Many scholars consider that the European integration model could be a future model for cross-Strait integration, with regard to the integration of China and Taiwan. However, very few authors have discussed this issue in a systematic way, by examining the nature of EU integration with reference to its legal institutions, the reasons why China and Taiwan should adopt the European model and how it could be implemented. This paper places this discussion within a systemic framework by recognizing the European integration model as a legal model, founded on different legal theories, concepts, principles and legal instruments, and arguing that the adoption of such a model would be a form of legal transplant.

The author argues that wholesale legal transplant of the EU integration model to the cross-Strait polity will not achieve the desired success for the following reason: before the transplanting takes place, the essentials of EU integration must be extracted and this would require the dissection of the legal model of European integration. The complexities of the dissecting and transplanting processes are, however, many and various: first of all, the legal principles, legislative approaches, and institutional designs pertinent to cross-Strait integration need to be spelt out. Secondly, the European legal model is still in the process of developing new legal principles, legislative approaches, and institutions through political agreements, institutional reforms, and institutional decisions, particularly the judgments of the ECJ. These developments also influence the ways in which European integration is perceived (Lusa 2008). The differing perceptions of European integration, in their turn, have a profound influence on the ways in which experts on cross-Strait relations evaluate the feasibility of this model for cross-Strait integration. That is to say, the continuing success of EU integration and the reforming nature of the EU integration model will influence the policy-makers of China and Taiwan who are looking to the EU integration for inspiration. Thirdly, the transplant of such a legal model would require reliance being placed on a snapshot of its current status, as if it is in equilibrium, and would not take account of any future developments which could change the equilibrium. Cross-Strait scholars and policy-makers will therefore have to pay close and constant attention to the development of EU integration until such time as China and Taiwan adopt a definitive model which, hopefully, will become more autonomous as it develops. Fourthly, the differences in culture and history underlying European integration and the cross-Strait polity will appear in the theoretical challenges posed by path-dependence.

1 Cross-Strait relations refer mainly to the relations between China and Taiwan across the Taiwan Strait (Horng 1993: 14-22, Chang 2007, Tung 2008, Chiu: 2005).

2 On Arab economic integration, see Hoekman and Messerlin 2003.
What is a Legal Transplant?

Some Parallels with Cardiac Transplant – Some Differences

As in the case of a cardiac transplant, carrying out a legal transplant involves the selection of a suitable donor and recipient, the preservation of the transplant substance of the donor before the transplant operation, the transplantation in the recipient, and postoperative treatment to avoid complications. The selection processes for the donors and the recipients are carried out against various respective contraindications which are categorized further into absolute and relative contraindications. For instance, an absolute contraindication for a heart donor would be an individual with HIV or with some form of heart disease. A relative contraindication would be the chronological age, that is, over 60. For a recipient, HIV would be a relative contraindication. A number of elements have to be considered with regard to the contraindications, such as age, systemic illness, psychosocial factors, and psychiatric illness. After the selection of donor and recipient, the next step consists of the operative techniques which involve trimming, sowing, and maintaining optimal blood pressure. Finally, post-operative management is deployed to avoid rejection and complications such as infection. The opponents of the EU legal transplant into the cross-Strait polity will attempt to identify the contraindications and discount the utility of the postoperative treatment.

What Does a Legal Transplant Involve?

The legal transplant shares certain features inherent in the cardiac transplant. It involves the selection and evaluation of the law of the “donor” and the system of the “recipient” against the contraindications identified with reference to their respective political, legal and cultural systems. Finally, the process requires the operative techniques of trimming, sowing, inspecting the suture lines and other supports to maintain the equilibrium of the whole, in other words to ensure a smooth transition and to avoid system failure. It also involves post-operative techniques to avoid the systemic rejection of the law of the donor and the influence of other social factors that may yield unintended results in the recipient system. However, it should be borne in mind that the two types of transplant, the legal transplant and the organ transplant are not exact mirror images of each other because some features of the cardiac transplant do not appear in the legal transplant, including, for instance, the removal of the law from the “donor.” The law of the donor will continue to develop and be shaped and formed by social factors which may not be shared by the recipient system. As a result, the development of the transplanted legal model will not be subject to the same degree of societal influence as the model of the donor. The legal transplant of

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3 For the example of the French Court of Cassation’s willingness to borrow foreign legal doctrines through comparative law study, see Watt 2003.
4 For the examples of the difficulties encountered by developing countries in adopting market economy legal models, see Lastra 2008.
6 For the practical implementations of legislative transplant, see Xanthaki 2008.