

Legal history of China

Before I introduce the legal history of China, I want to talk about several points:

First, introduce the legal history of China should be based on the general history of china:

As everyone has know the general history of China, I will not introduce it in detail.(The ancient China had many dynasties, from the Xia Dynasty (21th-16th century before Christ), to the Shang Dynasty (16th—11th century B.C). West Zhou Dynasty (11 century B.C-256 B.C. total 800 years), the Spring and Autumn Period (770 B.C. —476 B.C), Warring States Period (403-221 BC), the Qin Dynasty (221B.C — 206B.C.) ,the Han Dynasty (202B.C,24EMPORALS,406years), Three Kingdoms (220 - 265) ,Dynasties of the North and South (317 - 589) ,the Sui Dynasty (581-618), Tang Dynasty, (617- 907, 290years),the Song Dynasty (960-1279, 18 emporals,320 years, Yuan Dynasty (1206 -1368 ,11 emperors, 98 years),Ming Dynasty (1368—1644), till the Qing Dynasty (1616—1911).

It has been proved though textual research that China has a legal history of five thousand years. During the passed thousands of years, China had a continuous legal history, clear evolution, abundance materials and content. China legal system had far-reaching influence to

other countries.

If we couldn't find a correct method to research, it would be difficult to speak it out in several minutes.

Second, find a correct method to research :

I will introduce the legal history of china according to the nature of social institution. It is the correct manner in studying the legal system of china.

Third, I must point out the four stages of china legal history because I will introduce follow the four stages.

China legal systems developed four stages, each stage has its unique character.

1 slave society, including The xia, Shang, west zhou three Dynasties.

2 feudal society , from Qin dynast to Qing dynasty, the duration is
from 210 B.C. to 1841

3 semi-feudal , semi-colony society, from 1841 to 1949

4 socialism society from 1949 till now

Then, I want to generally combine the qualities or features of the legal system that distinguishes one stage from another

In the legal education of China, we teach the legal system of each dynasty respectively. If I select this kind of method to introduce the legal system of china, I can not finish it in just 15 minutes. Therefore, I want to form general conclusions of each stage.

I slave society,

First, theocracy and divinity Judge, nemesis

We can find it in the old books, and can easily find it from the literal meaning and structure of the word of “law”. The Chinese word of law in ancient Chinese, is constituted with three parts, which are water, unicorn and go. Water means equity like water, unicorn, another named ancient goat, which reputed to gore guilty person at court, “go” means to gore.

Second, patriarchal clan system no difference between the country and the family. People were divided into different classes, and people of different status must abide the rule of his class

Third, emphasize ceremony. Ceremony is the activities of sacrifice, it has the character of criterion, compulsion, the will of country, such as the character of law.

II feudal society, (five characteristics)

1)In every dynasty, we had the tradition of statute law

After one dynasty set up, the new governor would abolish the law of the former dynasty and began to make the law of its own. So we had a long history of statute law.

2)every kinds of law were in the same statute.

procedural law and substantial law were in the same statute. Each dynasty has criminal law, family law, land law, tax law, etc.

3)Lay stress on the criminal law, make like of civil law

The ruler of each dynasty took the criminal law as one method to rule the country. and without the development of free economic, the self consciousness had no growth base, so civil law did not grow up.

4)The judges were not professional educated, they were administrative officials at the same time.

Imperial examination was the method to select the administrative officials.

When the administrative took up, one of his offices was to hear the cases.

5) the Confucian or feudal ethical code

the famous ideologist who named Confucius(551B.C–479 B.C.), his ideology named the Confucianism, was the basic of Chinese ethic, education, politics, law and religion, it effected the whole Chinese history.

the king should act as a king, a minister should act as a minister 、 a father should act as a father、 a son should act as a son, so as to protect the grade and the order of the society .He proposed governing by morals, opposed tyranny. He propagandized benevolence, and benevolence became the rule of words and deeds according with the grade system. Why china had thousands of years of feudal society? It is said because of the Confucianism.

III semi-feudal ,semi-colony society,

It was the Opium War ruined the gate of ancient China. After Opium war, the knowledge, culture and advanced thoughts of democracy and science began to affect old China. And china suffered nearly one hundred years in time of war. During that period, governments alternated from one to another. No government could rule for a long time.

1\At the end of Qing Dynasty,

\\ it had to begin the movement of constitutionalism and the reform of legal system.

China had absolute criminal law, civil law, procedure law and substantial law. Detached the criminal law and civil law, detached the procedure law and substantial law,

and began to adopt some system such as trial at Bar, defend, etc.,

Nanjing Kuomintang government replanted the legal system in Japan, including constitution, the statutes of different legal departments, courts, procuratorate,

IV socialism society from 1949 till now

50 years passed by, since the People's Republic of China set up. But our law scientists pay little attention on researching the legal history of new china. Till now, we have no authoritative statement on this field. I want to introduce the history of new china in two periods, one is the history prior to the reforms, and the other is the history after the Reforms.

History Prior to the Reforms

The origins of the current legal system can be traced back to the period of the Chinese-Soviet Republic in the revolutionary bases prior to the establishment of the People's Republic of China. After the PRC set up, the laws of the previous Guomindang Government previously existing, were declared null and void.

1\The first formal piece of legislation, commonly referred to, was [the Common Programme](#) of the Chinese People's Political Consultative Congress promulgated in 1949 which laid down the essential principles of the Constitution and which was adopted in 1954.

2\Thereafter laws relating to the court system, the procuratorates, marriage, land reform etc. were adopted.

The laws adopted in the early 1950's were to a large extent tinged with revolutionary characteristics for the transformation of private ownership to public ownership.

3\From 1957 to 1976 with the exception of three to four years in the early 1960's, China was deeply engaged in political movements. The laws of that period reflected the class-struggle type of the political environment. At the same time, China adopted a highly centralized planned economic system. Economic plans and administrative orders, instead of law, had binding force on the society. Laws thus became a tool of class struggle. However, it is expected that class struggle will continue to exist within certain limits for a long time to come. In fact in the ten years of the Great Cultural Revolution (1966 - 1976), laws were not considered to be necessary, let alone as important, to the society. The economy was on the verge of bankruptcy after ten years of the Great Revolution.

4\In 1978 when it was announced that the country would, from then on, concentrate its efforts on economic construction. But the Government had not decided to change

political directions or ideology. On the contrary, the Constitution of 1982 stipulates the 'four cardinal principles' as guiding principles for the development of the country.

Law-Making Since Late 1970's

From 1978 to 1989, numerous laws and administrative regulations were adopted to encourage foreign investments and domestic economic reforms. During this period more than 450 laws and regulations were promulgated by the NPC, the NPC's Standing Committee and the State Council. Included among them were 350 economic laws and nearly 100 laws concerning the introduction of foreign capital and technology from foreign countries. Issues in relation to political reforms were brought about several times but no major law, however, was adopted in that period. In late 1980s, foreign investments in also slowed down. The main reason for this was political rather than legal or for lack of economic opportunity. What happened in the summer of 1989 also generated world wide concern which, in turn, affected foreign governments policies towards investment in China.

The situation changed with Deng Xiaoping's tour to southern China in 1992 during which Deng worked hard to promote economic reforms and the establishment of a market economy with socialist characteristics. Since then a number of important laws have been enacted in relation to commercial transactions, administrative litigation, Legal system, etc. Such laws have contributed greatly to establishing the legal order of the domestic market, attracting foreign investment and converging the

domestic market with the international market by providing compatible legal prescriptions.

Looking back at the path of legal reforms of the last 20 years, it is clear that China has demonstrated its willingness to learn from the experience of the developed economies in respect of establishing a suitable legal system for strengthening the socialist market economy. China was even prepared to adopt the whole sector of a foreign legal system. In this regard, the tax system (heavily influenced by the US tax system) and the industrial property laws, i.e., patents and designs, and trademarks (a copy of the German system) are examples. In most of cases, however, China appeared to be more willing to accept the provisions and concepts of foreign laws than their values and underlying principles. As a result, China has resisted the notion of 'copying' or 'transplanting'. But it has accepted the proposition of 'learning the experience of foreign countries', for 'experience' implies successful practices. This, as discussed later, has proved to be very difficult, if not impossible, in the current heavily interdependent world.

The economic exchanges with foreign countries and regions, and China's own effort to join the WTO have gradually made the Chinese market an integrated part of the world market. Chinese economy has become an inseparable part of the global economy. The interdependence between China and the rest of the world makes it impossible for China to resist cultural, political and legal influences, including values and beliefs, of foreign countries on the one hand, and to welcome foreign capital and advanced technology on

the other. These economic exchanges carry cultural, political, legal, moral, even ideological values with them, for economic transactions require the help of human beings, the real persons who exchange views with each other. Through such exchanges, foreign concepts, values, etc. slowly entered China and influenced Chinese laws too.

After twenty years effort, China has formed a completed legal system, which has the unique characteristics. Now the legal system of china is the most completed and the most plentiful in the history of china. We can predict that the legal system of china will be more completed and more perfect in the new century. It will reflect the excellent legal achievement s, the growth of culture, and the tend of the times.

Vii: China is rich in traditional legal culture. The traditional legal culture is in sharp conflict with social environment in contemporary China. It is necessary for society ruled by law to accomplish the modernization of the traditional legal culture.