



Two Concepts of Data Sovereignty and Global Internet Governance

Han Liu

Tsinghua Law School

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“Data Sovereignty” What it is and why it matters?

Data sovereignty comes into play when an organization's data is stored outside of their country and is subject to the laws of the country in which the data resides.

The main concern with data sovereignty is maintaining privacy regulations and keeping foreign countries from being able to subpoena data.



G20 Osaka Leaders' Declaration:
Promoting international rule-
making on digital economy and
data flows.



Europe should have its own data
platform, rather than relying on
Google's or Microsoft's cloud
services, to ensure "digital
sovereignty"



“

All the theorist can do is preserve
concepts and call things by their names.

”

——Carl Schmitt

【注】 原文载于 Carl Schmitt, *The Theory of the Partisan* (Michigan State University Press, 2004), p.68.

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1. Pioneer and Takeover: The Origin of the Problem

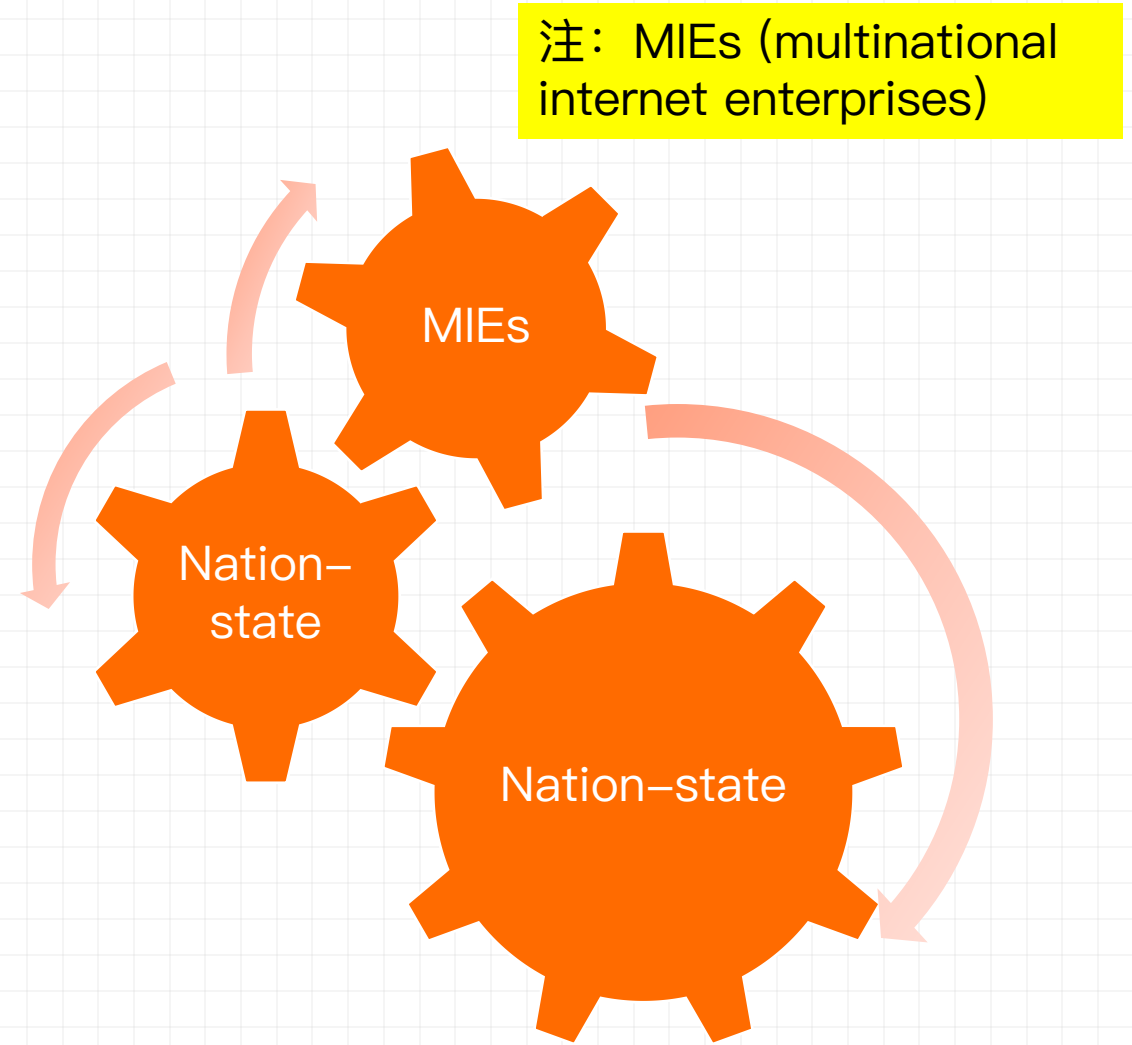
2. Authority and Control: The Preliminary Definition

3. Positive and Negative: The Deep Logic

4. Defensiveness and Expansionism: Two Dimensions

5. Attack and Defense: According to Local Conditions

The history of the Internet so far has been one of exploiting the realm of freedom and being retaken by the state.



Lawsuit

S



2013, the U.S.
government's Prism
program



US v. Microsoft.



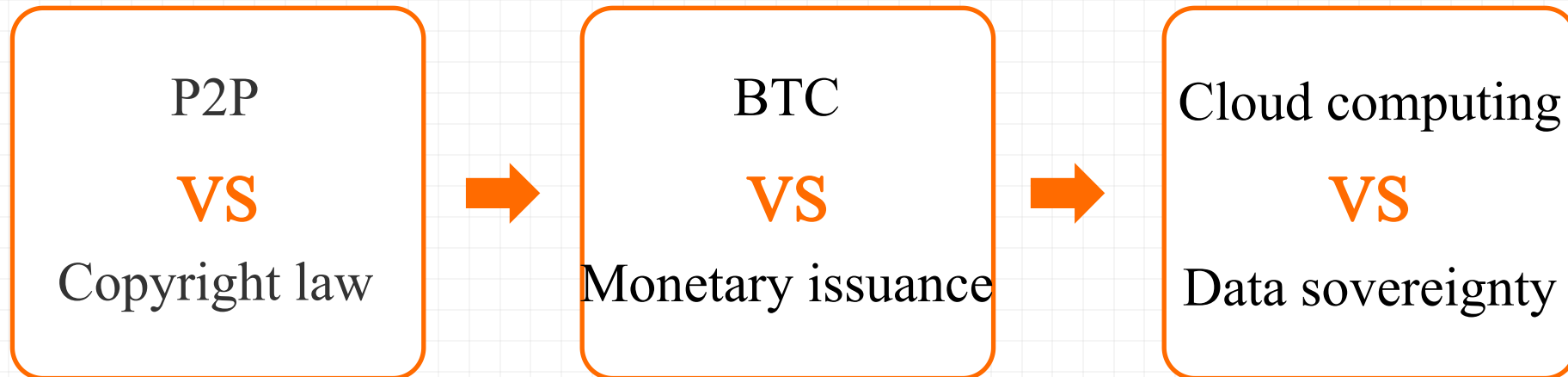
The CLOUD Act,
the Clarifying
Lawful Overseas
Use of Data Act

- ❑ Does a state have the right to control data stored within its territory?
- ❑ Does a government have the right to directly retrieve relevant data in a foreign country for the sake of its own government or judicial proceedings?
- ❑ Should the flow of data across borders be subject to national sovereignty?

The concept: sovereignty of data

Technolog y

Every technological advance has the unintended or intentional effect of circumventing the regulations of the nation state.



Cloud computing

Riley v. California, 134 S. Ct. 2473, 2491 (2014)

「Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself.」

Technology itself represents the fundamental position of globalization.

- ❑ De-territorialization: The traditional concept of sovereignty is difficult to apply.
- ❑ Decentralization: New mode of production.

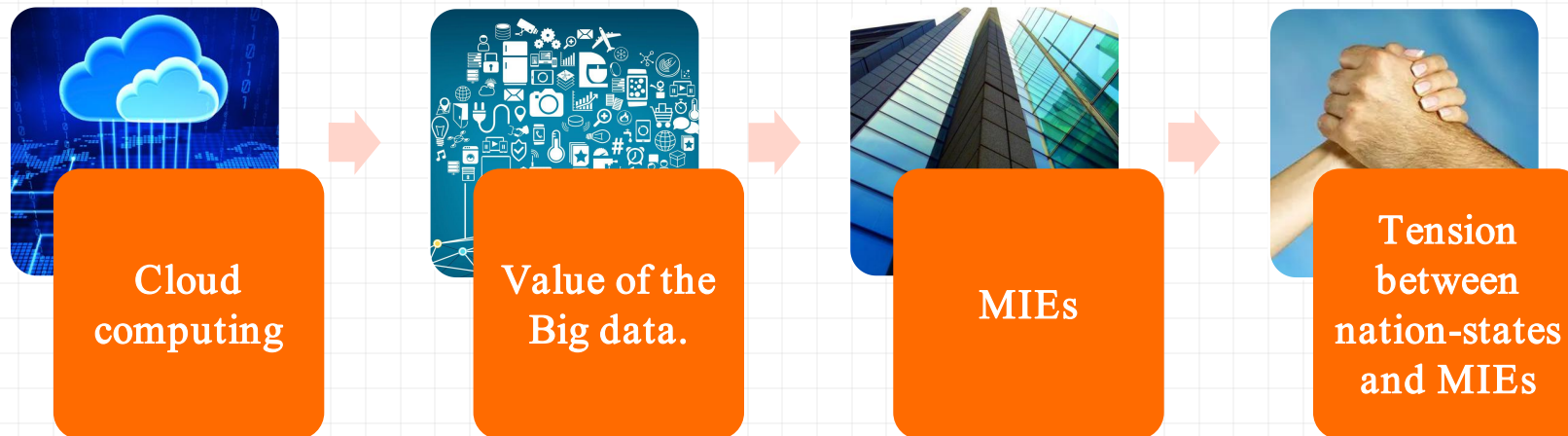


The nation-states' dual attitude to globalization:

- Access to goods and services through globalization
- The fear that the flow of information, money and goods across national borders threatens the special identity of nation-states

The other side of the coin...

Centralization & hierarchization



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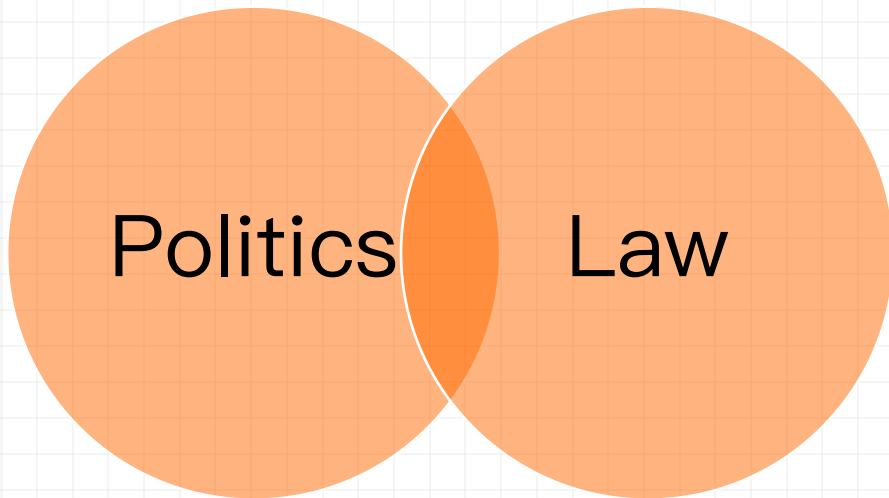
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1. The meaning of sovereignty: legal authority and practical control



In the modern sense, sovereignty is the highest political power and legal authority of a country to its territory without external interference and internal challenge in the system of states.

Political power creates rules; Rules, in turn, constrain political power

Concepts of sovereignty

In

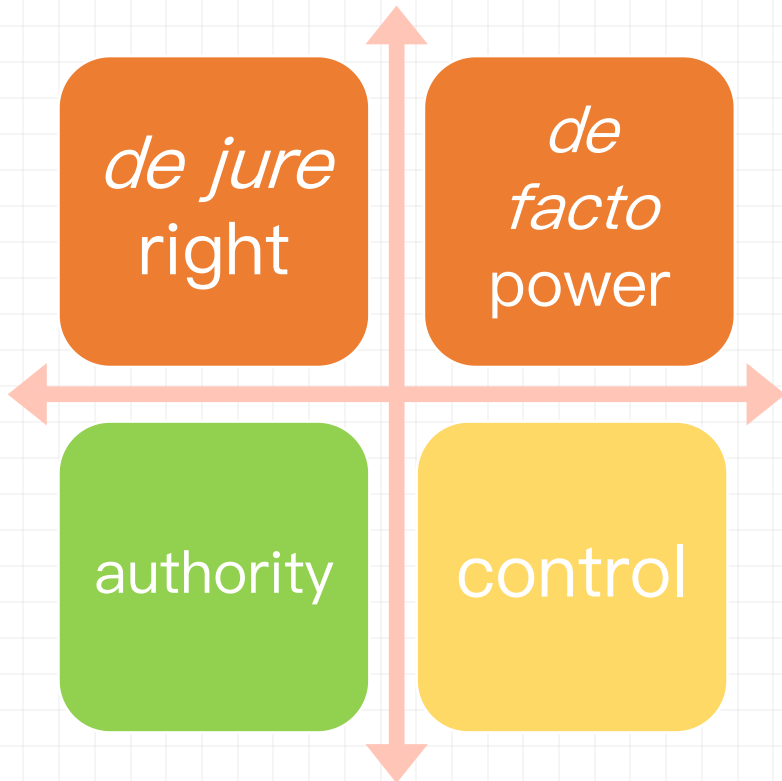
Jurisprudence

- Law is a command of the sovereign.
- Human rights above sovereignty & humanitarian intervention
- Return of sovereignty: America First

In Politics

- Westphalia sovereignty
 - International legal sovereignty
 - Interdependence sovereignty
 - Domestic sovereignty
-

To differentiate “authority” from “control”



In the international community

- Failed state
- Semi-sovereign state
- Non-sovereign state

Within a sovereign state

- Popular sovereignty
- Real sovereign

Four meanings of sovereignty

- Westphalia sovereignty
- International legal sovereignty
- Interdependence sovereignty
- Domestic sovereignty

2. Internet sovereignty: data sovereignty in the sense of legal authority



The Yahoo case in 2000

“The first generation of Internet border controls tried to keep information out -- from Nazi gear to copyrighted material. The next generation of Internet border control is not about keeping information out, it’s about keeping data in. While the first generation was relatively narrow in its exclusion of information, the new generation tries to retain all data on individuals within a country.”

How can sovereign states control the Internet?

Rigid methods

- Cut off the information infrastructure

Flexible methods

- Regulation on the market and enterprises

Both

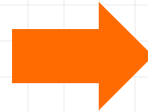
- Carrot and stick
- India Police Raid Facebook's Mumbai Office Looking the Details a Man Accused of Posting Derogatory Content

The key is What/whose rules of law to use

Cosmopolitan

1. Take the RULES of the United States as the blueprint
2. Take Internet freedom as the banner,
3. Take the freedom of speech laws of the United States as the

Internet globalism means imperialism disguised as globalism.



Sovereign-difference

1. A diversified system based on sovereign-difference
2. Each country regulating the Internet according to its own laws

The logic of sovereignty is that the degree of actual control will determine the existence or absence of sovereign authority.



“

Technological lag and dependence translate into reduced security and economic opportunities of the country and, ultimately, the loss of its sovereignty.

”

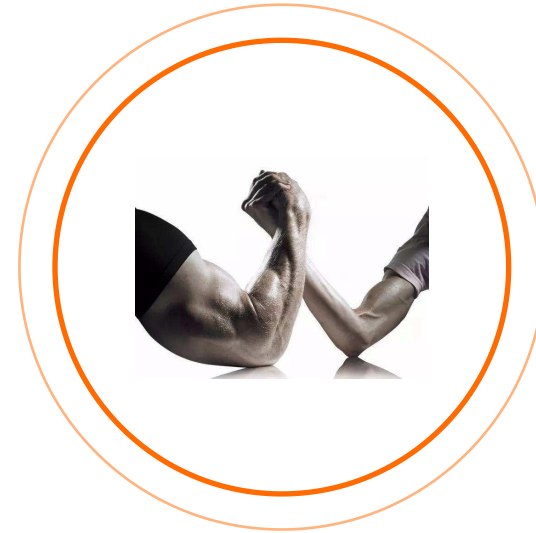
—Vladimir Putin

3. Data sovereignty: dual reference in the sense of practical control



Data sovereignty

Competition among nation-states



Data “sovereignty”

Rivalry between states and internal groups

Data sovereignty

authority

Data sovereignty refers to the application of Westphalian sovereignty to data: protection against foreign cyber attacks, information theft and unjustified outflow.

Territoriality constitutes a legal limit on data mobility。

control

From a control perspective, whether a sovereign state can effectively control the flow of data depends on its political, economic, and technological strength.

Data colonialism

Sovereignty: Theory of social contract,
consent

Data “sovereignty”

Issue of domestic sovereignty, that is, whether a country can enjoy complete control over the Internet industry and information data within its territory.



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Negative sovereignty

Define boundaries and avoid interference.

- ❑ Westphalian sovereignty
- ❑ The decolonization movement after World War II

Territoriality

Positive sovereignty

Define their own national identity, take actions to confirm and affirm the status of their own identity, and sometimes even to some aggressive posture with other

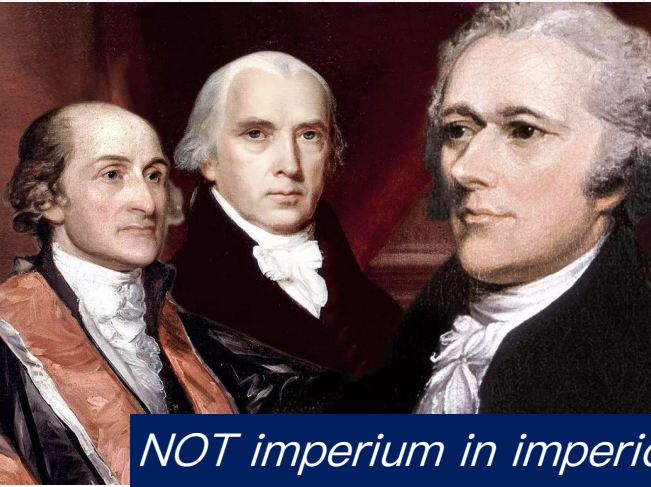
- ❑ countries and peoples
- ❑ The Cold War
- ❑ sphere of influence

Separation from territoriality



Positive sovereignty reveals the hidden variant of classical imperial sovereignty in the modern nation-state system. Whether the British Empire, Hitler's "Third Reich", the "Soviet Empire", or even the "American Empire" are all variants of the Roman Empire, what they want to achieve is not **sovereignty** but **imperium**.

American expansionary view of sovereignty



*NOT imperium in imperio
BUT empire of liberty*



Westward Movement



Wage foreign wars



Strategic Defense
Initiative, SDI

The dialectics of defense and expansion

-
1. Monroe doctrine
 2. Double standard
 3. De-territorialization
-

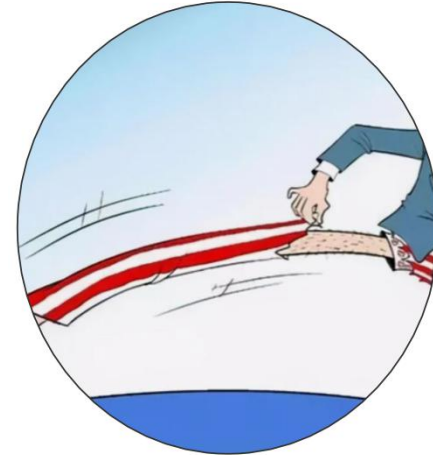
American "Internet Sovereignty" and "Data Sovereignty"



Information
superhighway



Root server



Long arm
jurisdiction

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Defensive mode

data localization

Strong protection

Rights protection

China
Russia
BRICS

Weak protection

National security

EU
Canada
Australia

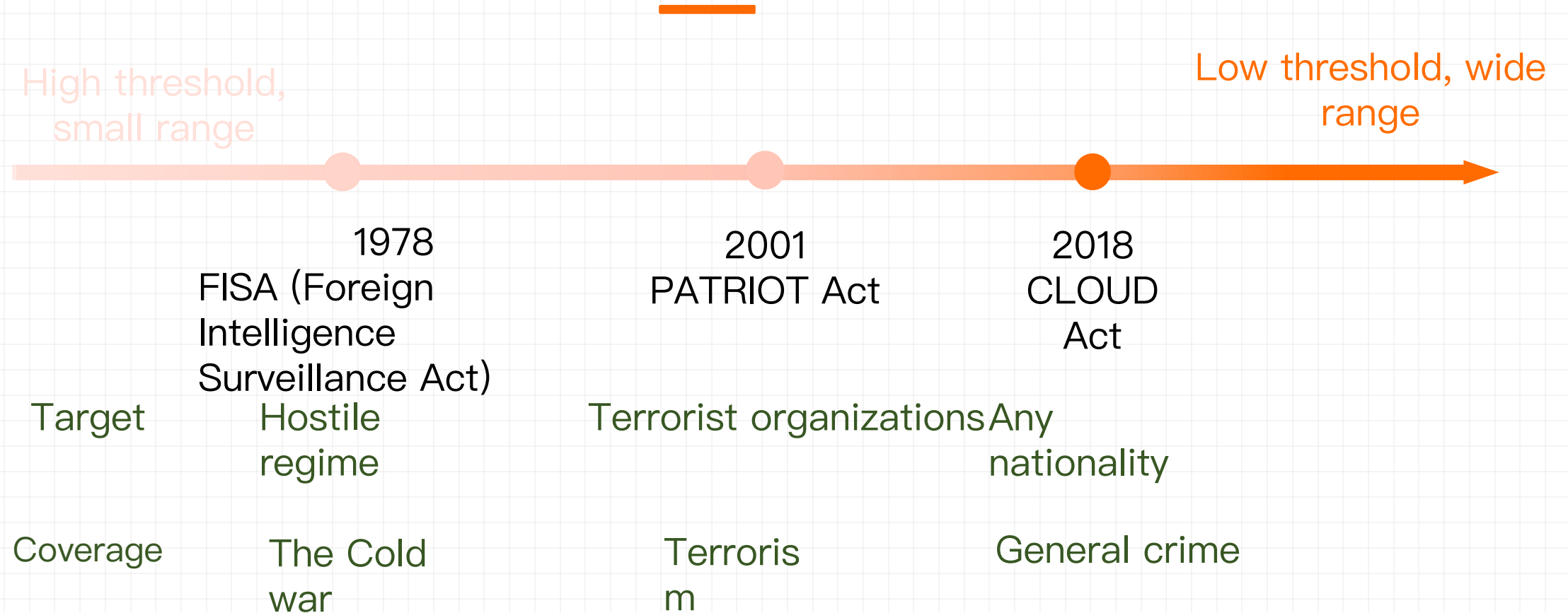
1. Brazil and South Africa allow data to flow across borders, only if it is backed up and retained within the country itself.
2. In stronger models, data collected by foreign companies within their own territory must be retained locally and can hardly be moved abroad, such as in China and Russia.
3. Commonwealth countries (Canada and Australia) implement classified protection, personal health information is not allowed to leak; Europe and the United States free.

GDPR

(General Data Protection Regulation)

1. Extra-territoriality (Art. 3 GDPR Territorial scope)
 2. Free movement inside, strict control outside
- ❑ Transfers on the basis of an adequacy decision (Art. 45 GDPR)
 - ◆ Key considerations:
 - ❑ Degree of the rule of law and human rights are protected
 - ❑ independent and effectively functioning regulators
 - ❑ national responsibility or international commitments
 - ❑ Prohibition of data flow out
 - ◆ Regulation“on a framework for the free flow of non-personal data in the European Union”
 - ❑ Investigation of criminal offenses
 - ❑ Prosecution activity
 - ❑ Threat to basic public services and the survival of the population
-

Expansionary mode



“The Constitution follows the flag”

Data sovereignty follows Internet companies and the countries to which they belong

CLOUD Act || Double standard

- ❑ With a few exceptions, the U.S. government can retrieve foreign data it holds from U.S. companies.
- ❑ On the other hand, if a foreign government wants to access the data of U.S. citizens and citizens of other countries in the U.S., it must comply with U.S. legal procedures, without equal treatment.

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Two Concepts of Data Sovereignty

The Legal System
of Data Governance

?



Local conditions

Technical strength

The industrial
development

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Global Top 100 Mar-2021

Location	# companies	Market capitalisation 2021 (\$bn)	Rank by market capitalisation
United States	59	20,549	1
China and its regions	14	4,188	2
Saudi Arabia	1	1,920	3
Switzerland	3	816	4
Netherlands	3	584	5
Japan	3	563	6
France	2	552	7
Germany	3	456	8
South Korea	1	431	9
United Kingdom	3	425	10
India	2	341	11
Ireland	2	335	12
Australia	1	163	13
Denmark	1	160	14
Canada	1	131	15
Belgium	1	128	16

China as an example

China



\$3,373bn

Market Capitalisation
(31 March 2021)

TENCENT



\$753bn

Market Capitalisation
(31 March 2021)



61%

% Change Market
Capitalisation (2021 - 2020)



7
Rank

ALIBABA GRP-ADR



\$615bn

Market Capitalisation
(31 March 2021)



18%

% Change Market
Capitalisation (2021 - 2020)



9
Rank

KWEICHOW MOUTA-A



\$385bn

Market Capitalisation
(31 March 2021)



95%

% Change Market
Capitalisation (2021 - 2020)



16
Rank

Source: Bloomberg and PwC analysis

A balanced legislation

While defending data sovereignty, it should take the initiative to take advantage of its own comparative advantages and more actively intervene in the global digital economy and data governance pattern. On the one hand, it can promote the development of its own data industry and digital economy; On the other hand, it can better protect citizens' information rights from being infringed.

“There is no new thing under the sun.”

“The Internet is not a lawless place.”



Thank you!

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