

# **New Frontiers of Comparative Law**

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## Comparative Law in China

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#### I. INTRODUCTION

The Chinese traditional legal system was essentially developed thanks to the mixed application of *Li* and *Fa*. 'Li' refers to the ethical rules, whose core consisted of Confucianism, and 'Fa' denotes the written normative on criminal and administrative punishment.<sup>1</sup> Although legal order and thought differed from state to state in the history of China, in the period of the spring and autumn and Warring States in particular (770 BC to 221 BC), legal science (*scientia iuris*) in the modern sense had never been developed in Chinese legal history. Therefore, it is hard to affirm the existence of comparative law in its technical sense in ancient China.<sup>2</sup> In *communis opinio*, the opening of the first conference of *Société de Législation Comparée* in Paris in 1990 marked the formation of comparative law as an independent subject of law. In China, however, comparative law was developed as an independent subject at a later time. For these reasons, the topic of research regarding comparative law in ancient China will be left aside in this paper.

As a matter of fact, Mainland China, Hong Kong, Macau and Taiwan fall into different jurisdictions and consequently, a micro-comparative law system within

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1 'Chinese written law had an overwhelmingly penal emphasis and little prescriptive function, leaving ethical norms or "Li" to provide normative framework for societal behavior. The written law was used as a supplementary codification of these norms and provided a "last resort" type of punishment in event of a breach'.

See: P. Blazey and G. Kapterian, *Traditional Chinese Law*, in *Commercial Law of the People's Republic of China* (edited by Blazey and Chan), Thomson Reuters Press, 2011, p. 20.

See also J. Chen, *Towards an Understanding of Chinese Law, its Nature and Development*, Martinus Nijhoff Publisher, 1999, p. 6; and R. Peerenboom, *China's Long March Towards the Rule of Law*, Cambridge University Press, 2002, p. 36.

2 However, Handian Pang, a leading expert of comparative law in China, argues that the comparative law in China dated back to the period of enactment of Fa Jing (Classic of Law, about 400 BC).

See: Handian Pang, 'Comparative Law in China: Records and Perspectives' (Bi Jiao Fa Zai Zhong Guo: Hui Gu He Zhan Wang), in *Journal of Study of Comparative Law* (Bi Jiao Fa Yan Jiu), vol. 2, 1990.

In the opinion of some scholars, comparative law in China existed even in 22 BC.

See: Dayin Wu and Bing Xu, *Fundamental Knowledge on Comparative Law* (Bi Jiao Fa Ji Chu), Qunzhong Press, Beijing, 1987, pp. 3–4.

Greater China had already been formed: a socialist legal system is implemented in the Mainland, common law in Hong Kong, a civil law system based on Portuguese law in Macau and the remaining law of the Republic of China in Taiwan. This situation will persist, at least in the future decades. The legal systems of Hong Kong, Macau and Taiwan are themselves the product of comparative law research. The different legal cultures and legal systems in Hong Kong, Macau and Taiwan present a great advantage for the development of comparative law in China.

For the necessary limitation of its length, this article aims only to describe briefly the development of comparative law in Mainland China, which resulted from the influence of foreign legal culture in China, starting from 1840 Opium War. Here, comparative law has experienced four stages: initial development, growth, stagnation and prosperity.<sup>3</sup>

## II. INITIAL STAGE (1840–1911)

The defeat of the Chinese in the 1840 Sino-British Opium War led to the publication and diffusion of many Western-influenced political, scientific, cultural and economic books in China. Well-known compilations included: *Records on the World* (1836, *Si Zhou Zhi*, translated and edited by Zhexu Lin from Hugh Murray's *Encyclopaedia of Geography*); *Records and Maps of the World* (1844, *Hai Guo Tu Zhi*, written by Yuan Wei), *World Geography* (1848, *Ying Huan Zhi Lue*, written by Jishe Xu); *Four Description on Foreign Countries* (1846, *Hai Guo Si Shuo*, written by Tingdan Liang); *Chinese and West Chronicle* (written by Yi Xia) etc. These books contained a vast amount of significant information on foreign laws. Increasingly, the Chinese realised that the prosperity of the West was not only based on its military power, but also on its advanced political and legal system. As a result, the Chinese began to recognise the importance of the study of foreign laws; and their comparison with Chinese law.

### (1) Translation of Foreign Laws and the Enactment of Comparative Law

Comparative law in China started with the translation of international law to meet the requirements of the Chinese government in their efforts to know about international diplomatic and trade rules.<sup>4</sup> The first book on foreign law introduced to China was Henry Wheaton's famous work, *Elements of International Law* (*Wang Guo Gong Fa*), which was translated into Chinese by William A.P. Martin (1827–1916) and published in China in 1864. In order to continue to study the successful experiences of foreign countries, in 1862, the Qing government established the School of Combined Learning (*Tongwen Guang*) in Beijing, where William A. P. Martin was appointed as teacher of International Law. With his help, and following the success of the Chinese version of *Elements of International Law*, some other important works written by Western experts of

3 Jian Mi, 'Comparative Law and Destiny of Chinese Legal System' (Bi Jiao Fa Xue He Zhong Guo Fa Zhi Zhi Ming Yun), in *Review of Modern Law* (Xian Dai Fa Xue), 2005, p.13.

4 For details on the introduction of International Law in China, see: Tao Tian, *Reception of International Law and China in Late Dynasty* (Guo Ji Fa Su Ru Yu Wang Qing Zhong Guo), Ji Nan Ren Min Press, 2001.

International Law were translated into Chinese and published in China; these include: *Manuel diplomatique* (*Xing Zhao Zhi Zhang*, by Charles de Martens, 1876); *Introduction to the Study of International Law* (*Gong Fa Bian Lan* by Theodore Dwight Woolsey, 1876); *Le droit international codifié* (*Gong Fa Hui Tong*, by J. C. Bluntschli, 1880); *Manual of the Law of War on Land* (*Lu Di Zhan Li*, edited by the Institute of International Law, 1883); *International Law* (*Gong Fa Xin Bian*, by William Edward Hall, 1903) etc.

Besides translating works on International Law, the School of Combined Learning also published the Chinese version of the French Civil Code in 1880, which was realised by Anatole Adrien Billequin, a French teacher working in the said institute.

In particular, comparative law in China was developed significantly by the amendment of laws at the end of the Qing Dynasty. This task was assigned to Jiaben Shen (1840–1913), the most well-known jurist at that time, and Tingfang Wu (1842–1922), a prominent legal expert and the first Chinese national to have completed a foreign legal education<sup>5</sup>. It was realised by the Law Amendment Institute (*Xiu Ding Fa Lü Guan*) that was established in May 1904. Jiaben Shen placed emphasis on comparative research and study in following the principle ‘to make the past serve today and the foreign things for China’ (*Gu Wei Jin Yong, Yang Wei Zhong Yong*). He believed that oriental knowledge was empiricism-oriented, while Western science was based on rationality, and said that:

without rationality, the empiricist can not understand the nature of the thing and without the experience of the practice, the scholastics can not prove the natural rules.

Hence, it was his opinion that it was of great importance to do comparative research and study, and translation of foreign law was the first step. Within two years after the establishment of the institution, 26 laws of different countries were translated, most of which were criminal laws. From 1906 to 1909, 42 foreign legal literatures were translated, including *The Spirit of Law* by Montesquieu; *Social Contract* by Rousseau; *Representative Government* by Spencer; and *The American Declaration of Independence*. In addition, the Institute also drafted two works of comparative law in 1907 – *The Comparison of Naturalisation of Different Countries* and *Comparison and Domestication of Laws*. These books effectively advanced the development of comparative law.

From 1902 to 1911, the ‘Criminal Procedure Code of Great Dynasty Qin’, ‘Civil Procedure Code of Great Dynasty Qin’, ‘Draft of Civil Code of Great Dynasty Qin’ and ‘Criminal Code of Great Dyansty’ were drafted by the Law Amendment Institute and enacted by Qing government. Western legal theories and principles were incorporated into these laws. For example, the structure and content of the 1911 ‘Draft of Civil Code of Great Dynasty Qin’ were very similar to the 1900 Civil Code of Germany and the 1898 Civil Code of Japan. Many legal terms originating from Western laws, such as legal capacity (*Quan Li Neng Li*), legal competence (*Xing Wei Neng Li*) etc were adopted in this draft. The 1911 ‘Criminal

5 Ting Fang Wu studied law at Lincoln’s law school from 1872 to 1876 and became the first Chinese to pass the bar exam in UK. He drafted the first Chinese commercial and civil laws. See: Xiang Jun Ding & Zhou Feng Yu (Edited), *Preface of ‘Collection of Ting Fang Wu’s works’* (*Wu Ting Fang Quan Ji*), Zhonghua Press, 1993, p. 3.

Code of Great Dyansty' even adopted the parole system and eliminated *Lin Chi*, a crude death sentence carried out by cutting the body into pieces, and which had been applied in China for many centuries. As a result of the comparative study on foreign laws, the said laws incorporated the notions contained in Western legal systems, and marked the beginning of the modernisation of Chinese legislation.

## (2) The Establishment of Law Schools and Law Research Institutes

As the first institute for study of foreign culture, the School of Combined Learning was essentially an institute for the study of foreign languages and the translation of foreign works. It is not a law school, even if a limited form of legal study and education had been carried out. China started systematic legal education by establishing the first university, the Tianjin Sino-Western School (*Tian Jin Zhong Xi Xue Tang*) in 1895. The curricula of study in this university included many law courses, such as General Introduction to Law, Roman Law, British Contract Law, British Criminal Law, International Public Law, and Business Law. Each law course was taught by at least one foreigner. Obviously, comparative law played a very important role in the formation of the Chinese modern legal experts. Chonghui Wang (1881–1958)<sup>6</sup>, the famous Chinese jurist and politician and the principal founder of modern Chinese legal education was the first law student graduating from this university. Tianjin Sino-Western School was converted into Peiyang University in 1903. Legal study in Peiyang University was influenced strongly by American legal culture and it adopted the same curricula of study as some distinguished American law schools, such as Harvard and Yale.<sup>7</sup>

In 1906, upon the suggestion of Jiaben Shen and Tingfang Wu, the first law school in China, the Affiliate Law School of the Law Amendment Institute (*Xiu Ding Fa Lü Guang Fu Shu Fa Lü Xue Tang*), was established. This school was later changed to Capital Law School (*Jing Shi Fa Lü Xue Tang*), whose curriculum included both Chinese and foreign laws. Its main faculty comprised Japanese jurists who gave lectures on foreign law, in particular, Japanese law. From 1895 to 1909, 47 law schools modelled on the Capital Law School were established, in almost all of which foreign and international laws were taught and many foreign law professors were invited to give lectures.<sup>8</sup> The government also sponsored many young students for further study of law abroad in Japan, USA and Europe.

6 Chonghui Wang also studied law in Japan, UK and USA and obtained his Ph.D degree from Yale University in 1902. He completed the first English translation of the 1900 German Civil Code was in 1907. He not only served as an important government officer of the Republic of China, in charge of legislative and judicial activities, such as the Ministry of Justice, but also as a judge at the International Court of Justice of United Nation.

7 This is because one of the founders of Tianjin Sino-Western School was Charles Daniel Tenney, (1857–1930), an American missionary. For details, see Jiang Wan, *China's Modern Legal Education* (Zhong Guo Jing Dai Fa Xue Jiao Yu), China University of Political Science and Law Press, 2001, 157.

8 See Jiang Wan, *China's Modern Legal Education* (Zhong Guo Jing Dai Fa Xue Jiao Yu), China University of Political Science and Law Press, 2001, p. 175, pp. 208–209.

III. THE GROWING PERIOD – THE REPUBLIC OF CHINA (1912–1949)

The 1911 Revolution ended 2000 years of feudal rule and propelled the entry of the Republic of China: the Nanjing Provisional Government, the Northern Government and the Nanjing government. The development of comparative law from 1911 to 1949 was based on an imitation of the laws of Western capitalist countries.

Sun Yat-sen did a comparative study of Europe and the United States Constitution and his constitutional ‘Theory of Separation of Five Powers’ was based upon the Western doctrine of the ‘separation of powers’. The Five Powers consisted of executive, legislative, judicial, and examination and supervisory powers. China’s legislation in this period further emulated the Western countries. In addition to China’s jurists, distinguished foreign law professors, such as J. Escarra and Podoux from France, and Roscoe Pound from the US, were employed as special Of-Counsels of the Central Government, Ministry of Justice and Ministry of Education and were engaged in consultation regarding legislative, judicial, administrative and legal education matters.

During this period, legislation was further advanced on the basis of comparative law research. From 1912 to 1949, in order to meet the needs of development of social-economy, the different legislatures in the Republic of China enacted many important laws, including 1912 Provisional Constitution Law, 1923 Constitution Law (modified in 1946), 1928 Criminal Law, 1928 Criminal Procedure Law, 1929–1930 Civil Code, 1930–1931 Civil Procedure Law and numerous business laws. In drafting all of these laws, the pros and cons of the related foreign law experiences were taken into consideration.

The law-making and management of the administration of justice imitated more European laws and the European continental legal system, in substitution of Japanese law, and became the main target of comparative law study. The latest European continental legal institutions were adopted by the Chinese legislature. For example, the 1929 Civil Code, under the guidance of French scholar Podoux, was drafted with 95% of its contents following the 1900 German Civil Code, 1907 Swiss Civil Code and 1911 Swiss Law of Obligations.<sup>9</sup> However, after the Second World War, the laws of the Republic of China began to pay more attention to the study of American law.

Legal research and study on comparative law in this period made a significant progress and contributed significantly to the modernisation of modern Chinese law:

- (1) During this period, China’s comparative law study aimed at matching the needs for major forms of legislation. Chinese scholars conducted intensive studies on Western constitutional law for the purpose of modernising the Chinese political system. Twenty-nine books on comparative constitutional law were published between 1911 to 1949, amongst which, the most important is *Comparative Constitutional Law*, published by Shijie Wang (1891–1981) in 1927, and then together with Duanshen Qian (1900–1990)

9 See. John Ching-hsiung Wu, *Research on Legal Philosophy* (Fa Lü Zhe Xue Yan Jiu), Tsing’hua University Press, 2005 (reprinted), p. 28.

in 1936. Both these experts had obtained their PhDs, respectively from the University of Paris and Harvard University. The authors wrote this book on the basis of an extensive and detailed research on constitutional theories in the main Western countries, by collecting and reading publications as they were written in their original languages and analysing the opinions of prominent constitutionalists of that day.<sup>10</sup> Besides that, Professor Shijie Wang was also a principal drafter of the 1936 Constitutional Law of Republic of China.

From the publication of the first Chinese version of a book on foreign private law in 1902<sup>11</sup>; up until 1949, 1200 books and 2500 articles on private law were published in China. Many of them resulted from the study of comparative law.<sup>12</sup> Zuyin Li's (1897–1963) book *Comparative Civil Law-General Part of Law of Obligations* (1933) represented the highest level of the research on comparative private law in China. Chong-hui Wang's *Comparative Summary of the Civil Code* (1916) and Jiaju Wang's *Comparative Business Law Theory* (1917) were also excellent works of comparative private law.

John Ching-hsiung Wu (1899–1986), the leading expert of comparative law of that day<sup>13</sup>, published many important books and articles on legal philosophy with comparative approach<sup>14</sup>. And as always in field of legal philosophy, the famous Italian scholar Luigi Miraglia's work entitled *Comparative Legal Philosophy* was translated also into Chinese in 1940.

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- 10 Shijie Wang & Duanshen Qian, *Comparative Constitutional Law* (Bi Jiao Xian Fa), Shan Wu Press, 2010, analysed in a comparative way the thoughts of many leading foreign scholars of constitutional law, such as A.V. Dicey, J. Bryce, G. D. H. Cole, H.J. Laski, L. Duguit, A. Esmein, D. Malberg, W. Burgess, F.J. Goodnow, P. Laband, G. Jellinek, O. Mayer and C. Schmitt. For details, see Jining Xiong, Qian Duan Shen and his *Comparative Constitutional Law* (Qian Duan Shen Ji Qi Bi Jiao Xian Fa), in *Journal of Study of Comparative Law* (Bi Jiao Fa Yan Jiu), vol. 2, 2008, p.25.
  - 11 *History of Socialism*, Thomas Kirkup and translated by I.K. Hu.
  - 12 See Qinhua He, 'Birth and Grow-up of China's Modern Civil and Commercial Law' (Zhong Guo Jing Dai Min Shang Fa de Cheng Zhang), in *Studies on Law and Business* (Fa Shan Yuan Jiu), vol. 1, 2004.
  - 13 Prof. John Ching-hsiung Wu obtained his Ph.D degree from University of Michigan with a thesis entitled 'Readings from Ancient Chinese Codes and Other Sources of Chinese law and Legal Ideas' (in Michigan Law Review, 1921) and studied legal philosophy at University of Paris with F. Geny (1861–1956) and at Berlin University with Rudolph Stammler (1856-1938). He also conducted legal research at Harvard University and kept very close academic contact with the leading American legal experts – Roscoe Pound and Judge Oliver Wendell Holmes.
  - 14 His principle publications are written in English, including, *Juristic Essays and Studies* (1928), *Fountain of Justice: A Study in the Natural Law* (1955), *Natural Law: A Comparative Study* (1955), *Jurisprudence as a Cultural Study* (1956), *Menciu's Philosophy of Human Nature and Natural Law* (1957), *Natural Law and Democracy in China Philosophy* (1957), *Chinese Legal Philosophy: A Brief History Survey* (1958), *Cases and Materials on Jurisprudence* (1958), *The Natural Law and Christian Civilization* (1962), *The Philosophy of Natural Law: A Comparative Study* (1975).

- (2) Chinese scholars paid more and more attention to the theory of comparative law. The first paper of this kind, written by a Chinese scholar, was Fazi Gong's *Comparison of the World's Five Legal Systems*, which appeared in the *Journal of Political Science and Law (Zheng Fa Xue Bao)* in 28 January 1903. Prior to 1911, very few articles on comparative law were published. Nevertheless, the situation changed in the period of the Republic of China and according to uncompleted statistics, 150 papers specialising on the study of comparative law were published. The most prominent include: Zhirang Zhang, *Comparative Study of Contract Laws between Great Britain and Germany* (1923); Renjie Liang, *Comparative Study on Parole System: Great Britain and France* (1923); Zhiyin Meng, *Comparative View on Five World Legal Systems* (1923); Zhuji Sun, *Comparison of Marriage: Anglo-American Law and Chinese Law* (1924); Changqin Hu, *Comparative Study on Parole* (1925); Zhifeng Zhu, *Comparative Study on Contract between Chinese Law and Anglo-American Law* (1932); Jiongjin Tian, *Comparative Study on European and American Elective Systems* (1933); Xiaoluo Sun, *Importance of Modern Comparative Law* (1933), Qitai Zhang, *Comparative Study on Agreed Penalty* (1934); Guifang Wang, *Comparison on Prison System in Different Countries* (1934); Dingchang Zhang, *Studies on Comparative Law* (1937) etc.

Additionally, in law schools, Chinese scholars made frequent reference to foreign institutions, legal history and doctrines, in comparing Chinese law with foreign laws.

- (3) Education on comparative law developed significantly.

In a number of public and private specialised schools and law schools, the number of foreign law courses increased. Besides International law, Roman law continuously played an important role in legal education. Comparative legal history was added as an elective course. In all of the law faculties of important universities, such as Peiyang University, Peking University, Chaoyang University and Soochow University, the courses of comparative constitutional law and comparative civil law were introduced. More and more distinguished foreign experts, for example, Japanese scholar Taro Okada, US judge Charles Sumner Lobingier and British expert Louis Rhys Oxley Bevan, were invited by leading Chinese law schools to give lectures on foreign laws.

In that period, the law schools of Chaoyang University and Soochow University were the two leading faculties of law in China. The first was founded in Beijing in 1912 and focused on teaching continental laws, attaching importance to the study of codified laws, as majority of its teachers had studied law in Japan.<sup>15</sup> The Law School of Soochow University was founded by the American Christian missionary movement in Shanghai in 1906. It was the only Chinese law school of that period to offer a formal programme of Anglo-American law, to adopt the case

15 Zhihong Qiu, 'Study on the Legal Education of Chaoyang University: Formation of the Attorney at Law in Beijing in the Republic of China' (*Chao Yang Da Xue Fa Lü Jiao Yu Chu Tang-Jiang Lun Ming Guo Shi Qi Bei Jing Lü Shi de Xing Cheng*), in *Studies on History* (Shi Ling), vol. 2, 2008, p. 23.

teaching method and to keep very close contact with American lawyers and law schools. The Law School of Soochow University was renamed as 'Comparative Law School of Soochow University' (CLS) in 1915 and became the first Chinese law school specialising in comparative law. The CLS aimed at enabling students to fully grasp the basic principles and legal theories of the world's major legal systems.<sup>16</sup> Many distinguished experts of comparative law in China graduated from the CLS, for example, John Ching-hsiung Wu, Handian Pang (1920– , leading experts of comparative law at China University of Political Science and Law) and Judge Zhenyu Ni (1906–2003), who served as a judge of the International Court of Justice in Hague and acted as the attorney at law of China in the 1946 Tokyo trial against Japanese war criminal.

The law school curriculum was officially promulgated by the national government of the Republic of China in 1938, and comparative law was selected as an elective course which included the different sectors of comparative law, such as comparative constitutional law, civil law, comparative criminal law and comparative judicial system. This marked the official inclusion of comparative law courses in the official curriculum of Chinese universities for the first time.

- (4) Institutes, journals and academic society of comparative law were established and they became important platforms of related research.

In 1927, as the first institute of comparative law, the Soochow Law Institute was established also at the CSL. The first legal journal on Comparative Law, *Law Quarterly* (*Fa Xue Ji Kang*, which was later renamed *Law Journal* (*Fa Xue Zha Zhi*) was first published in 1922 by the CSL. In the same year, an English language journal on comparative law, called *China Law Review* was launched by the same law school. Many important articles on comparative law were published in these two journals. Moreover, the first society of comparative law was established in Shanghai in 1913 and Chonghui Wang was elected as its first incumbent president.

<sup>16</sup> 'Although other law schools of the day also taught some comparative law courses, few could match the depth and range of the CLS, where such course still constituted one third of the curriculum during the thirties. In 1934, for example, the CLS program was advertised to include courses in (1) Chinese law, (2) modern continental law (French, German, Japanese and Soviet Russian civil law), (3) Anglo-American Law, (4) Roman Law and (5) both public and private international law. Students were required to take not only Roman Law and legal Latin, but also continental civil law (German or French); comparative electives included world legal history and comparative criminal law. Since those course covered past as well as contemporary law, the school's comparative approach was described by one thirties graduate as being both 'vertical' and 'horizontal'. The CLS graduate program also stressed the study and research of comparative law'.

See Alion. W. Conner, *Training China's Early Modern Lawyers: Soochow University Law School*, in *Journal of Chinese Law*, Vol. 8, 1994, pp.1–47.

#### IV. THE SETBACK PERIOD (1949–1979)

Between 1949 to the early 1960s, after the founding of the People's Republic of China, China abandoned the old legal system and tried to establish a socialist legal system, and comparative study shifted its focus to the law of Soviet Union. A large number of Soviet legal literatures were translated into Chinese.

In a sense, comparative law was still in place in this period of time, but due to the ideology of negligence on the study of law, the development of comparative law was constrained. By the end of the 1950s, comparative law was considered as completely terminated in China. In 1957, Judge Zhenyu Ni openly called for 'saving comparative law'. However, his efforts were unsuccessful in arresting the public's attention. During the Cultural Revolution period (1966–1976), legal nihilism became rampant. All legal study and research were interrupted completely. This directly stifled the development of comparative law in China.

#### V. FULL BOOM PERIOD (1979 TO DATE)

In 1978, China began to reform its economy and adopted an open policy. Comparative legal studies were revived. Starting from the 1990s, the gradual globalisation of the world economy has dramatically been encouraging the development of comparative legal study in China.

Firstly, the Chinese legislature drew its attention to successful foreign legislative experiences. Thanks to the reform and opening-up policy, almost all Chinese laws promulgated in this period were enacted on the basis of the survey and research on foreign law.

For example, the comparative law approach was utilised intensively in the 1982 amendment of the Constitution. After extensive research on foreign laws as well as domestic realities, the National People's Congress enacted a modern constitution in which the typical Western legal concepts, such as citizens' fundamental rights and duties, the right of asylum, judicial independence etc, were adopted. The 1999 constitutional amendment provided that the 'rule of law' shall be carried out as a constitutional principal of governance of the country. The legislature stated clearly in the 2004 Constitutional Amendment Act that private property rights, inheritance rights and human rights shall be protected constitutionally, greatly taking into account the successful foreign experiences of national governance and in following international focus on the protection of human rights. In terms of civil and commercial legislation, after China's entry into the WTO in 2000, the legislature continuously adopted more and more standard rules and usages of international law practice. A number of sectoral laws, including environmental law, labour law, maritime law, corporation law, property law, tort law, consumer protection law and intellectual property law, were enacted by reference to foreign laws.

Secondly, the education and study of comparative law were revived. The course 'Introduction to Comparative Law' was introduced in the early 1980s and was added to the curriculum of the main law schools in China. China's University of Political Science and Law (ECUPL) set up a 'comparative law research institute' in 1985 and established a foreign law research institute in 1986; both were merged and officially named 'Institute of Comparative Law' in 1988. It

became the first comparative law research institute in the People's Republic of China and it was divided into different research groups, according to the different legal families, such as civil and common law, Scandinavian law, Soviet Union and Eastern Europe law, Japanese law, Islamic law and Indian law.

Following the opening of this first comparative law institute, ECUPL established the German Law Research Institute in 1998, the Roman Law Research Institute in 1999, the Sino-German and Sino-US law schools in 2004, and in particular, it began enrolling graduate students majoring in comparative law in 2004. To this date, almost 40 comparative law master-degree holders have graduated from this university. In this way, it made itself the most important Chinese university in the field of comparative law.

Many other Chinese universities stressed also the study and research of comparative law, including Wang Jian Law School of Soochow University which opened in 2003, the Sino-Germany Institute for Economic Law established by Nanjing University School of Law in 1995, the Roman Law and European Law Research Centre established by the East China University of Political Science and Law (ECUPL) in 2004 and its Foreign Law and Comparative Law School which opened in 2005. From 2004, both these research organisation of the ECUPL organised a large number of high-level international conferences on Comparative Law and established exchange and training systems in cooperation with many foreign law schools.<sup>17</sup>

Thirdly, there has been an increase in the publication of books and papers on Comparative Law.

After the mid-1980s, more than 50 worldwide influential monographs on comparative law were translated into Chinese.<sup>18</sup> Besides the translation of the classic books on comparative law, starting from the early 1990s, Chinese scholars

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17 The Roman Law and European Law Research Centre established by the East China University of Political Science and Law (ECUPL) successfully organised these International Symposiums: '*Codification, Decodification, Anti-Codification of Civil Law*' (April 2-3, 2010, Shanghai), '*Real Rights: Historical Experiences and Modern Development and Comparative Perspectives in the Continental Legal System*' (April 7-8, 2007), '*Legal Protection of Personality Rights: Historical Foundation, Contemporary Development and Challenges*' (October 16, 2010). Dozens of leading legal experts coming from all over the world attended in each conference.

18 These include '*Introduction to Comparative Law*' by R. Rodière (1989), '*Comparative Law*' by Zweigert and Kötz (1992), '*The Contemporary World Legal System*' (1984) and '*English Law and French Law: a Comparison in Substance*' (2002) by Rene David, '*Comparative Legal Traditions*' by Glendon, Gordon and Carozza (2004), '*A Panorama of the World's Legal Systems*' by J. H. Wigmore (2004), '*Comparative Law*' by Masao Oki (1999), '*Civil Law Tradition*' by J. H. Merryman (1984), '*Making of Civil Law*' by Alan Watson (1992), '*Power and Weakness of Comparative Law*' by Grossfield (2009), '*Comparative Legal Culture*' by Ehrmann etc. The translation of Rodolfo Sacco '*Introduction to Comparative Law*' and '*Comparative Legal Systems*' from Italian into Chinese is also in course.

have been translating more than 800 legal works written by the foreign scholars.<sup>19</sup> Besides translation of foreign works, Chinese comparative legal scholars wrote a large number of books on comparative law: *General Introduction to Comparative Law* (by Zongling Shen, 1987) is noted to be China's most authoritative comparative law monograph.<sup>20</sup>

The Commercial Press published the *Chinese Comparative Law Series* from 2001, which included a set of ten books on comparative law written by Chinese scholars, encompassing 'comparative judicial system', 'comparative Criminal Law', 'comparative constitutional law', 'comparative political systems' etc. The *Comparative Law Series* (as edited by Qinhua He from 2010) also annually hosted books by Chinese scholars on comparative law.

A total of 1382 papers were published on the subject of comparative law from 1978 to 2000.<sup>21</sup> According to an incomplete statistical study, more than 1700 papers were published between 2000 and October 2013. Furthermore, Chinese scholars created their own legal journal on Comparative Law. The most important of these is *Journal of Comparative Law Study* founded by China University of Political Science and Law in 1987, and *Global Law Review* created by the Law Institute of Chinese Academy of Social Sciences in 2000. In fact, *Global Law Review* dates back to the legal journal *Foreign Law Dynamic*, which was created by the same Law Institute in 1976 for the purpose of promoting the study of

19 The Chinese version of the foreign books on Comparative Law and foreign laws appear mainly in the following series of publication: 'Translation in Chinese of the World's Well-known Academic Works Series' edited by Commercial Press (from 1981), 'Series of Translation on Foreign Law' edited by Ping Jiang (from 1991), 'Series of Translation of Well-Known Works on Public Law' edited by Haocai Luo (from 1999), 'Series of Contemporary Classic Law Works' edited by Weidong Ji (from 1990), 'Classic Books of German Contemporary Law' edited by Jian Mi (from 1998), 'Comparative Law Series' co-edited by Weifang He and Hongjun Gao (from 2001), published 'Series of Translation of World Famous Law Books' edited by Shanghai People's Press (from 2001), 'Collection on Foreign Law and Comparative Law' edited by Peking University Press (from 2008). In addition, the series of 'Translation in Chinese of Classic Legal Books on Italian Law' edited by the author of this article is scheduled for publication starting from the beginning of 2014.

20 Other important comparative law works include: 'Comparative Study on Legislation' (by Daying Wu & YunZheng Ren, 1981), 'Fundamental Knowledge on Comparative Law' (by Dayin Wu & Bing Xu, 1987), 'Comparative Constitutional System' (by Huahui He, 1988), 'Comparative Criminal Law System' (by Ge Gao, 1991), 'New Tendency of Development of Comparative Law' (by Zhongling Sheng and Chenguang Wang, 1993), 'Comparative Civil Law' (by Shuangyuan Li, 1998), 'Comparative Law' (by Zhaoxing Liu, 2004), 'Comparative Law in the 20<sup>th</sup> Centuries' (Xiuqin Li, 2006), 'Application of Virtue through Law. Collection of Comparative Law and Civil Commercial Law' (by Jian Mi, 2006), 'Survey on Comparative Law' (by Maozheng Ni, 2006), 'General Introduction to Comparative Law' (by Jingwen Zhu, 2008), 'Comparative Law' (by Shizhong Zhou, 2010), 'General Introduction to Comparative Law' (by Zhujun Zheng, 2010) and 'History of Comparative Law' (by Qinhua He, 2011)

21 For the list of all of these publications, see. Xiuqin Li, *Comparative Law in the 20<sup>th</sup> Century* (Er Shi Shi Ji Bi Jiao Fa Xue), Commercial Press, 2004, p. 464-538.

foreign law and which was renamed twice (*Selection of Foreign Law Translation* in 1979, and *Foreign Law Review* in 1993). Both these journals were core publications on comparative law and produced the considerable influence in the Chinese academic society. Some periodically published books, such as *Foreign Law and Comparative Law* (edited by Qinhua He from 2006), focused on the collection of papers on comparative and foreign laws.

At last, in this period, China's Comparative Law Society was formed and international and domestic comparative law research and exchange programmes increased substantially. In 1990, the Comparative Law Research Association, as a part of China's Law Society, was established and Professor Ping Jiang (1931–), China's most prominent jurist today and former director of China University of Political Science and Law, became its first president. Consequently, the status of comparative law as an independent subject has been established in China and its academic and social value is becoming increasingly prominent. Currently, the Comparative Law Society is guided by Professor Zhaoxing Liu (1941–) of China's Academy of Social Science. It has been providing a wide platform for academic exchanges regarding comparative law.

Besides its annual conference in which foreign scholars are invited to participate, the Comparative Law Research Association successfully organised some very important international conferences to strengthen its academic exchange with foreigners. In 2005, the Comparative Law Association, in cooperation with the International Association of Legal Studies of UNESCO and the International Academy of Comparative Law, held an international symposium entitled '*Comparative Law from the Perspective of Globalization of Law*' in Beijing. Rodolfo Sacco, a worldwide leading expert of comparative law and the President of the said International Association (as at that date), together with many other internationally renowned legal scholars, attended this symposium. In September 2005, with the help of the Comparative Law Research Association, the Supreme Court of China successfully organised the 22nd World Law Conference in Beijing and Shanghai. Prominent jurists and political leaders from all around the world attended this conference, which actively promoted China's international exchange in the field of legal research and education and opened up a new world of comparative law. In 2010, China's Comparative Law Association has separated itself from the China Law Society and was officially renamed 'China Comparative Law Society'. It obtained a greater autonomy after the name change and with more than 200 members, it has continued to intensify academic exchange with foreigners in the field of comparative law.<sup>22</sup>

## VI. CONCLUSION

Current comparative law research and development in Mainland China has undergone great progress and has contributed significantly to the modernisation of the Chinese legal system, but it still falls behind in comparison to other countries

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<sup>22</sup> In particular, together with the *Council d'Etat* of France, it jointly held the international symposium entitled '*Sense of Justice*' in Paris in July 2011 and sent its representatives to participate in the Second Thematic Congress of the International Academy of Comparative Law '*Codification*' (Taipei, May 24–16, 2012).

since it is still difficult for Chinese scholars to gain access to first-hand materials and information. Also, an observation of specific legal systems and phenomena from a cultural and historical perspective has not yet been conducted in depth. There remains a great gap in comparison with other developed countries and China still has a long way to go.

