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Research Article

Origins of China's Private International Law with Shu Without Dao --- *from Tang Lv Shu Yi to Application Law (653-1918)*

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Abstract

The foreign-related legal system existed in Chinese historical archives does not have the same meaning as the private international law in the mid-19th century. The legal thought of the former is *Tian Xia*, the latter is the modern nation, the former's basis is Zong Fan and tribute system, while the latter's basis is the treaty. Starting from *Tang Lv Shu Yi • Ming Li Lv*, although hua wai had been inherited by *Song Xing Tong*, *Da Ming Lv* and *Da Qing Lv*, it did not indicate as foreigners. Within China's traditional feudal diplomatic relationship and the hierarchy system, it was impossible to evolve private international law on its own strength and local resources. The 220-year maritime ban not only suppressed the first sprouts of capitalism during the Ming Dynasty but also lost the opportunity to become a powerful maritime country. Just as powerful European countries were beginning an era of global colonial expansion, China locked itself up tightly. The helpless and forced acceptance of international law came from the disastrous defeat in the two Opium Wars, China was swept into the second globalization. The Qing Dynasty and the bureaucratic group had to use these terminologies to express their demands. When the Westernization Movement was coming to an end, John Fryer's *Ge Guo Jiao She Bian Fa Lun* became China's first representative one on private international law and entered the first peak driven by the freedom of business and encouragement of foreign investment of the Republic of China. The first Nationality Law, Application Law, Measures for the Decisions on Litigation between Chinese and Foreigners and Regulations for the Jurisdiction over Aliens were the representatives works in private international law in the 20th century, but its insufficiency of localized resources would be trapped with dilemma.

Keywords

Ancient China, Foreign-related Legal System, Private International Legal Relationship, Comparative, Historical Analysis, Dao, Shu

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1. Introduction

Although many European and Chinese scholars search for relevant laws and fragments of their interpretations in *Tang Lv Shu Yi • Ming Li Lv* to prove that private international law was already present in the ancient Chinese legal system, the undeniable fact is that private international law, like public international law, was an imported product of near-modern China. It is well known that the failure of the two Opium Wars became the starting point of the contemporary Chinese legal system, and private international law cannot escape this historical arrangement. Indeed, it is a product of the translation and dissemination of European scientific and technological knowledge in the final stage of the Westernization Movement. *Ge Guo Jiao She Bian Fa Lun* translated by John Fryer (1839-1928) can be referred to as the "introduction to near-modern Chinese private international law" [4]. Whether it was public international law or private international law, after the 1830s, for the Qing Dynasty and his bureaucratic group, it was a kind of vocabularies or tools of expression, utilized by Qing's officials to deal with the world and foreigners.

2. Documents on Foreign-Related Law in Ancient China

2.1. Tang and Song Dynasties: Hua Wai Appeared in *Tang Lv Shu Yi* and *Song Xing Tong*

The Tang years was a relatively open society during China's feudal period, the well-connected transportation routes gave the opportunity to become the center of East Asia, fostering a thriving economy and widespread prosperity, which attracted outsiders for trade. Indeed, the capital, Chang An was the center of economic and cultural exchanges, many foreigners and China's ethnic minorities lived there permanently or for a short period of time, consequently, there were bound to be some civil, commercial and criminal rights and interests disputes between Chinese and foreigners (including ethnic minorities), and between foreigners themselves. Addressing the jurisdiction of these cases involving foreign elements represents the earliest foreign-related records in Chinese historical archives.

"諸化外人，謂藩議之國別立君長者，各有風俗，製法不同，鬚問本國之製，以本俗法斷案之。異類相犯者，皆議國家法律論刑罰處之"[6].

During Tang Dynasty, foreign-related legal disputes were generally divided into two situations: between hua wai of the same category, their custom law was applicable; between hua wai of different categories, *Tang Lv Shu Yi* was applicable. Unfortunately, there was no definition, which left a lot of room for later interpretation and imagination. Indeed, two elements should be explained, the first one is on nationality, had never appeared in the Chinese traditional legal system, people's appearance, language expression, clothing and accessories, and even life and eating habits were used as the criteria. Generally, hua wai, referred to people who was immersed in Chinese culture but outside Zhong Yuan, they were not reached by the Zhong Yuan's etiquette, or people who had not been assimilated, they might accept Tang's enthronement, paid tribute to Tang's emperors every year, the category of hua wai included both minorities and foreigners. The second one is that the ancient Chinese foreign-related legal system was based on Tian Xia. The ancient Chinese world view believed that the highest position was Tian, China was the center, and the Chinese emperors were the power center, all other regions were "on the edge of power" [4], China was Zong, and other places were Fan.

After 705, due to the invasion of the Islamic power and the continuous wars in Asia, the land Silk Road [3] was stagnant, how to open a new road and reconnect trade and commerce became an urgent requirement for merchants, the Maritime Silk Road [3] had become a possibility. The Song first emperor, Zhao Kuang Yin (927-976), decided to shift the Chinese economic center to the south. Meanwhile, many maritime trade agencies, shi bo shi [12], were set up along the long coastline to actively develop sea transportation. "The benefits of maritime trade were quite helpful to national finances. It was advisable to follow the old rule to attract people and facilitate the circulation of goods" [3].

The Song Dynasty almost completely inherited the provisions from *Tang Lv Shu Yi*.

"同類相犯，此謂藩議之國，同其風俗，習性一類，若是相犯，即從他俗之法斷之；異類相犯，此謂東夷之刃，與西戎之人相犯，兩種之刃，習俗既異，戎夷之法，各有不等，不可以其一種之法斷罪，遂以中華之政決之"[7].

Compared with *Tang lv Shu Yi*, it was particularly broad. From the international environment at that time, the Crusades forced active Arab merchants to shift their trade focus to the East, opened trade routes to the East, and entered and exited Chinese coastal ports, objectively, created a favorable international environment for overseas trade. The increasing financial pressure on the government was also an unavoidable factor for the Song Dynasty to attach importance to maritime trade. The government had to find ways to open new sources of finance due to the huge military and official salaries, it attached more importance to overseas trade. To build and open more ports, to formulate regulations, to encourage foreign merchants to trade in China, and to reward (or punish) officials for their achievements in attracting foreign merchants. "If there was a crime between Han, Hu, Fan, Yi, Rong, as long as it was not a severe case, it would not be punished according to their rules" [4].

2.2. Ming Dynasty: The Maritime Ban Policy Suppressed the Budding of Capitalism

After the end of the Song Dynasty, China's foreign economic system and maritime legal system underwent major adjustments. Indeed, although maritime trade was not as prosperous as before, due to historical inertia, overseas countries still came to China for trade, the legal provisions applicable to conflicts with foreign merchants were:

"凡化外人犯罪者，並依據律擬斷", "雖非我族類，歸復既是王民，並依據常律擬斷也"[10].

Comparing *Tang Lv Shu Yi*, *Song Xing Tong* and *Da Ming Lv*, it is not difficult to find that the three codes were consistent in that the provisions only applied to criminal cases, not civil and commercial disputes, what changed was there had been differences in how to understand hua wai, it no longer had the distinction between the same and different kind, this was a turning point from absolute personalism to absolute territorialism.

Why did this change happen? Although Ming's worldview could not go beyond Tian Xia, the understanding had greatly improved. During the Ming dynasty, some systems had been established to manage the ethnic minorities in the northwest, southwest, and north. Except for suppression and elimination, the Ming Dynasty was better at using culture (Confucianism), economy (tribute system), and marriage as supporting means to govern the territory. Meanwhile, by the late Ming Dynasty, this shift has its origin in the earliest contact with Portugal and Spain. Portuguese explorers and their fleets began to operate on the southeast coast of China. In 1517, disputes arose between the Portuguese and the Chinese, and sometimes the two sides even fought. The Ming Dynasty once interrupted its trade relations with them. However, in 1577, the Portuguese stayed in Macau, and the local authorities allowed them to build a trade warehouse there. From then on, the specific area where the Portuguese lived in Macau was called Fan or Ao Fan. Spain was the second European country connected with China, when the Spanish expeditionary force led by General Legazpi decided to make the Philippine Islands a colony in Asia, these Chinese Nan Yang ships and Chinese goods became synonymous with super profits [1] under the jurisdiction of the Colonial Administrator. Taking Quan Zhou and Yue Gang in Fu Jian as the starting point, Chinese ships and goods continuously transported Chinese tea, spices, silk, beeswax, furniture, etc. to Manila Bay. Nan Yang merchants and their Chinese ships enjoyed the right to temporarily live outside Manila, waiting for the monsoon and ocean currents to meet the conditions, and then they returned to Fu Jian again. Although this transaction included Chinese ships and goods, the transaction of cross-regional civil and commercial activities took place in the Philippines rather than in China.

As a seller in the first globalization, a commodity exporter and the largest importer of silver at that time, Wan Li Emperor, who seemed to be the winner, did not think that this was good for China. The prosperity and development of commerce made farmers in the east south areas of China no longer cultivated their own land, more and more people were engaged in business and transportation. This was considered a dangerous thing for China, which was based on agriculture. How to stabilize agriculture: to suppress commerce, to prohibit ocean trade, to prohibit ships from going out to sea, and impose heavy penalties on those who go out to sea privately and shipbuilders. Gradually, maritime trade lost its increasing prosperity, and there were fewer Chinese ships floating in the South Sea. The sea ban was an isolation policy, which aimed to prohibit private voyages, and then it absolutely restricted foreign merchants from going to China for trade. The implementation hit China's economy and the development of scientific and technological knowledge and cultural exchanges. In Europe, the Age of Exploration and the prevalence of colonialism, China lost the opportunity to communicate with the world, blindly and foolishly missing the historical opportunity that would be developed into a powerful maritime country.

2.3. Early Qing Dynasty: Commercial Debts in Thirteen Hongs Were the War Fuse

Inheriting the maritime ban policy, all coastal ports must be strictly guarded, and no sails were allowed to enter. Starting from 1684, the policy was a little loosened, the British merchant Hong Renhui (Hong) brought British ships to Ning Bo for trade many times, intending to establish a long-term commercial base here, which aroused the Qing's suspicion, facing foreign merchant ships floating in the South China Sea, this decree prohibited foreign merchant ships from Ning Bo, was changed to Guang Zhou. Hong went to Tian Jin, asked the Qing to open Ning Bo, accused Guang Dong Customs and officers of corruption and extortion, but, except that some officers were dismissed, Hong was detained in Macau for three years.

Just after Hong's case, Qing issued: *Five Measures to Prevent Foreigner*: foreign merchants were not allowed to spend the winter in the provincial cities; local merchants should strengthen their control over foreign merchants; to prohibit merchants from borrowing money from foreign merchants; to strengthen public security management around the port; to prohibit foreign merchants from hiring local person to pass some information. Under the *Regulations on Trade between the Chinese and Yi* (1809) and *Eight-Article Regulations* (1835), those decrees' purpose was: under the strict control of the Qing's administrative power, Chinese subjects were not allowed to have contact with foreigners.

Guang Zhou and the Thirteen Hongs [14], as the only foreign-related port and department, the duties were: (1) when a foreign ship arrived in Guang Dong, it must first choose a Bao Shang [14] from the Thirteen Hongs, he would be fully responsible for all actions of the foreign merchants. Foreign merchants had to entrust all matters to Bao Shang, and then

foreign merchants could only sell goods to the Thirteen Hongs. (2) Foreign merchants were only allowed to visit three times a month and were restricted to moving freely within the market area located 100 yards away, they were not allowed either to gain information about market demands or current prices. Foreign merchants had no way to contact local Chinese merchants and had no way to compare and judge the prices of Chinese goods. They could only deliver the list of all the goods on the ship directly to bao shang through a list and had no way to avoid direct participation in the trade.(3) The Thirteen Hongs could choose to trade with foreign ships according to their own personal wishes, but they also had to serve as intermediaries between officials and foreign merchants and guarantee the safety of foreigners' lives and property. Once the government made changes in taxation, the Thirteen Hongs would inform foreign merchants. (4) The Thirteen Hongs must monitor foreigners and make them obey the prohibitions, supervise foreigners to avoid them from getting lost and cause trouble.

The Thirteen Hongs were the medium for trade between Chinese and foreign merchants, with both the power of commercial monopoly and political functions. However, the Thirteen Hongs with dual functions were not as powerful as imagined, most of them went bankrupt within 10-20 years. The debts owed to foreign merchants that they could not repay after bankruptcy formed a debt. After the Opium War, the compensation items and amounts in the treaties signed between China and many European countries included commercial debts.

2.4. Reasons Why Private International Law Did Not Exist in Ancient China

"The traditional Chinese legal system was not a management system that serves the public interest, but a one-way control system operated by the emperor and implemented through the bureaucratic machine" [13], from *Tang Lv Shu Yi*, *Song Xing Tong*, *Da Ming Lv* and *Da Qing Lv*, it required all legal systems to maintain the supreme authority, meanwhile, the emperors should give foreigners quite lenient measures. In ancient China (before the Opium War), analyzing whether there was private international law, under the interaction of Confucianism and Legalism, it must be an analytical framework and background, some elements that had never appeared in the Chinese traditional legal system should not be introduced into the analytical path or means of ancient Chinese private international law. So, before two Opium Wars, private international law did not exist in China.

First, foreigners and hua wai are different. How to define and its scope are complex, nationality as a modern legal factor did not exist in the Chinese legal system. Such as Yi, Di, Hu, Fan, Wai, and Yang had all been used to express foreigners' notation. The Differential Pattern [11] should help explain this problem. The basic logical relationship of Chinese society is: every Chinese is a central origin of this social pattern, according to different factors such as blood relationship, appearance, kinship, and social relations, like a stone thrown into the lake, there are layers of ripples, the more it spreads outward, the weaker the relationship is, and the closer it is to the center point, the stronger the relationship is. Taking the emperor and his power as the center, in Zhong Yuan, the area infused with Confucianism became a core, expanding to the west and north respectively, the closer to the emperor, the more central the area, other places were subordinate, could not be on the same level as China, "they can only come to China because they envy China's greatness, rich products and Confucian culture" [4].

Secondly, the Tang's foreign trade was developed, and it was continued in the Song Dynasty and adopted a positive open policy, because of the continuous prosperity of economy and trade that the tourists and missionaries who first recorded the ancient and wealthy countries in the East could find a long story of "rich and prosperous ancient countries in East Asia" [2]. However, one fact cannot be denied: China was a feudal agricultural country, the self-sufficient agricultural economy led to a consensus: China was rich and did not need to trade with foreigners and other countries, "minimizing exchanges between Chinese subjects and foreigners as much as possible" [13] to ensure agricultural stability. So, it was impossible to regard foreign-related transactions as a part of their lives, social demand was very weak, which was not conducive to the emergence of private international law.

Another major reason is that the traditional Chinese legal system was dominated by criminal law, *Tang Lv Shu Yi* was a criminal code with 12 chapters, only in the second chapter were there a small number of records about marriage, inheritance, land, real estate, etc., and the rest of the chapters were all criminal legislation. "Being good at using criminal means to achieve national governance [8]" allowed China to achieve national unity and social harmony earlier, and it had indeed made outstanding contributions to maintaining the stability of the feudal system. However, over-emphasis on criminal punishment was bound to be harmful to other legal relationships. An obvious consequence of over-using criminal means to regulate all relationships was that private law (civil and commercial law) was not developed and sufficient in feudal China, personal interests and rights were not the content of the traditional Chinese legal system, and there was no clear boundary for the public power. Without sufficient domestic private law, it is almost impossible for foreign-related and developed private law to appear.

Thirdly, from the concepts of private international law, some explanations are given for ancient China's foreign-related economic legislations. It "is referred to the law that resolves which country's law should be applied to civil law relations with foreign-related factors when civil laws and commercial laws of countries around the world differ from each other" [5]. Jurisdiction, applicable law and recognition and enforcement of foreign judgments are regarded as the core, the debate on whether there was private international

law in ancient China revolves around the above three basic issues. (1) The recognition and enforcement of foreign judgments had never appeared in the ancient Chinese code, nor had it been the scope of various government offices, nor the officials who were specifically responsible for solving cases had never thought about this issue. After the outbreak of the Opium War, the consular jurisdiction was determined through treaties signed between China and other countries, it became an issue. (2) Throughout Tian Xia, the Chinese legal system had become a representative of high-level civilization, when the provisions outside China would conflict with the Chinese codes, the later enjoyed a higher effectiveness. Although Chinese officials would respect foreign customs in the handling cases, in fact, it was necessary to consider as discretionary factors. (3) Jurisdiction in the litigation did not exist in the traditional Chinese legal system, it was usually associated with administrative power and function, had nothing to do with judicial power. Because officials were responsible for administrative affairs within a certain area under the mixture with judicial power, administrative jurisdiction replaced judicial jurisdiction.

3. The Near-Modern Chinese Private International Law: Translation

3.1. Lin Ze Xu and His Translation: Hua Da Er Lv Li

During the reign of Emperor Dao Guang, Western capitalism was developing rapidly, to open the Chinese market, Britain smuggled opium from the East India Company into China, a large amount of Chinese silver flowed out. Opium smoking became widespread, affecting not only the general population but also infiltrating the Forbidden City, determined to address the crisis. Emperor Dao Guang resolved to impose a strict ban on opium. On December 31, 1838, Lin Zexu (Lin, 1785-1850) was appointed as the Minister of Anti-Opium, arriving to Guang Dong on March 10, 1839. As a typical Chinese Confucian official, he did not know English before. When he arrived in Guang Zhou, Lin knew that the foreign merchants he faced were different from traditional "Hu" and "Fan". He appointed some people to translate some materials, the only legal one was: *The Law of Nations, or Principles of the Law of Nature*, Swiss Emerich de Vattel (1714-1767), its Chinese name was *Hua Da Er Lv Li*.

A historical story cannot be ignored. On July 7, 1839, British merchant sailors broke into Lin Weixin in Kowloon and clashed with the Chinese people, Thomas Tedder's behavior caused his death. According to *Da Qing Lv*, criminal cases on Chinese territory should be investigated and handled by local official, Lin asked Charles Elliot (Elliot, 1801-1875) to hand over the murderer. On July 10, 1839, Elliot used 1,500 silvers as compensation, hoping that the wife, children and other members would admit that Lin's death was caused by "falling to the ground and hitting the rocks and dying, which had nothing to do with the foreigners", and "no one would make trouble and try to blame the foreigners" [13]. On August 12, 1839, Elliot set up a court on a British merchant ship in Hong Kong waters to try this case. The jury finally rejected the charge due to insufficient evidence and acquitted Thomas Tidder.

This case was not an isolated incident but was deeply intertwined with broader tension over the opium trade and the conflicts between China and Britain. Because Emperor Dao Guang burned the opium of British merchants in Hu Men, it severely hit Elliot's interests and his opium traffickers without giving compensation, and Lin thought that if the sale of opium in China was to be completely ended, this criminal case only added pressure and confrontation to the conflicting parties. On January 5, 1840, Lin cut off Sino-British trade and destroyed all their opium, without paying compensation. The above two things mixed, became the fuse of the First Opium War.

3.2. The First Private International Law Was John Fryer's Ge Guo Jiao She Bian Fa Lun

In the last five years of the 19th century, Qing launched the last legal reform, and the history of China's legal modernization began, "international law was the earliest legal discipline" [4]. The most famous legal text was, *Wan Guo Gong Fa*, which came from the American missionary Timothy Richard. It was based on the American international law professor Whitten's Elements of International Law: With a Sketch of the History of the Science, published in 1865, and it became "the first book on international law in East Asia" [8].

However, it should be noted that the first translated work devoted specially to private international law was published in 1898, when the Westernization Movement had already ended, it was finished by John Fryer, a British teacher at the Jiang Nan Arsenal. It is worth noting that the original work translated was the four-volume Commentaries upon International Law, the first three volumes of which dealt with public international law and were published in 1895, under the Chinese name *Ge Guo Jiao She Gong Fa Lun*. Only the fourth volume was related to private international law, and again, was published in 1898. "Fryer's translation of private international law can still be seen as a product dependent on the public law" [5].

The development of China's near-modern international legal system has its roots in *Wan Guo Gong Fa*, up until this moment, private international law had always existed as a part of public international law, and there are three main reasons for this: first, there is no term, compared with criminal punishment, civil and commercial legal relations and their systems were underdeveloped. Due to historical inertia and path-dependent thinking, the speed and degree of acceptance of public international law were significantly greater than that of private international law. Second, the environment and pressure faced by the country at that time, the demand for

public international law was relatively urgent. After the two Opium Wars, from the process of negotiation to signing, officials' demand for public international law was greater than their requirements for private international law. Finally, traditional Chinese society was a society where "family and country were one" [4]. The country was an enlarged family, and the family was a shrunken country. Giving priority to national and macro affairs had become a kind of path dependence or ideological inertia, the former was destined to have a higher degree of demand and attention.

3.3. The First Application Law Was Born in 1918

The last emperor, Pu Yi announced the abdication in 1911, the last dynasty ended. In 1912, the Republic of China (ROC) was established, becoming the first republic in Asia. As far as private international law is concerned, there is no doubt that both the legislative achievements and judicial practice activities of China's private international law originated in this period, the evolution is unsurprising, as private international law typically arise in response to the demands of cross-border civil and commercial interactions. In contexts where such exchanges are frequent, disputes naturally increase, leading to a corresponding growth in private international law cases. As the provisional president of the Nan Jing Provisional Government, Sun Yat-sen was also a representative of the national bourgeois revolutionary faction, his public remarks were conducive to the provisional government's formulation of policies and measures to revitalize industry and develop the economy. However, at that time, the domestic national bourgeoisie had weak capital strength and backward technology. To realize the commit and the wishes of the national bourgeoisie, it was necessary to rely on foreign capital, this process was inevitably accompanied by exchanges between Chinese and foreign personnel and foreign-related civil and commercial disputes.

Three important legal documents emerged in private international law. The initial important document was the first *Nationality Law*, promulgated in near-modern China, on November 18, 1912, the Bei Yang government promulgated Nationality Law, five chapters and 22 articles, mainly divided into five parts: inherent nationality, acquisition of nationality, loss of nationality, restoration of nationality and supplementary provisions. This fully made up for the problem of how to define foreigners and stateless persons in judicial practice, which was a prerequisite for private international law to be deployed. The second important legal document was *Measures for the Disputes between Chinese and Foreigners*. The last legal document is *Application Law*.

Nonetheless, with the outbreak of the Chinese Civil War in 1927, Kuo Min Tang retreated to Taiwan. The above-mentioned legal provisions and litigation files on international civil and commercial legal relations were brought to Taiwan. Mainland China, without these legal provisions, ended the germination and brief development of private international law for a hundred years since Lin's efforts to learn and explore international legal rules. From 1949 to before 1980, mainland China entered a historical stage without any sign of private international law.

3.4. Near-Modern Chinese Private International Law Existed Four Features

Looking back at the 20th century, the development of private international law in China as an imported product had two climaxes, after the ROC's establishment, it lasted until the outbreak of the Chinese Civil War in 1927, this was a rare golden period of economic development, and private international law ushered in its first wave. The other climax should be from China's accession to the World Trade Organization (WTO) in 2001, and it has continued to this day. The following discussion is focused on the period from the Opium War to the end of the first climax. The author summaries the characteristic of four aspects and the characteristic of the emergence of private international law in China at that time.

First and most important, private international law shall be understood as an imported product. During the history of Xi Fa Dong Chuan, private international law emerged as a brand-new legal department that only appeared in China through missionaries and their translations. What does it mean to view it as an imported product? As an independent legal department, private international law did not exist in the Chinese legal system with Confucianism as its background. Due to the failure of the Opium War, Qing and the bureaucratic groups had to face a diplomatic and legal culture that was completely different from the Chinese legal system. "[…] To learn to express the ideas of Chinese officials in the language of foreigners" [5] and "[…] had to use the vocabulary and expressions in international law" [9], and so private international law was a kind of transmitted knowledge rather than local knowledge.

A related question refers to who bought this product? Accompanied by the process of missionaries spreading Christianity, Catholicism or other religious teachings in China, various forms of social knowledge coming from Europe and the United States, including geography, maps, paintings, astronomy, mathematics, geometry, science and technology, gradually spread to China. Leveraging their linguist expertise, missionaries translated and published quite a few well-known legal works in Europe and the United States at that time, which became an indispensable link in the modernization of Chinese law. Qing ordered that they ought to be considered, "as a manual for officials to handle foreign cases, and everyone should have it" [4]. Their translation and publication were supported by the Qing's finances, and they became the most widely circulated. When local governments at all kinds of levels handled foreign-related legal issues, these two books had become applicable law.

It must be acknowledged that missionaries were not jurists

after all, nor were they necessarily experts in social sciences, missionaries were still a minority. Therefore, what were the criteria to translate a certain public international law or a certain private international law? What factors supported their choices? And then, because most missionaries still did not have the same professional qualities as jurists, it is also worth considering whether, during the translation process, the complexities inherent to private international law may have been overlooked. Instead, they may have focused on translating sections of public international law that were simpler and more manageable.

Secondly, from the evolution of Chinese legal history, private international law originated from specific cases before and after the Opium War, closely linked to the works of missionaries. It served as an emergency measure adopted to respond to and resolve the national crisis, even though the last legal reform ruined its own fate.

However, almost all the draft laws that were discussed in the Qing last five years eventually appeared in ROC, laws that simulated European legal civilization culminated the establishment of the six-codes system, it was precisely in this process that private international law ushered in its first prosperity in China. Within 35 years, important legislation such as the *Nationality Law*, *Regulations on the Implementation of Jurisdiction over Foreigners*, *Application Law*, etc., however, records of judgements involving Chinese and foreign litigants remained rare.

As previously noted, the first development of private international law was inseparable from ROC's establishment. From local to central governments, the active development of the economy and the high attention paid to the rights of foreigners in China are inseparable. Because it was a bourgeois regime, economic development was the fundamental task, it can be attributed to two additional factors: first, ROC was the first democratic republic in Asia, and abolishing consular jurisdiction was an important historical task, "all reforms to the Chinese legal system are centered around consular jurisdiction" [5], making its abolition central work of private international law at this stage. Second, the development of civil and commercial legal relationships requires economic cooperation. The government adopted a limited intervention approach, respecting market dynamics and avoiding excessive interference. Moreover, the administrative power did not have too much energy and financial resources to intervene in the economy, which led to the prosperity of civil and commercial entities.

However, the good times did not last long. The relatively peaceful and prosperous initial stage of capitalist development was close to collapse due to the outbreak of the civil war between the Kuo Min Tang and the Communist Party. In 1948, Kuo Min Tang retreated to Taiwan, China. The six-code system, legal documents, and important judicial officials and scholars were all taken to Taiwan, and mainland China entered the period of Communism. After the founding of the People Republic of China (PRC), there was a period of comprehensive Sovietization reform. Most of the Sovietized laws were concentrated in the constitution, administrative law, court law, procuratorate law, supervision law, etc. There was no document record of private international law. After the Cultural Revolution in China, all the documents, books, notes, legislation, etc. that had been left in mainland China and recorded the modernization of Chinese law were burned.

Thirdly, it became important to analyze the relationship between public and private international law in China. The transition from the direct development of diplomatic relations of Zong Fan in ancient China to diplomatic relations based on the treaty model, left China with little time for a sufficient adjustment period. In this process, not only were the tributary system and the Qing Dynasty's elaborate etiquette practiced abandoned, but more important, the imperial power structure and Tian Xia were all rejected. Even if the Qing last three emperors actively imitated European legal civilization and established separation of powers and judicial independence, they still could not change the fate of the dynasty's decline, neither by promulgating the so-called Nineteen Articles of the Constitution in accordance with the requirements of many treaties.

Both public and private international law came to China through the same process, since private international law had always been an appendage of public international law. For the Qing's bureaucracy and intellectuals who had no private legal knowledge in their thoughts and education, the civil and commercial legal relationship was weak. Because of the national crisis that public international law entered China and was integrated into the power system at a faster speed, Qing's officials felt more affinity with public international law, and "they always looked for the shadow of the Chinese legal system in the rules of international public law" [9].

Fourthly, it seems to be a good choice to analyze the near-modern history of China from the perspective of traditional Chinese culture: Confucianism, Han Feizi's Shu and Laozi's Dao. Confucianism, with Confucius as its founder, was closely related to agricultural civilization. The development of agriculture required the restriction of mobility as a guarantee. In the division between officers, farmers, craftsmen and businessmen in ancient China, business and merchants had always been at the bottom of the social class. This ranking stemmed from the belief that business destroys the "mobility restriction" [11] advocated by agricultural civilization and Confucianism, because once business was developed, the economy becomes inevitably active, and the profits will be greater than agriculture itself, farmers would not stay on the land to seek benefits. Once the population engaged in commercial activities increases, agriculture would face the risk of being abandoned. Therefore, to stabilize the regime and the stability of national finances, a stable agricultural country had always been the foundation of feudal China. Agricultural civilization and Confucianism cooperated with each other, the former is the economic foundation, and the latter is the superstructure.

In the global route of the Manila Galleon by Spain, Emperor Wan Li of the Ming Dynasty was still worried even though he saw the silver from Mexico and the Philippines flowing into China. His anxiety stemmed from the growing prosperity of budding capitalist commerce, handicrafts, and transportation industries continued to prosper, which led to fewer people remaining on the land and engaged in farming. Alarmed by this shift, the emperor closed coastal ports and implemented a maritime ban. So, as it may be inferred, Confucianism, which had always been the ruling ideology, did not advocate business, businessmen and commercial civilization. Instead, it articulated a country, and a society relies on unequal social hierarchies constructed by blood, occupation, culture and many other factors to ensure the operation of power structure and the established social order. As a result, the concept of the equal civil and commercial relationship to private international law cannot be found in Confucianism, nor are traces generated at a local level in China.

In comparison, the essence of the Chinese legal system is determined by Han Feizi's *Shu*. Shu, was technology, means, skills or specific methods. Introducing Han Feizi's Shu into private international law means: the specific method and steps used by Qing officials and emperors to deal with Hong, the specific method and process for dealing with the Chinese Lin's case, how to solve the problem of exchanges between China and European countries, how to use the correct vocabulary in official documents, how to choose which English words to express the Qing's views, etc. The above-mentioned means, procedures, steps, skills, vocabulary and even applicable legal documents, together, were Shu proposed by Han Fei. As a private international law at Shu's level, the more specific and practical the better, pragmatism is the standard, and it was also a problem that cannot be escaped as an imported legal discipline.

Compared with Shu, Dao is closest to the natural law, corresponding to the theory, principle or doctrine. Dao and Shu, the former is the theory and principle, which is the general part of the modern international private law, and the latter is the system and means in different fields or sectors. As the birthplace of modern legal culture, Europe has developed Dao and Shu synchronously in legal departments. Different systems or preferences and different choices in different periods can be found in the doctrines and history of different legal departments. However, this phenomenon or appearance did not exist in China. Dao and Shu have become two levels of parallel existence in modern legal departments. At Shu's level, International private law exists but is missing at Dao's level.

4. Conclusion

As an independent legal department, private international law as it is understood today, although there had been some sporadic records, hua wai in those ancient and outdated historical documents since the Tang Dynasty, it is an undeniable fact that until the early Qing Dynasty, there were a few civil and commercial judicial activities involving foreign parties in China, and they had not reached the level of being adjusted through legislation, such as Lv and Li. At that time, civil and commercial legal relations were not fully developed, and there were almost no judicial records on civil and commercial legal relations involving foreign parties. Whether it is the first wave of the development of private international law in ROC or the re-development after China joined the WTO, private international law as transplantation, not as localization, does not yet can innovate and develop independently.

Abbreviations

Elliot	Charles Elliot
Hong	Hong Renhui
Lin	Lin Zexue
PRC	The People Republic of China
ROC	The Republic of China
WTO	World Trade Organization

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