 31.