

# Legal Problems of China Today



Ed. by Yang Kaixiang

***East and West***

*Band 3*

Verlag Traugott Bautz

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**East and West.**  
**Philosophy, ethics, politics**  
**and human rights**

**Band 3**

ed. by H.-C. Günther and Li Yong

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From a drawing by a native artist in the possession of Lady Strange

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## Editor's Preface

The present volume unites the papers on legal matters relating to problems of China today, given at a conference sponsored by the Alexander-von-Humboldt-Stiftung at the CSU Changsha in spring 2015. The paper of Hans-Christian Günther is an external contribution.

This volume is also a reserch output of the "Rule of Law and Regional Governance Collaborative Innovation Center" in Hunan.

Yang Kaixiang

January 2017





Li Yong and Gu Tongtong

## Historical Comparison of Chinese and European Reforms: Remarks on China's Legal Construction

### Abstract

Comparing Chinese and foreign history of reform can give us some insight into Chinese legal reforms which have meant a great deal to the development of the country's legal system. In this study, four periods of reform were compared: in the classical period, the post-classical period, the post-classical transformative period and contemporary China. This paper will draw several conclusions regarding the causes and consequences of these different reforms.

Key words: Reform; Revolution; Historical comparison

### 1. Introduction

All throughout human history, old means of governance or production have always given way, either subtly or radically, to the new. Nowadays, the transformation of outmoded elements for the purposes of bettering society is known as “reform”. Revolution happens when a reform is in the air but, nevertheless, encounters a great deal of resistance. In this sense, revolutions should be

understood as kinds of reform that mark radical turning points in history. Reforms, and revolutions in particular, are milestones in human civilization and, thus, a comparison between them will not only reveal what changes were specific to each turning point but also the causes and effects of those reforms. It will also allow us to draw lessons from a modern perspective in investigating the laws of vicissitude, understanding the rise of great powers, and to improve the party's ability to rule and make policies that will facilitate socialist modernization.

## 2. Historical Comparison

### *2.1. Reform in Classic Period*

Reforms and revolutions have always been pivotal to the development of human society. Even in primitive society, political and economic reforms took place unconsciously, whether it be through the production and improvement of tools, the generation of monogamy, the separation of animal husbandry and agriculture, the emergence of commerce, etc. The rise of the nation-state, in particular, marked the advent of civilization's move toward specialization, standardization and institutionalization. China, as is well known, is one of the world's oldest civilizations. And areas which now suffer from poverty and political weakness such as Iraq – which was once ancient Babylon – was in the Ancient World a

typical slavery country and it, reached its zenith through Hammurabi's reforms in military strategy and the introduction of legal code.

After one thousand years, standardized and institutionalized legislative attempts were carried out in ancient China, proving Morgan's assertion in *Ancient Society* that human societies that progress sooner or later are not all that different. In 536 BC, Zi Chan, the executive officer of Zheng, ordered his subordinate to cast Zheng's legal provisions on a tablet to make this state common law public. Zi Chan, through great perseverance, finally completed the reform, demonstrating the effect of law by their factual consequences.

Around the same time in Greece, roughly 600 BC, Consul Solon was conducting his own democratic reforms meaning that standardized, legislative reforms were taking place spontaneously and independently in both China and in the Occident. Chinese ethical code and political wisdom, which held that undue punishment leads to unpredictable power played an important role in hindering this legislation. However, with the nostalgia for prior democratic periods, the Occident was determined to re-introduce democratic politics, which, in many ways, brought back many of the same pros and cons that had existed before.

In the areas of thought, culture and technology, ancient China bred neither a pluralistic society, nor an overwhelming sense of progress in economic well-being due, in no small part, to the lack of democratic reforms. As a consequence, most intellectuals strived to become affiliated with the emperor and contribute their talent in assisting his rule of the people. In this way, they sought official ranking and titular honors to raise themselves up as well as to honor their families. Confucius said, “Where there is learning, there is fortune.” His student Zi Xia paraphrased this with the saying, “A good scholar will make an official.” Only those who failed to gain official fame were made to do academic research. From then on, ancient Greek democracy began to facilitate a pluralistic society, which was tolerant individual pursuits and individual satisfaction. Political morality in Greece was aimed towards the goals of justice, wisdom, goodness and courage. Achievements in knowledge were in full bloom and it is no wonder that our contemporary sciences derive from that moment in history.

Chinese thoughts also yielded a significant output but primarily in the area of statecraft, while Greek democracy bred great social influence and prominent achievements in the natural and social sciences.

## *2.2. Reform in the Post-classic Period*

### *2.2.1. Prosperity of the Tang Dynasty and Contemporary Europe*

China was a mighty and prosperous country during the Tang Dynasty (618-907 A.D.). If you lived in the Eastern hemisphere at the time, it was impossible to not be influenced by Tang's culture. Europe, on the other hand, was overrun with war, disease and plague and was hardly the seat of world progress and civilization.

Chinese history shows that sage politics can lead a country to flourish, if even just temporarily. Throughout the history of ancient China, centralization and regalism were rarely called into question and rather than show an interest in giving sovereignty to the people, the hereditary system was only occasionally challenged. One has the sense of an environment in which the say, "while water can keep a ship afloat, it can also sink it," was particularly relevant. During this time period, however, the Occident was in a state of disarray, subjected to the manipulation of religious power and the torment of disease. Nevertheless, feudalization was underway, royal power was limited, and the Witan became a tradition. Furthermore, their decentralized political order prevented the emergence of empire, encouraging the development of regional countries. Part of the freemen acquired

the so-called chivalry. Religious faith also solidified the transcendent consciousness.

### 2.2.2. Dividing point of Chinese and Occidental Pattern

China's government during the Yuan Dynasty (1275-1368 A.D.) was extremely cruel. The ruler, Mongolian, was fighting nearly invincible fighter but inept at governance. During the same time period, the Magna Charta was created in Britain, whose imperial power was at its most fragile. Although the Magna Charta did not terminate the war, it became a requirement of law that the king was the subject of law. It has been quoted for generations since, subverting the traditional allegiance to the king and garnering appeal for the promotion of freedom and democracy.

During the 14 and 15<sup>th</sup> centuries, the centralization and autocratic monarchy of the Ming dynasty were increasingly strengthened, widely implementing measures such as imperial examination and literary inquisition, which stifled independent thought. Europe, on the other hand, was beginning to experience an ideological and cultural movement, namely, the Renaissance. This period saw great encouragement for the liberation and progress of thought and tremendous leaps were made both materially as well as spiritually. In the realm of spirit, scholastic philosophy, as advocated by Christian theology, was particularly