

The Comparison and Implication between Lü-Li Law and Common Law – The Perspective of Law Forms Evolution

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Abstract

Statute law system in Chinese history was established at roughly the same time when English common law system was formed in British history. But the two countries have been developing in quite different ways. This paper focuses on the development path of two systems at that period in order to get access to the study of the legal and cultural background of the two law system. From the history, we can see china ancient law was wandering between stability and flexibility. The law code mainly deals with the stability of the law, meanwhile the case code mainly solves the flexibility of the law. Undoubtedly, sometimes law code will conflict with the case code. This conflict condition also occurs in British law. In this research, on one hand, historical analysis was adopted to search for the truth of the legal history; on the other hand, the sociology of law was also adopted to find the interactivity of law and social life. This paper reports on a survey into the legal history. Studies have shown that the China's feudal autocratic was further strengthened and the "case" which is on behalf of the sovereign authority was increasingly important with the development of statutes law system; meanwhile, in British, due to the battle between royal and religious authorities, the legal authority was gradually established. However, no matter which legal system we use, the stability and flexibility of the law system are the most important elements and in order to meet the requirements of society law must be modified accordingly.

Keywords: lü-li law, common law, law evolution, law system

1. Introduction

The formulation of tradition in Chinese and Western law systems was influenced by many elements which have the specialty respectively. By analyzing the law systems of every country, we must find out the problems to be resolved together and the differences among their problems. Since Song Dynasty, in feudal dynasty autocratic monarchy was strengthened. With increasing stress from the conflicts of classes and inner conflicts of leaders, the legal system was formulated gradually. Accordingly, Li had been emphasized. While at the same period in British, Common law was formulated in the combat between the Emperor and the religion in order to strengthen the Emperor's right.

2. The Evolution of Chinese Lü-Li Law System

2.1 The Definition of Lü-Li Law System

In the history of Chinese legal system, the time between Warring States to Sui and Tang Dynasties is known as "lü-ling law" period, which was first established during from Warring States to Qin and Han Dynasties, went through development in Wei, Jin, and Northern and Southern Dynasties, and mounted to its climax in Sui and Tang Dynasties. However, after the middle of Tang Dynasty, the form of legal system went thorough major changes due to social turmoil. The "ling" in the "lü-ling law" system gradually declined, and the existing system was shocked by the new emerging forms of law such as "chi" (a kind of loyal order).

In the context of social revolution, the battered "lü-ling law" system was gradually disintegrated and a new form of law - "lü-ling law" system came into being. The "lü-ling law" system is generally defined as "a legal system which is dominated by lü and li and consists of many other forms of law" (Liu Bacai, 2012). This point of view is acceptable. "Li" then gained official recognition by the state and gradually completed to a relatively mature and harmonious legal relationship. In the perspective of legal sources revolution, the turn from "lü-ling law"

system to “lü-li law” was not completed overnight, as tremendous social, political and economic demands for reform are always hiding behind legal reform.

2.2 *The Changes of Legal form during Song and Yuan Dynasties*

“Lü-ling law” system peaked in the beginning of Tang dynasty, and the appearance of “Tanglü -Shuyi” marked its maturity. After the middle of Tang dynasty, due to great social political and economic changes, the legal system had to make relative adjustment as a superstructure.

Since the middle of Tang, feudal society had been facing radical changes in social, political aspects and so on. After the rapid economy development in the early period, the primary system of land equalization and Zu-Yong-Diao System were severely damaged in the middle of Tang. To avoid gradually increased taxes, the number of “escaping families” kept growing, casting negative effect on not only the national revenue but also the Fubing system. The military governorship of late Tang dynasty and the following social upheavals made the system of land equalization resolved and the Zu-Yong-Diao System abolished, and then great changes were brought about to social activities.

Meanwhile, after long period of development, the feudal dynasty went into a stage of acute class contradiction with civil uprisings breaking out frequently and the internal contradictions in ruling class intensified constantly, all of which compelled feudal emperors to consolidate loyal power and intensify centralization by means of law.

Great social changes force the rulers of feudal dynasty to adjust the existing legal system. Slowly though, the changes of form of law in legal system had become an ineluctable trend. The “Lü-ling” emphasizing legal stability in original legal system declined; the early rejected “fali” in “Lü-ling law” system was gradually recognized and flourished in this transition. Therefore, with “Lü-ling law” system disintegrated, a new system--the “Lü-li law” system slowly established.

2.2.1 A New Form – “Fali” Grew from Rejected to Recognition

In the “Lü-ling law” system of Sui and Tang Dynasty, the main forms of law includes “Lü”, “ling”, “ge” and “shi”, around which the legislative and judicial activities are organized. However, there also appeared in judicial practice of early Tang the “fa-li”, which is the origin for Dali Department to make judicial judgments. As for the application scope of “fa-li”, it had aroused intensive debate among the government officials and people in the period of Tang Gaozong. The debate began with Zhao Renben, a governor of Dali Department, who raised the question of whether “fa-li” could be used as a reference to settle a lawsuit, and ended with Tang Gaozong’s disapproval of the “fa-li” application on account of legal stability. Generally speaking, due to the firm objection of Tang Gaozong towards the “fa-li”, the application and compile of “fa-li” during the whole of Tang dynasty had very little to recommend. But in the development of case law, Tang dynasty first replaced “bi” in Han dynasty with “fa-li”, which is a vital change.

Established after the military governorship of late Tang dynasty and turmoils of The Five Dynasties and Ten Kingdoms period, Song dynasty paid more and more attention to the reinforcement of centralization, especially in the consolidation of imperial power. And the flexibility of “Li” could meet the needs for free discretion of feudal emperors. In Song dynasty, the “Li” gradually prevailed, leading to the popularity of case compilation. Surely, the popularity of “Li” and even “Li against law” was rejected by many people, who arguing that “Li” is not part of the law, and its application would damage the universal application value of laws.

Though opposed, it had become an objective fact that “Li” was already a vital basis of law in the period of Song and Yuan dynasties. Basically speaking, in the development of laws, statute law carried with itself the inborn weakness of hysteresis in face of the complex and fast-changing social relations. In this background, “Li”- a flexible form of law established according to different occasions, would naturally satisfy the complex social demands. The time between Song and Yuan dynasties is a time of great social revolution compared with Sui and Tang, and the appearance of “Li” favored the rulers’ demands to solve new social problems according to flexible laws.

Subjectively speaking, the reason why Tang Gaozong opposed “Li” largely depends on the orthodox ideology of “protecting the existing fruits” by Chinese feudal royal families. And the ideology of rulers since Song dynasty had changed a lot, especially the rulers of Yuan, who came from minority ethnic groups and advocated “military control”, less confined to Chinese legal tradition. The rulers of the early Yuan deliberately rejected Chinese culture of the Yellow River plain, especially the orthodox legal culture, and regarded their own national law as ruling basis. Under this circumstance, the application of “Li” in the field of judicial practice expanded largely and sharply. The laws of Yuan dynasty mainly embodied in “Dayuan-Tongzhi” and “Zhizheng-Tiaoge”, both of which contain numerous “Li” as regulation. Objectively speaking, “Li” itself is also changing as a form of law.

“Li” was primarily set according to different occasions, and it was too casual indeed. But in the Song dynasty, “Li” was officially brought into the horizon of national scrutinize, and it was divided into the compiled and not compiled. The compilation of “Li” had become the country’s formal legislative activity, and a judicial case could not formally used as case law until scrutinized by particular government institute.

In conclusion, as new form of law with the “case law” quality, “Li” was rejected in Tang dynasty but obtained public recognition and was introduced into legal system in Song and Yuan dynasties. The existing “Lü-ling law” system was impacted by the appearance of a new legal origin.

2.2.2 The Decline of Ling-dian

In Jin Dynasty, “Taishi-lü” became the beginning of the departure of lü and ling. From then on the rule which means that ling can define the scope and make the regulation became the unique position legally. The rule lost its position at the summit of laws and decrees of Sui and Tang Dynasty. In Sui and Tang Dynasty, the laws and decrees were made with the establishment of the important law and code. In Sui Dynasty, there were “Kai Huang Decree”, “Da Ye Decree”, while in Tang Dynasty, there were “Wu De Decree”, “Zhen Guan Ling”, “Yong Hui Decree” and “Kai Yuan Decree”. “the 25th year of Kai Yuan Decree” revised mainly by Li Linfu is the last time to revised the decree largely in Tang Dynasty. From then on the revision of the decrees was done in the form of “Ge” or “Ge Hou Chi” in Tang Dynasty, for example, “Yuanhe Gehouchi”, “Taihe Gehouchi”. “Decree and Code” was further developed in Song Dynasty. Taking “Tiansheng Decree” as example, which is the first decree formally made in Song Dynasty, we can find the heritage of the decree and code. In the ten volumes of “Tianshi Decree” which were passed on incompletely in the world, there are 293 items of Song Decree and 221 items of Futang Decree, coming to the total at 514 items (Dai Jianguo, 2010). The discarded items account for three of fourth, from which we can find the changes of the society at the turn of Tang and Song Dynasties.

In Yuan Dynasty, there are some important laws and code, such as “Zhiyuanxin Ge”, “Fengxianhong Gang”, “Yuantong Zhi” and “Zhizhengtiao Ge” (Qianjing Hufu, 2007). In Yuan Dynasty, there was no decrees in the law system, which showed that the decrees and laws were developed in the different way from those in Tang and Song Dynasties. After the Emperor of Ming, Zhu Yuanzhang, established the new country, he made the “Daming Decree” which followed the structure of six parts, including “Shi Decree”, “Hu Decree”, “Li Decree”, “Bing Decree”, “Xing Decree” and “Gong Decree”. There were 145 items in the six parts. The items of “Daming Decree” were much less that those in Tang and Song Dynasties, which showed the decline of the decree and code. In Qing Dynasty, the decree and code thoroughly lost its original position in the law system and the code replaced the decree officially. So the ling-dian disappeared in the law system of Qing Dynasty.

2.3 The Law System in Song and Yuan Dynasties

In the law systems of Song and Yuan systems, “Li” had been the necessary supplement in the making national law. They were various, among which the formulation and application of “Duan-li” were the most influential. With the development of products and economy, the society and living condition have been changed a lot in Song Dynasty and the ideas in academic fields are very new and creative. Meanwhile, due to the rebellion at the end of the Tang Dynasty and the following splitting nations of Wudaishiguo, the leaders at the beginning of Song Dynasty paid more attention the strengthen of centralization in case that the Emperor was weak but the local governors were strong. The centralization of political rights required the strengthening of laws which served the Emperor’s order so as the roles of Chi and Li were more and more important.

There was a big difference in law system of Song Dynasty after Emperor Songshenzong during Yuanfeng Year. But before that the forms of law were mainly about lü, ling, Ge and Chi being inherited from Tang Dynasty. Chi was used to modify the improper part and “Bianchi” was usually used as the legislation activities. Four volumes of “Jianlong-Bianchi” which were adapted during the year of Songjianlong were published at the same time with “Songjianlong-Xiangding Criminal system”. Until the period of Emperor of Songren, the items in Chi were far more than those in Criminal system. After the year of Songyuanfeng, the law system changed a lot. The original form of law disappears regularly while Chi was becoming the main form in law system resulting in the law system of “the form of Chi decree” which officially came into being in “the form of Xiningzhushi Chi decree”. In Song Dynasty, adapted case was used regularly, for example, “the incomplete case of Xiningfasi”, “the incomplete case of Yuanfeng”, “the incomplete case of law events of Yuanyou” and “the incomplete case of criminal names of Kaixi”. Bianli as a form of national legislation activity made “Duan Li”, the form of law the function of justice. Judicial acts of Bianchi and Bianli made the temporary Chiling or Duanli get the judicial authority applicable to law strengthening the centralization of Emperor’s power.

In Ming and Xing Dynasty, the forms that Li was attached to lv and lv was combined with Li were evolved from Song Dynasty. Besides the Bianli, there were some other law and code with some items in them, for

example, "chunxitiaofashili", "qingyuantiaofashilei" and "chunyoutiaofashilei". Above all, the time of Song is a time when the adoption of law was paid more attention to. At that time, the forms and names of law are various and changeable. In Yuan Dynasty, which was established by the minority, there were some forms of military law at the early development of its nation. With their invasion of mainland, owing to the accumulation of law and civilization, the forms of law were also various. "Yuanshi. xingfazhi" generalized the laws in Yuan Dynasty into three forms: zhaozhi, tiaoge and duanli. In "Yuandongzhi", there are lots of regulations about Duanli, tiaoge zhao, chi and ling.

2.4 The Mature Statutes of Law and Case Systems in Ming and Qing Dynasty

2.4.1 The Law System in Ming Dynasty

As Zhangfan pointed out that since Ming Dynasty the revision of "Li" and adaptation of "Huidian" had made a great impact on the traditional law and decree system. And he also put forward that this process was the turn point from lü-ling law system to lü-li law system (Zhang fan,2013). In Ming Dynasty, the regularly legislation activities are about revising the Li but the adaptation of "Ling" was paid more attention at the beginning of Ming Dynasty and declined at the middle of Ming Dynasty.

After Emperor of Ming, Zhu Yuanzhang, established the government, he learned the lesson that government would be destroyed due to the strict law from Yuan Dynasty and put forward that it was good to make a simple law. So he firstly formulated the "Daming Ling" which was divided into six parts: Shi, Hu, Li, Bing, Xing and Gong, including 141 simple items. Zhu Yuanzhang paid more attention to the function of Lingdian and thought Lingdian and lü-ling were both the effective forms of law. In fact, the items in Daming-Ling were much less compared with the Tangling which mostly include more than one hundred items. The decrease of items in Lingdian showed the decline of the adaptation of the Lingdian. In a period in Ming Dynasty, there was only one "Daming-Ling" but at the middle of Ming Dynasty, the adaptation of Huidian was very popular. Accordingly, "Zhengde-huidian" and "wanlichongxiu-huidian" were published formally. And they replaced the Lingdian in the forms of law officially. After Zhu Yuanzhang made the "Daming Ling", he continued to adapt "Daming-lü" which changed the way of adaptation since the "Tanglü-Shuyi" was adapted and legislated following the six departments including seven parts: "Mingli-lü", "li-lü", "hu-lü", "li-lü", "bing-lü", "xing-lü" and "gong-lü". At the time of Emperor Ming, there are the "Tiaoli" form of law, except for "Daming-lü", "damingling" and "mingdagao". The "Tiaoli" resolved the social problems happened at the beginning of Ming dynasty due to its relative flexibility, such as "zhenfanzafansizui-tiaoli", "chongjun-tiaoli" and so on. When there were both 'lü' and 'li', how to keep balance between them was a problem. He emphasized that lü could be the regular rules but li could be used temporarily. So the balance between li and lü showed that the law system lacked the combination and assimilation.

At the middle of Ming Dynasty, the formulation and regular revision of "Wenxing-tiaoli" showed the mature of the relationship between lü and li of Ming Dynasty. "Wenxing-tiaoli" was formed in the 13th year of Hongzhi and was revised in 28th year of Jiaqing and was revised again in the 13th year of Wanli. At the middle of Ming Dynasty, there were severe conflicts in society so the law could not solve the social problems. Meanwhile, the multiple 'Liwen' were not in accordance with each other bring out more difficulties in the application of law. "Wenxing-tiaoli" sorted out the "xinganliwen" and made it clear that the Li was the supplement of the lü. During the period of Mingwanli, the lü and li were adapted and published in the same book following the rule that lü was the main part and li was the supplement note, which was considered as the beginning of the combined adaptation of lü and li. In Ming Dynasty, among the various adaptations of li, the system which took li as the supplement of lü was fully improved and followed the rule of simplicity promoting the role of li in the law system.

2.4.2 The law System of Qing Dynasty

When the governors in Qing Dynasty went to the center of China, they strengthened the adaptation of "lü-li" in order to adjust to the new government. From Shuizhi to Qianlong dynasty, there were three decree codes: "shunzhi-lü", "yongzheng-lü" and "qianlong-lü". "Shunzhi-lü", also called "Daqinglüjijie-fuli", which was the first decree code after the Qing Dynasty's entering the center of China, was wholly inherited the "Daming-lü" including the items attached to "Daming-lü".

During Kangxi' period, with the stable condition of the dynasty. The governor worked on the adaptation and revision of law text and items, adding some items to the fixed law. Consequently, "xingbuxianxing-celi" was formulated in the 19th year of Kangxi and was systematic from the aspect of legislation, emphasizing the wholly conduction itself. In 28th year of Kangxi, "Xianxing-tiaoli" was merged into "Qing-lüfuli". During the period of Yongzheng, the "Li" was revised largely, but the revisions were the stage of sorting out from the perspective of

modern Jurisprudence, among which lacked of necessary combination of “Lü and Li” and were not organized.

After Emperor Qianlong took his place, the third main revision started in the first year of Qianlong. So in the 5th year of Qianlong, “Daqing-lüli” was conveyed including 47 volumes, 30 parts and 436 items of law text which were attached by 1049 items of regulations. “Daqing-lüli” opened the system of combination between law text and regulations announcing the establishment of “Lü-li law system”. After the formulation of “Daqing-lüli”, it could not be changed easily as the permanent law from ancestor, and was continually used without any revision from the 5th year of Qianlong to the late of Qing when the new law was made. According to the invariance of the permanent law from ancestor and the changeable social conditions, the government had to add or revise the “Li” to make up the insufficiency of the law. So there were an increasing number of Li and came up to 1456 items until 26th year of Qianlong. Owing to the conflicts between Lü and Li in the Judicial practice, the rule, that the regulations should be revised partly every 5 years and revised mostly every ten years, was made in 15th year of Qianlong making the revision of regulations legalization and standardized.

2.4.3 The formulation of Ming -Qing Lü-Li law system

The “Li” became equally important to “Lü” in the formulation of Lü-Li law system. To some extent, the function of “Li” was even greater than “Lü” and thus resulting in that the “Li” surpassed the “Lü”. But the relationship between “Lü” and “Li” did not satisfy the governors of Qing Dynasty so they wanted to adjust it through the regularly revisions. In the system of Lü and Li, “Lü” and “Li” were not equal. “Lü” was the essential and permanent rule and “Li” was the supplement and temporary.

Secondly, Li includes not only criminal items but administration items which are represented as “huidian” and all kinds of items or “Celi”. In the law system of Ming and Qing Dynasties, administration items are very important. Since Ming Dynasty, the norm of public law which maintains the feudal rules includes not only the norm of criminal law but the many norms of administration law which monitor the administrators’ behavior. The first administration law code was firstly adapted since the 15th of Hongzhi in Ming Dynasty, including “Zhengde-huidian”, “Jiajing-xuzhuanhuidian”, “Wanli-chongxiuhuidian” and so on. They were different from “Tang-liudian” and were important administration law followed by the Emperor and all ministers. Meanwhile, the government of Ming Dynasty also launched the administration items as supplements of the “Huidian”, such as “Libu-tiaoli”, “Zongfan-tiaoli” and so on. The tradition of adapting the Huidian of Ming Dynasty was inherited in Qing Dynasty. Since the year of Kangxi there were some codes published like “Kangxi-huidian”, “Yongzheng-huidian”, “Qianlong-huidian”, “Jiaqing-huidian” and “Guanxu-huidian”. In legal history, we call these codes “Wuchao-huidian”. “Celi” was the regulations which were typical and permitted officially were the rules and important law followed by the administration. There were “Lifanyuan-Celi”, “Liubu-Celi”, “Qindinglibu-Celi” and so on since the dynasty of Kangxi. So in Qing Dynasty, there were a lot of law system like “Shili”, “Celi”, “Tiaoli”, “Shengli” and so on, ranging from national politics, economy, nations and so on in every aspect of life.

2.5 The Enlightenment from the Development of Chinese Law System

In the ancient Chinese law system, different laws worked mutually and functioned respectively in order to the requirements of the stability and flexibility of law. In Lü-Li law system, Lü-Li as the Making law functioned as the stability. Lülian as the Criminal law was the norm for adjusting the behaviors which were against nation and the essential regulations. However, the new form of “Li” mainly work on the function of adjustment in the flexibility of law, which to some extent functioned as the temporary strategy.

Law is accordance with the social life. The transformation from the Lü-Ling law to Lü-Li law represented the adaptation of legal construction to the social economy and social life. In the system of Lü-Ling law, Lü and Ling were to meet the requirements of social stability in the beginning and prosperity periods. Taking Tang Dynasty as example, in the economic recovery period of the beginning stage of Tang Dynasty, “Juntian-Ling” protected the social and economic foundation encouraging the farmers and improving the economic recovery and development in the beginning of Tang Dynasty. Whereas in the Turbulent Times, Ling apparently could not adapt the demanding of society inevitably was replaced by the more flexible form of law. After the middle of Tang Dynasty, because of the economic recovery, the old “Jundianzhi” and “Zuyongdiaozhi” brought heavy burden to the farmers so as to many “Taohu” appeared requiring a new reform in law. So Li was relatively more flexible than “Ling” in the system of Lü-Li law.

3. The Evolution of the English Common Law

Hayek said: “it is because the British preserves more the medieval prevailing ideal that law is the highest—an ideal which had been destroyed due to the rising of the autocratic monarchy in other places or countries—that

Britain was able to create a modern development of freedom.” (Hayek, 1997) .The development of the British legal system is always accompanied by tendency of liberalism, rather than one-way strengthening autocratic monarchy just like China’s feudal dynasty. Generally speaking, in the same period as the China’s Song, Yuan, Ming, and Qing Dynasties, Britain, along with the monarchy and the religious right competition, gradually formed the origin system of Common law, Equity law, and Statue law.

3.1 Common Law Evolution

The formation and development of Common law in Britain is full of the competition and mix of natural native and foreign laws. Common law was formed in about twelfth Century and was developed by England Royal judge, which was a set of legal system applied to the whole of the kingdom of England.

The origin of Common law was closely related to the Norman Conquest. The major result of this event was the establishment of a powerful centralization in England, which at that time could only be accomplished by the church in the whole Europe, thus the development of the English law could be launched under the background that the European continent had not yet established centralization. In some sense, Common law was actually a byproduct that was produced by the king of England during the process of strengthening centralization. At that time, King Henry II continuously carried out a number of judicial revolutions in order to Strengthen the Royal. He first strengthened the assize, thus forming a relatively complete judicial institutions from the central to the local and expanding the Royal jurisdiction; simultaneously, he expanded the king’s judicial power through practicing legislation and judicial. As a result, the nuclei of the Royal judicial system were the writ system and jury system.

At the beginning of formation, Common law had particularity, which was carried out by means of writ providing judicial relief, and took relief rather than legal norm as a starting point, so it intensified rights protection via pursuing strict formalism program features, emphasizing “program proceed rights”. Since Common law emerged, it had continuously developed in practice under the joint effect of Royal judges and legal professional classes. Comparatively speaking, its development was stable, consistent with the expansion of Royal rights from twelfth century to fifth century; but in sixth and seventh century, as the Feudal dynasty’s desire of strengthening absolute power became stronger and stronger, the relation between Common law, which was originated from the king but later independent from the king, and the king began to be subtle, sowing the seed of breaking out in later legal conflict.

The common law emphasizes that the scope of application of law is universal, and the most frequent manifestation of law is legal precedent. Legal precedent means that rules of Common law are contained in the previous judgment. From the legal nature of speaking, Common law processes rich customs, rationality, and history, which makes it have characteristics of continuity, openness and adaptability compared with Statue law. Historical factors make the continuity of Common law and the variability of Statue law be in sharp contrast. Since the English common law came into being in twelfth century, its development was continuous without being interrupted throughout the changes of dynasties. Relatively speaking, China, since the Song Dynasty, has emphasized that “the rules from the ancestor mustn’t be changed”, but in practice contents of law had experienced complex changes frequently with the changes of dynasties. Openness makes Common law tolerant, and enables it to absorb different kinds of legal resources as well as to maintain its leading role and at the same time take in new legal forms through the rule of development that makes it open to the judicial practice of judge and legal experts.

3.2 Equity Law Evolution

From the aspect of the legal source, Equity law is a demonstration that the English law is influenced by the Roman law; from the perspective of the relationship between legal sources, Equity law is a correction to Common law’s rigid rules, a kind of judicial relief outside Common law. The evolution of Equity law in Britain is rather exceptional. In fourteenth century, it was a legal method used to adjust the relationship with Common law, while after seventeenth century, it was officially recognized as a legal system parallel with Common law. The emerging of Equity law was in close relation with the birth of the court of Chancery, and had a direct relation with the expose of Common law’s own defect after long development. Compared with Common law, Equity law emphasizes ethical value of morality and conscience, paying attention to the realization of substantive justice, and was likely tend to judicial discretion. Equitable procedure of equity law is relatively simple as commands issued by the judge play a mandatory role; like Common law, Equity law is a relief system in which the program drives the entity. Equity law is a complement of Common law.

3.3 *Statue Law Evolution*

There is Statue law besides Common law and Equity law in the English legal source, but Statue law has a longer history than the others. The history of the English Statue law concerned in this essay is from the Norman Conquest to the Glorious Revolution. The English Statue law is divided into two stages during this period: one is from the Norman Conquest to the mid fourteenth Century, a period when legal tradition of the English Common law is formed; during the process of Common law's formation, Statue law at that time played a role as legal resources provider. In this period, judges from Common law courts had a good interaction with Statue law. The judge not only promoted the making of Statue law through participation in legislative discussion and afterwards legislation, but also influenced the changes of the rules of Statue law via explaining Statue law and case verdict during judicial process. Under the effect of this, Statue law at that time had strong judicial characteristics. The other is from the mid fourteenth Century to the Glorious Revolution. The role of legislative court had become professional and the role of judges had also become specialized since the mid fourteenth Century. Against this background, the English legislative court became mature in aspects of members and rules of procedure, thus judges began to fade out the legislative role gradually. The judge's explanation of statue was constrained by stricter rules during judicial practice, and judges from Common law court started to explain the law more seriously according to the rules. In entity content, Statue law at this time was concerned about social problems in some specific aspects in the form of special regulation, tending to be more practical and concrete.

The number of the English Statue law was large and its content was concrete from fourteenth century to the eve of the England Glorious Revolution. In Statue law great attention was paid to details in content which makes it possess greater clarity. The English Statue law had different demonstrations compared to the ancient Chinese Statue law. Ancient China had a long tradition of administrative procedure, and law became more normalized after Song Dynasty; comparatively, Britain's establishment of law was embodied by separate law in a certain aspect.

3.4 *Enlightenment of the Evolution of Common law*

There are conflicts between several legal forces during the process of the formation of the English legal system, including balances between kingship and the religious authority as well as combats between kingship and forces of restricting kingship. The result of legal combats was to make the English law to be corrected and developed in dynamic balance, forming a legal tradition which was totally different from the European Statue law.

Generally speaking, the law is realized through the road of codification in a strong centralized country; but because of special history and geography, Britain has formed a completely different legal system, which shows that there is not only one way of codification to realize the unification of the law. The choices are not monodic but diverse. The unification of Common law is realized based on the fact that the motility of the judicial is fully guaranteed. Common law implements the unification of the law through the judicial (including the united central court, united judges, united procedural formats and procedures, nationwide assize, etc.) without relying on the Roman method of codification.

4. **The Comparison between “Lü-Li Law” and Common Law**

“lü-li law” represented the law system in ancient Chinese feudal dynasties, while Common law represented the law system during the same period in the peninsula of England. Natural economy is the basis of society in the traditional Chinese, accordingly self-sufficiency in the farming led to the stability and conservatory in the law system. In the traditional legal relationship, “lü” as the representative of cultural conservatory established the stable order in the feudal society due to its stability. As the expanding of the social conflicts, “Li” had been paid more attention to and was equally important to “lü”. In the traditional Chinese political system, the emperor had the most powerful right, which was the highest of all others. Meanwhile the religion also relied on the emperor's right. Taking the development of Buddhism in Tang Dynasty, at the beginning of Tang Dynasty, Emperor Gao and Taizong emphasized the Buddhism and then Buddhism developed a lot. But at the middle and late of Tang Dynasty, the flourishing of Temples of Buddhism damaged the interests of landlords so as to decrease the revenues. So the governors changed their attitudes to the Buddhism and were against the Buddhism, even in the period of Tangwuzong, the Buddhism was forbidden and destroyed to prevent the Buddhism from being developed. The passivity of religion in the Chinese traditional system made the “lü-li law” conservative and self-improving. Compared with the Chinese history, in the peninsula of England, the emperor's right to a large extent was limited by religion. For a very long time, the emperor's right competed with the power of religion. In order to win over the support from the public, both of them managed to inform or improve the law so as to be very helpful for the development of common law in the history.

5. Conclusion

To discuss the comparison of two countries' legal system is likely to confront the problem of "it can only see trees but no forest", so this essay is not concerned about differences between two countries' legal systems, but tries to search the similarity of legal systems' development in the process of carding the evolution and changes of two countries' legal systems so as to reveal the rule of legal development.

Defining the law of the Song, Yuan, Ming, and Qing Dynasties as a statute law system is unilateral because Statute law was just the major demonstration of the criminal law in that period. To be fair, besides Criminal law, there were Civil law, Administrative law, etc., which existed and developed in their special legal forms. But in the light of the fact that the law of the traditional China is always regarded as the criminal code, in this sense, it is acceptable to say that Statute law was the symbol of the law in this period. The law in this period possessed both authority and flexibility from the aspect of social effect of the law. "Law", which characterizes stability, reflects the rational design of the law maker, and it is the law maker's anticipation of the problem that the law may be needed to adjust social relationships, which have the function of forecast; while "case", which emerges in the practice of summing up experience, embodying the law's positive response to social life. In the process of forming the law, mutual complement of reason and experience and the echo of stability and flexibility make Statute law system more adapted to the need of complex and changeable social life in the late feudal society than Decree law system. Though law and case coordinate with each other under Statute law system, under the background of strengthening feudal autocracy, the development of Statute law had no choice but to draw close to maintaining absolute monarchy gradually, thus the authority of the law was easy to be destroyed by the king's casual decision, which sowed the seed that Statute law in the late Qing Dynasty was replaced by modern law.

During the same period, Britain had developed the tradition of the common law in the combats of several legal forces. Under the English monarchy system, the authority of the law had been developed to a certain extent for the reason that the power of kingship in general had not been developed into high authority just like feudal centralization of state power of China, which made the English law develop into Common law which was different from codification through dynamic judicial force. In Common law system, the strengthening of the judge's power and citizens' awareness of legal authority lays the foundation for modern civilization transformation of the English law, enabling the English law to come to the judicial civilization gradually based on the combats of all kinds of social forces.

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