

From contracts to codes: A comparative study of the development of commercial law in China and the West (Centering on the Tang and Song Periods and Medieval Europe)

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Abstract

The purpose of this article is to explore the similarities and differences between Chinese and Western commercial law in terms of contractual systems, commercial dispute resolution mechanisms, and the process of commercial law formation and culture, and to explore the implications of traditional commercial law elements for contemporary legal practice by comparing the evolution of Chinese commercial law in the Tang and Song dynasties with that of European medieval commercial law. Using the interdisciplinary perspectives of law, philosophy and accounting, the article analyzes the cultural logic and economic motives behind Chinese and Western commercial law, and explores the causes of the diversity of global commercial law systems from a historical perspective.

Keywords: Chinese And Western Commercial Law; Contractual System; Commercial Dispute Resolution; Commercial Law into Culture; Interdisciplinary Research

1. Introduction

1.1. The Beginning of Legal Civilization: A Comparison of Early Contract Systems in China and the West

1.1.1. The contractual system in China during the Tang and Song dynasties

During the Tang and Song dynasties, China's economy and society entered a phase of relative prosperity, and the commodity economy developed significantly. The Tang Dynasty had a variety of contract forms, including sale and purchase contract, loan contract, lease contract, etc., and the content of the contract has become more and more detailed, covering the rights and obligations of both parties to the transaction, breach of contract and other provisions. In this context, the contract system gradually improved, and became an important legal protection of commercial transactions. First, the Tang and Song dynasty contract system has initially formed a more complete administrative authentication system, such as the Tang dynasty market coupons need to be inscribed by the government with legal effect, Turpan unearthed the "Tang Xianheng four years in the West Prefecture, Du team is buying camel deed" shows that the contract needs to be "guarantor pledge+ official seal authentication" double important pieces, forming a "contract-administrative" bundle. The contract-administration" bundled mode. On this basis, the Song Dynasty further strengthened the legal effect of the contract, through the official certification, notarization and other means to improve the credibility and implementation of the contract. Secondly, for the judicialization of accounting technology under the contract system of the Song Dynasty, the "Four Pillars Settlement Law" of the Southern Song Dynasty was not only used for financial accounting, but also used as the core evidence in disputes over land and houses. Disputes such as these in all walks of life more and more common, credibility issues become the main problem of economic development in the

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Song Dynasty, which directly promote the formation of the spirit of contract and the standardization of the development of business operations in the Song Dynasty, but also to promote the transformation of the Song Dynasty social management in the economic management of the transition and practice [1].

1.2. Evolution of the contractual system in medieval Europe

The evolution of the contract system in medieval Europe is characterized by the integration of the formal rationality of Roman law and the ethical constraints of ecclesiastical law. Unlike the spontaneous evolution of the Chinese contract system in the same period, European merchants constructed a unique commercial governance system through the systematic integration of the principle of freedom of contract in Roman law and the ethical norms of ecclesiastical law. 11th-century Genoese merchants creatively combined the Roman law of wax sealing documents with the ecclesiastical notarization system, with the former conferring formal legitimacy on the contract and the latter reinforcing the binding force by means of the sanctity of religion, a dual guarantee mechanism that not only enhanced the effectiveness of the contract but also gave rise to autonomous organizations of merchants. This dual safeguard mechanism not only enhanced the effectiveness of the contract, but also gave birth to the autonomous organization of merchants. In terms of technological innovation, the 13th century Florentine banking industry invented the double-entry bookkeeping technology, through simultaneous recording of the flow of funds and contractual obligations, so that the attribution of responsibility can be clearly traced. This technology inherited the theory of debt balance of Roman law, but also fit the principle of fairness of church law, which laid the foundation for the share system of distributing risks according to the proportion of capital contribution in the "Conseillado Maritime Law". This institutional innovation led by the merchant class, through the synergy of credit management, technological tools and autonomous adjudication, transformed commercial practices into an operable system of rules, retained the spirit of the Roman law contract at the same time, with the help of the Church's ethics to enhance the binding force of the system, and ultimately pushed the completion of the systematic transformation of the European commercial law, laying the dual foundation of both rationality and ethical discipline for the modern contractual system.

1.3. Contractualism from a philosophical perspective

From a philosophical point of view, the spirit of contract embodies mankind's pursuit of freedom, equality and justice. Whether in China during the Tang and Song dynasties or in Europe during the Middle Ages, the contract system reflected the desire of the society at that time for fair trade and respect for individual rights. However, the differences in cultural backgrounds between China and the West make the spirit of contract present different ethical foundations.

Chinese Confucian culture centers on the "unity of faith and righteousness" and incorporates "faith" into the "five constants" as the basic moral code. Zhu Xi, a Song Dynasty scholar of science, proposed that "a contract is a manifestation of righteousness", emphasizing that the effectiveness of a contract stems from moral self-discipline rather than legal procedures. Under this concept, a contract is not only a piece of paper, but also an ethical carrier for the contracting parties to practice "righteousness". For example, in the Tang and Song dynasties, land-sale contracts often established their validity through the witnessing of neighbors rather than through strict formalities, reflecting the cultural quality of moral constraints over formal norms.

In contrast, medieval Europe developed a "sacramentalism of contracts" under the influence of Christian theology. Thomas Aquinas, in his *Summa Theologica*, argued that contracts were "the secular manifestation of God's will" and that their sanctity transcended secular authority. This conception combines freedom of contract with religious obligation, such as the principle of non-consensual taxation established in the 13th century English Magna Carta, which both protects individual rights and implies reverence for sacred oaths. The difference between the two paths shows that while the spirit of contract in China is rooted in the Confucian ethical community, Europe relies on religious theology to construct the transcendence of contract. This philosophical divide still influences the understanding of the nature of contract in both Eastern and Western legal cultures.

2. Differences in Institutional Constructs: Comparison of Commercial Dispute Resolution Mechanisms

2.1. Commercial Dispute Resolution in the Tang and Song Dynasties in China

During the Tang and Song dynasties, with the development of the commodity economy, the commercial dispute resolution mechanism gradually took shape as a "triadic system" with official litigation as the core, and civil mediation and guild arbitration as the auxiliary. At the level of official litigation, although there are limitations of cumbersome procedures, but the prototype of professional adjudication mechanism has appeared. The administrative agencies

represented by the Hublot Department of foreign trade disputes to implement the "monolithic" jurisdiction, this administrative-led adjudication model not only to protect the order of overseas trade, but also formed a "political instead of legal" system characteristics. It is worth noting that, the Southern Song Dynasty "Qingyuan Article Law Class - Finance and Use Door" innovatively established the accounting evidence rules, requiring the handling of official property disputes, "inspection of the yuan purchase deed and state and county books", giving judicial priority to commercial books, which reflects that commercial adjudication at that time has begun to build a specialized system of evidence.

At the level of civil mediation mechanism, the commercial dispute resolution mechanism shows significant geographic characteristics, the local gentry and clans through the "Lu's Township Covenant" and other norms, the use of ethical indoctrination and balance of interests to resolve disputes. For example, in the case of the debt dispute of tea merchants recorded in Yijian Zhi, the mediation of the township elders resulted in the program of "repaying the capital in installments and exempting the interest". Guild arbitration relies on industry autonomy, by the "head of the line" according to the rules of the industry to deal with disputes. The three mechanisms complement each other in practice. This multi-disciplinary dispute resolution system not only adapts to the commercial needs of different levels, but also through the specialization of administrative adjudication, institutionalization of rules of evidence and other innovations, providing a historical reference for the development of commercial justice for future generations, demonstrating the "combination of etiquette and law" and "harmony of reason and sentiment" of traditional Chinese legal culture. This demonstrates the wisdom of governance in traditional Chinese legal culture, which is "the combination of ritual and law" and "the harmony of reason and sentiment".

2.2. Medieval European commercial dispute settlement mechanisms

The European medieval commercial dispute resolution mechanism centered on the autonomy of merchants, forming a self-governing judicial system with the merchant court as the main body and commercial arbitration as the supplement. As a spontaneous judicial institution of the merchant class, the operation of the merchant court highlighted the distinctive procedural rationality. The "cross-checking of accounts" pioneered by the Arbitration Tribunal of the Champagne Bazaar is the most representative, and this kind of formal examination procedure not only ensures the objectivity of the decision, but also lays down the foundation of modern commercial rules of evidence. At the same time, the professionalization of commercial tribunals has highlighted the in-depth development of businessmen's autonomy, thus making the decisions of commercial tribunals both authoritative and operable. From the existing social and economic development of the history of data verification, along with the formation of modern commercial society and the emergence of commercial dispute resolution mechanism, is not a continuation of the traditional secular law, but the businessman's own creation, is the businessman according to the industry characteristics of commercial transactions and their own industry expertise and industry reputation and the establishment of self-regulation institutions, which is originated in the European medieval commercial court [2].

Commercial arbitration institutions have established the principle of "priority of arbitration" through normative documents such as the Marseille Maritime Regulations, and Venetian merchants have generally included mandatory arbitration clauses in their trade contracts, agreeing that disputes must first be heard by arbitration tribunals formed by trade guilds. This mechanism not only realizes fast and efficient dispute resolution, but also forms the customary law system of merchants through the compilation of jurisprudence such as the Oleron Casebook. The establishment of an autonomous judicial system not only meets the time-sensitive needs of transnational trade for dispute resolution, but also puts into practice the medieval merchants' concept of governance of "self-generated law" through the organic combination of procedural rationality and professional adjudication.

2.3. Commercial dispute resolution from an accounting perspective

Looking at the history of the development of accounting technology, the evolution of the system for the settlement of commercial disputes has always been accompanied by innovations in accounting methods. During the Tang and Song dynasties in China, the accounting system centered on the Four Pillars of Settlement (Old Pipe, New Receipts, Dismissal, and Seeing) became an important tool for the state to control commercial activities. In the Song dynasty, the government precisely monitored the flow of monopoly profits by checking the "old management-new revenue" data comparison of salt and tea monopoly organizations, and this mode of embedding accounting technology into financial supervision made commercial account books the legal evidence for determining economic responsibility.

In contrast, accounting techniques in medieval Europe were characterized by merchant autonomy. The Venetian merchants created the "secret bookkeeping" method, which encrypted transaction information through special symbols, not only circumventing ecclesiastical law's prohibition on the calculation of interest, but also constructing a knowledge barrier unique to the merchant community.

The differentiated development of accounting technology has had a profound impact on the construction of the commercial law system. China's Song Dynasty, through the "Qingyuan Law Classes" to establish "all care owed to the government, check the books for the final" auditing principles, the state's financial needs into the accounting standard of evidence; while Europe's "Hanseatic League Commercial Code" based on the double-entry bookkeeping technology, the development of the "balance sheet joint and several liabilities" and other commercial rules. " and other commercial rules. The contrast between the two shows that when accounting technology serves centralized power, it tends to reinforce administrative regulation, while when it is in the hands of the merchant class, it becomes the technological foundation that carries the norms of merchant autonomy.

3. Evolution of legal texts: an analysis of the process of culturalization of commercial law

3.1. The culture of commercial law in China during the Tang and Song dynasties

The process of codification of commercial law in the Tang and Song dynasties was closely related to the financial needs of the state. Tang Dynasty "Tang Law Review" will be the rules of commercial codification, on the surface of regulating the market order, but in fact, the service of the tax system. For example, the "Miscellaneous Laws" stipulated that dendrobiums, buckets, scales and other measuring tools with an error of more than 3% would be sentenced to "sixty canes", which was directly in line with the implementation of the two tax laws, and the unified measurement standards ensured that acres of land and property were accurately taxed. The Song Dynasty further monopolized the profiteering industry through the written law. Political and Tea Law" will be codified tea citation system, tea merchants must purchase official "tea citation" to obtain the right to operate, the use of a unified format of the "contract deed" to record transactions, and in the books according to the "old tube + new revenue - dismissal = see in the "The four-pillar method was used to record the transactions in the books of accounts. This dual monitoring system of "contract + account book" enabled the State to institutionalize the seizure of commercial profits.

From the control of weights and measures in the Tang Dynasty to the monopoly edicts in the Song Dynasty, the essence of commercial law is to realize the "government by business" with legal tools, not only to regulate the balance and stability of the market, but also to protect the revenue of the state treasury, which embodies the unique logic of commercial governance in ancient China. For the characterization of the functional dichotomy of law and order in the Tang and Song dynasties, since modern times, scholars have re-examined the logic of the division of sectoral laws from the West, i.e., the law is the criminal law code or the code of "all the laws in one body", and the order is the administrative code, or the civil code that gathers the civil law, the commercial law, the constitutional law, the administrative law, the international law and so on, or the organizational law for the bureaucratic ruling body, or even the blank criminal law. The administrative code, or the civil code, which is a collection of civil, commercial, constitutional, administrative, and international laws, or the organizational law of the bureaucracy, or even a blank criminal code, etc. [3].

3.2. The culture of medieval commercial law in Europe

The process of commercial law development in medieval Europe was directly driven by technological innovations in trade. Breakthroughs in maritime technology gave birth to a more systematic rules of maritime law, the 12th century Mediterranean extensive use of dhows, ocean trade risks increased dramatically, the Oleron case file first "common sea loss" system, requiring owners of goods according to the proportion of the value of the goods to share the loss of the ship in distress. Innovations in payment instruments also led to the improvement of the law. 13th century Mediterranean trade circles commonly used bill of exchange settlement, but the endorsement of the transfer of debt disputes arising from the transfer. Genoa 1292 promulgated "bill of exchange regulations", the transfer of bills of exchange in the city hall "register of bills of exchange" for the record, and the establishment of the "endorser joint and several liability systems". The case of the Bank of Venice shows that after the implementation of this law, the rejection rate of bills of exchange dropped from 18% in 1270 to 4% in 1330. This model of codification of commercial practices has made the Italian Commercial Code a universal rule for cross-border trade.

From the Oleron Papers to the Bills of Exchange Regulations, technological innovations in trade as well as payment continued to reconfigure the system of commercial law. These codes were not only a summary of customary law, but also a legal response to new technologies such as navigation and finance, which ultimately led to the maturation of professional institutions such as merchant's courts and notary publics, laying the foundations of modern European commercial codes.

3.3. Differences and similarities between Chinese and Western commercial law cultures

Chinese and Western commercial law show significant path differences in the process of cultural development, which is centered on the paradigm of knowledge production. Chinese commercial law has a distinctive state-led culture, and

the practice of "broken rules for tea and salt" in the Song Dynasty is a typical example, in which the government upgraded the "broken rules" formed in the transactions of salt and tea traders to edicts with legal effect through codification, and constructed the legislative mode of "supplementing laws with rules". The government, by codifying the "broken rules" formed in the transactions of salt merchants and tea merchants and upgrading them into edicts with legal effect, has constructed the legislative mode of "supplementing the law with the rules", which embodies the systematic integration of commercial rules by the state power. On the contrary, the European commercial law culture shows the double drive of the autonomy of merchants and academic systematization. 13th century exegetical law school introduced Aristotelian logic into the legal interpretation, and pushed the customary law of merchants to the development of systematization. From European medieval customary merchant law, to modern commercial law, to modern commercial law, not only have legal provisions gone from unwritten to codified, but their content has also evolved with the times [4].

In comparison, the Chinese tradition of "interaction of laws and regulations" highlights the pragmatic thinking of the state to improve commercial legislation through the accumulation of individual cases, while the systematization of European commercial law reflects the synergistic innovation of the merchant class and academic forces. This difference not only stems from the institutional differences between China's political system and the autonomy of European city-states, but also reflects the cultural characteristics of the agrarian civilization, which focuses on administrative control, and the commercial civilization, which focuses on rule-based autonomy.

4. Modern revelations: contemporary transformation of traditional commercial law elements

4.1. Contemporary values of the spirit of contract

Western civilization from ancient Greece advocating rationality to the modern pursuit of enlightenment, the realization of the rational expression of human nature, the establishment of the capitalist mode of production, and in the course of history, Western civilization has bred the core values of liberty, equality, fraternity, the spirit of contract and other core values. The spirit of contract, as a common core value of Chinese and Western commercial law, is still of great significance in contemporary society [5]. The spirit of contract is the cornerstone of commercial activities, which has been revitalized in the era of digital economy. Taking a cross-border e-commerce platform as an example, more than 120 million cross-border transactions were processed through standardized e-contracts in 2023, fully embodying the digital extension of the principle of freedom of contract. Modern commercial law not only protects the validity of traditional paper contracts, but also recognizes the legal status of blockchain deposits and smart contracts through legislation such as the Electronic Signature Law. With the acceleration of globalization and the increase in transnational transactions, the principles of freedom of contract and autonomy of meaning have become the basic guidelines for international commercial transactions. At the same time, the spirit of contract also promotes the construction of an honesty system and the improvement of the social credit system. At the international level, the United Nations Convention on Contracts for the International Sale of Goods had been adopted by 83 countries, building a globalized network of contractual rules.

4.2. Modernization of commercial dispute resolution mechanisms

In contemporary society, commercial dispute resolution mechanisms are developing in the direction of diversification, specialization and internationalization. In addition to traditional litigation and arbitration, new dispute resolution mechanisms such as mediation, conciliation and online dispute resolution have emerged. The emergence of these mechanisms has not only improved the efficiency and quality of dispute resolution, but also promoted the convenience and security of commercial transactions.

The One-Stop Dispute Resolution Center set up in the Shanghai Free Trade Zone integrates mediation, arbitration and litigation, and its efficiency has increased by 40% compared with that of traditional litigation. The "asynchronous trial mode" pioneered by the Hangzhou Internet Court has shortened the dispute handling cycle for multinational enterprises from six months to 21 days. Data shows that in 2022, the number of commercial arbitration cases in China increased by 18% year-on-year, with online arbitration accounting for 37% of the total. This evolution confirms the innovation of the path from "guild autonomy" to "professional institution-led", while retaining the core principle of party autonomy.

4.3. Improvements and innovations in statutory commercial law

In contemporary society, the improvement and innovation of statutory commercial law is an important guarantee to promote the standardization and internationalization of commercial transactions. Various countries have strengthened their commercial legislation and formulated and improved commercial codes and separate statutes. At the same time,

with the development of science and technology and the popularization of the Internet, legislation in emerging areas such as e-commerce law and cyber transactions law has also received increasing attention.

The legislative process of the E-Commerce Law embodies typical institutional innovation, from the launch of legislative research in 2013 to its official implementation in 2019, during which time it underwent seven major draft revisions, in particular the addition of cutting-edge chapters such as "electronic payment" and "cross-border e-commerce". The introduction of the EU's Digital Marketplace Act has created a "gatekeeper system" that requires large platform companies to fulfill special obligations. In the revision of the Regulations on the Administration of Registration of Commercial Entities to be launched in 2023, China will take the lead in introducing a "business closure filing" system, which will allow enterprises in difficulty to suspend operations without canceling their qualifications. For emerging areas such as cryptocurrency trading. These legislative practices show that modern commercial law is building a dynamic balance between "technology neutrality" and "risk prevention and control".

4.4. Application of accounting in the practice of commercial law

Accounting is increasingly used in the practice of commercial law. Accurate financial records and audit evidence not only provide important data support for the resolution of commercial disputes, but also promote the standardization and transparency of enterprise financial management. At the same time, the development of accounting has also promoted the improvement and innovation of the provisions on financial responsibility and property rights in commercial law. For example, in order to help judges hear cases of commercial disputes, courses in accounting or statistics are developed to help judges read financial reports, and even involve the introduction and interpretation of the latest game theory of economics [6]. In the case of the financial fraud of Ruixing Coffee, the auditing procedure found an inflated income of 2.12 billion yuan, confirming the decisive role of accounting supervision in the enforcement of commercial law. The promotion of the blockchain e-invoice system in Shenzhen, which increased the efficiency of tax supervision by 70%, are practices that show that accounting norms are shifting from passive compliance to active empowerment of business decisions.

5. Conclusion

Through a comparative study of Chinese commercial law during the Tang and Song dynasties and European medieval commercial law, we can find significant differences between Chinese and Western commercial law in terms of contractual systems, commercial dispute resolution mechanisms, and the process of commercial law becoming cultural. These differences reflect the different characteristics of China and the West in terms of legal culture, political system and economic structure. However, with the acceleration of globalization and the increase of transnational transactions, Chinese and Western commercial law are also developing in mutual reference and integration. In the future development, we should fully explore the contemporary value of the elements of traditional commercial law and promote the improvement and innovation of the commercial law system to meet the new needs of global economic development.

Compliance with ethical standards

Disclosure of conflict of interest

No potential conflict of interest was reported by the authors.

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