

The Abolition of the Old and Establishment of the New in Chinese Jurisprudence from the Perspective of the May Fourth Movement: The Evolution of Ideas and the Reconstruction of Institutions

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Abstract

This article explores the impact of the May Fourth Movement on the development of Chinese jurisprudence. Prior to the May Fourth Movement, Chinese jurisprudence had already embarked on a process of modernization but faced numerous challenges. The May Fourth Movement is often absent in contemporary legal studies, primarily because its influence was exerted more on the ideological and cultural levels, which distances it from the orthodox logic of legal transformation. Nevertheless, its impact on Chinese jurisprudence is significant. In terms of "abolishing the old," it criticized Confucian traditional ethics to break the shackles of feudal morality, negated feudal old culture to advocate for a scientific spirit, and opposed classical Chinese and old literature to promote a literary revolution. In terms of "establishing the new," it pursued political democracy to safeguard the political rights of the people, and the spread of Soviet socialist legal systems set a new practical direction for Chinese jurisprudence and established a people-centered value orientation. The May Fourth Movement represents a crucial turning point for Chinese jurisprudence transitioning from tradition to modernity, laying the groundwork for the development of jurisprudence in later generations.

Keywords: May Fourth Movement; Chinese Jurisprudence; Abolishing the Old and Establishing the New; Development of Jurisprudence.

I. The Background of Legal Development Before the May Fourth Movement

In the field of legal studies, the topic of Chinese legal development before the May Fourth

Movement has not yet been systematically and thoroughly explored. The scarcity of related research papers reflects, to some extent, the inadequacy of research in this area. However, it is undeniable that Chinese law had already undergone significant development before the May Fourth Movement, making considerable progress amidst twists and turns and giving rise to many new legal ideas with characteristics of the times.

From the mid-19th century onward, with the aggressive expansion of Western powers, the Qing government, in a state of decay and decline, was forced to sign a series of unequal treaties that undermined China's sovereignty. These treaties not only severely infringed upon China's sovereignty but also granted Western powers extraterritorial rights and other privileges in China, greatly disrupting the existing legal order. Stimulated by this external pressure, the Qing government, in an effort to salvage its ruling crisis, had no choice but to initiate a series of reforms, including the revision of laws. Although these legal reforms were somewhat passive, they objectively marked the beginning of the modernization of Chinese law, injecting new elements into the traditional legal system.

By the late 19th century, while facing internal and external challenges, China also witnessed the introduction of Western legal thought. The basic concepts, theoretical frameworks, and research methods of Western jurisprudence (especially modern Western legal science) began to influence the field of Chinese legal studies through the medium of Japan. Following the Meiji Restoration, Japan rapidly rose to prominence, and its successful model of borrowing from Western legal systems provided a reference for China. Some Chinese intellectuals began to pay attention to and study Western legal systems, actively introducing Western legal concepts and attempting to integrate them into Chinese legal practice. During this process, new criminal laws, civil laws, and constitutional documents were successively drafted. For example, in the field of criminal law, adjustments were made to the traditional criminal system, incorporating some offenses and penal systems from Western criminal law. In civil law, efforts were made to draw on Western concepts such as the spirit of contract and property rights, aiming to construct a more modern civil legal framework. The drafting of constitutional documents reflected new considerations regarding the national political system and the distribution of power. However, despite these achievements, Chinese jurisprudence at the time remained in the preliminary stages of learning and exploring Western legal thought.

In the process of studying Western jurisprudence, China faced numerous challenges and dilemmas. On the one hand, there were significant differences between Chinese and Western legal cultures, making it difficult to integrate Western legal concepts and institutions with China's national conditions and cultural traditions. Many newly enacted laws were difficult to implement effectively in practice, often clashing with the realities of Chinese society. On the other hand, due to a lack of in-depth research and understanding, the borrowing of Western jurisprudence was often superficial and fragmented. The transplantation of certain legal provisions failed to fully consider their theoretical foundations and social contexts, resulting in inconsistencies and

incoherencies within the legal system.

Moreover, traditional legal thought and systems remained deeply rooted in Chinese society, continuing to influence people's legal concepts and judicial practices. Confucian ideas such as the rule of rites and family-centric values collided and intertwined with Western legal principles, making the development of Chinese jurisprudence a challenging exploration between tradition and modernity. Nevertheless, the progress made during this period laid the groundwork for the further transformation and development of Chinese jurisprudence after the May Fourth Movement, serving as a crucial transitional phase in the evolution of Chinese law from tradition to modernity.

II. Reasons for the Absence of the May Fourth Movement in Chinese Legal Studies

The May Fourth Movement holds a significant yet largely overlooked position in the development of jurisprudence in contemporary Chinese research. On the one hand, in current legal history textbooks, the importance of the New Culture Movement and the May Fourth Movement is rarely mentioned. Such textbooks tend to focus on the evolution of legal systems, the changes in legal provisions, and the development of judicial practices, while giving insufficient attention to the May Fourth Movement, a historical event that triggered profound ideological transformations, in the context of legal development. On the other hand, within research on the impact of the May Fourth Movement, discussions on its influence in the legal field are extremely scarce. Why does this absence exist?

The May Fourth Movement is notably absent in contemporary Chinese legal studies, a phenomenon that arises from multiple and complex factors. From a temporal perspective, if the century-long journey of China's rule of law is delineated as spanning from 1906 to 2015, the New Culture Movement that occurred between 1915 and 1923 is often regarded as a mere late-stage episode within this extended period. In essence, the New Culture Movement was a multifaceted campaign primarily focused on culture and ideology. It manifested in the enlightenment of public thought, the emergence of social trends, the promotion of language and literary reforms, and to some extent, the advocacy for political and social reforms, including democracy and science.

However, from a legal perspective, while the New Culture Movement carried ideological and cultural significance, it was at most related to political and social realms and was not a movement directly associated with law. Legal movements adhere to specific requirements of political legitimacy and legal legitimacy. Within the legal system, political legitimacy pertains to the

succession and operational framework of political power, while legal legitimacy concerns the inheritance, evolution, and foundational legality of the legal system. Though ideological, cultural, and social currents may influence the formulation and application of laws, their impact is indirect, unlike the direct influence exerted by internal legal reforms on legal practice. This indirect influence makes it difficult for the New Culture Movement to occupy a significant place in the canonical narrative of legal history.

From the perspective of legal legitimacy, the origins of modern Chinese legal thought can be traced back to the intellectual enlightenment efforts of figures such as Kang Youwei, Liang Qichao, and Yan Fu, who introduced advanced Western ideas, laying a foundation for the emergence of modern Chinese legal thought. The construction of the modern legal system, however, stemmed from the legal models brought back by the Qing Dynasty's five ministers who studied abroad, the New Policies edicts issued by the Qing court, and the legal reforms led by Shen Jiaben and Wu Tingfang. Politically, the abdication edict of the Qing Emperor marked the end of the feudal monarchy, while the promulgation of the Provisional Constitution of the Republic of China guided Chinese society toward a republican system.

Within this historical trajectory, the New Culture Movement, championed by intellectuals, mainly centered on cultural and ideological transformations, which differed significantly in objectives, methods, and direct impact from the actual legal reforms at the level of the sovereign state. The New Culture Movement stirred waves in the realm of social thought, whereas legal reforms adhered to a more rigorous and systematic political and legal logic. This sense of detachment prevented the New Culture Movement—and its climax, the May Fourth Movement—from being incorporated into the mainstream narrative of legal history, thereby leading to its absence in contemporary legal studies.

III. The May Fourth Movement Had a Profound Impact on Chinese Jurisprudence

Although the May Fourth Movement does not occupy a prominent position in traditional legal historiography and appears to be somewhat absent, it is essential to recognize from an objective and comprehensive perspective that the movement was by no means insignificant for the development of Chinese jurisprudence. On the contrary, the May Fourth Movement injected powerful momentum into the evolution of Chinese legal thought on a macro and indirect level, with an influence that is both significant and irreplaceable.

The reason why the May Fourth Movement's impact on Chinese jurisprudence is primarily indirect lies in its predominant influence on social ideology, culture, and political structure, rather

than on the direct construction of legal institutions and statutes. Legal reforms typically require adherence to rigorous legislative procedures, political decision-making, and the gradual accumulation of judicial practice. In contrast, the May Fourth Movement triggered a profound revolution in the realm of ideological concepts, transforming people's ways of thinking, value orientations, and social consciousness. This, in turn, indirectly influenced the development of legal thought.

This indirect impact is specifically reflected in two key aspects: "breaking the old" and "establishing the new".

IV. The May Fourth Movement's Role in Breaking the Shackles of Traditional Chinese Jurisprudence

During the feudal period in China, jurisprudence was heavily constrained by the feudal system and traditional culture. The deep integration of feudal ethics and law, dominated by Confucian ideology, established a rigid hierarchical order. This significantly hindered the development of legal studies in various aspects, including legal norms, social perceptions, and cultural dissemination. As a result, the rights of the people were restricted, and the modernization of jurisprudence was impeded. The May Fourth Movement, akin to an ideological storm, forcefully shook this entrenched system and played an irreplaceable role in "breaking the old."

(1) Criticism of Confucian Traditional Morality: Breaking Free from Feudal Ethical Constraints

Amidst the ideological tide of the May Fourth Movement, slogans such as "Down with the Confucian Shop" and "Promote New Morality, Oppose Old Morality" triggered a profound transformation in the social ideological landscape. This transformation had a far-reaching and complex indirect impact on the field of legal studies, becoming a significant force propelling the modernization of Chinese jurisprudence.

Confucian traditional morality, centered on the "Three Cardinal Guides" and the "Five Constant Virtues," formed the foundation of the strict hierarchical order in feudal China. During the long period of feudal rule, the ruling class exploited these doctrines as tools to restrain human nature and freedom. This repression stifled individual autonomy and creativity, significantly hindering social progress. The powerful slogan "Down with the Confucian Shop" was a direct critique of the ruling class's rigid and extreme application of Confucian thought. It reflected society's strong desire to break free from the ideological shackles of feudalism and pursue intellectual liberation. Meanwhile, the call to "Promote New Morality, Oppose Old Morality" encouraged people to rethink traditional values and actively advocate for modern moral concepts, such as respect for

individuality, the pursuit of equality, and the aspiration for freedom. This ideological shift laid a solid foundation for social transformation and legal reform.

During the feudal era, Chinese society exhibited the characteristic of "unity of rites and law," where law and ritual were closely intertwined, with Confucian moral concepts deeply embedded in the legal system. For example:

In family ethics, the principle of "the father guides the son" granted the patriarch absolute authority within the family. Children's absolute obedience to their parents was legally codified in many instances. For example, "unfilial conduct" was classified as a serious crime, and those guilty of such behavior faced severe legal punishment. This demonstrated how family relations were strictly regulated by feudal morality in the legal framework.

In political order, the principle of "the ruler guides the minister" reinforced imperial autocracy. The law became a tool for maintaining royal power, and disloyalty to the emperor was regarded as treason, punishable by the harshest penalties.

In marital relations, the principle of "the husband guides the wife" established male dominance in marriage and family law. Women were legally subordinate to men, with limited rights. For example, in marriage, women lacked the right to divorce, while men could unilaterally divorce their wives based on the "Seven Grounds for Divorce," including offenses such as adultery, disobedience, or barrenness.

This "unity of rites and law" legal system was fundamentally designed to preserve the feudal hierarchy and safeguard the privileges of the ruling class, while disregarding the rights of the people. Consequently, the development of legal studies was severely restricted. The May Fourth Movement's rejection of Confucian orthodoxy directly undermined the ideological foundation of this system, paving the way for the separation of law from feudal ethics and laying the groundwork for the modernization of Chinese jurisprudence.

The May Fourth Movement's criticism of Confucian traditional morality fundamentally shook the foundation of feudal ideology, leading to a series of changes in social structures and ideological concepts. As the feudal hierarchical order was challenged, society's pursuit of values such as equality and freedom grew increasingly intense, and the contradictions between the traditional legal system and the needs of social development became more pronounced. This prompted the legal community to reflect on the legitimacy of the traditional legal system, pushing jurisprudence to break free from the constraints of feudal ethics and seek new directions for development. Jurisprudence was no longer merely a tool for maintaining the feudal hierarchical order but gradually shifted toward a modern legal system that protected civil rights and pursued fairness and justice. This laid the ideological and social foundation for future innovations in legal theory and judicial reforms, marking the beginning of a new chapter in the

modernization of Chinese jurisprudence.

(2) Denial of Feudal Old Culture and Advocacy of Scientific Spirit

The core idea in this area was "promoting science and opposing superstition," which had a profound impact on jurisprudence. Feudal old culture was like a stagnant pool, with superstitions prevailing and people trapped in blind faith. At the same time, the phenomenon of blind worship of authority was also widespread, which not only restricted people's intellectual freedom but also greatly hindered social progress and development. Therefore, the concept of "promoting science and opposing superstition" emerged, advocating for the use of scientific methods to understand the world and explore the truth, breaking the shackles of feudal superstition and injecting new vitality into the modernization of jurisprudence.

The old legal education system was deeply imprinted with the mark of feudal rule, and its core goal was to cultivate individuals who would maintain the feudal order. In terms of educational content, it emphasized adherence to feudal ethics and severely lacked systematic instruction in scientific knowledge. The drawbacks of this educational system were evident: students struggled to develop independent thinking and rational analysis skills, merely becoming inheritors and maintainers of the feudal legal system. However, it was precisely the limitations of this educational model that led to a fundamental shift in legal studies. Legal scholars no longer confined themselves to the single task of upholding feudal ethics but began to actively explore the relationships between law and various social, economic, and cultural factors, seeking innovation and development in legal theory. This shift not only disrupted the framework of traditional feudal legal studies but also paved the way for the modernization and diversification of legal studies.

(3) Opposing Classical Chinese and Old Literature, Promoting the Literary Revolution

In the wave of the New Culture Movement, the concepts of opposing Classical Chinese and old literature, and advocating for a literary revolution, with their distinct slogans and profound implications, such as "promoting vernacular Chinese, opposing Classical Chinese" and Hu Shi's "Eight No's" ("do not write meaningless words," "do not imitate the ancients," etc.), had a broad and far-reaching impact on all sectors of society, including jurisprudence.

Classical Chinese, as the main carrier of old culture, though possessing unique cultural value throughout history, increasingly revealed its drawbacks in the era of new ideas. Classical Chinese has complex grammar, obscure vocabulary, and a style that is terse and laden with allusions, making it very difficult to understand. The general public struggled to overcome this linguistic barrier and access and comprehend the ideological content within it. In the field of law, the knowledge dissemination barrier created by Classical Chinese was particularly severe. Many

ancient legal texts were written in Classical Chinese, containing rich legal wisdom, institutional norms, and judicial experience. However, due to their obscure nature, the general public was excluded from the door of legal knowledge, unable to understand the content of legal provisions, the spirit of legal principles, or their own rights and obligations within the legal system.

The slogan "promoting vernacular Chinese, opposing Classical Chinese," which was of epoch-making significance, made legal knowledge more accessible by using vernacular Chinese, which is simple, easy to understand, and closer to everyday life. This change meant that the dissemination of legal knowledge was no longer limited to a small elite class with a background in Classical Chinese. The general public could easily understand how legal provisions constrained and protected their actions. Legal works thereafter were also written in vernacular Chinese, and scholars were no longer constrained by Classical Chinese, allowing them to more freely and accurately express complex legal ideas and research findings. This enabled legal theories to be spread and communicated to a wider audience.

V. The New Development of Chinese Traditional Jurisprudence in the May Fourth Movement

During the wave of the May Fourth Movement, Chinese jurisprudence embarked on a new journey, with its "new development" reflected in two key aspects: the pursuit of political democracy to safeguard the political rights of the people and the widespread dissemination of Soviet socialist legal systems. These two aspects intertwined and jointly pushed Chinese jurisprudence into a new phase.

(1) Pursuit of Political Democracy and Safeguarding the Political Rights of the People:

"Democracy (Mr. Democracy)"

Under the feudal autocratic regime, political power was highly concentrated in the hands of a few, and the people were deprived of basic political rights. The feudal imperial system and warlord dictatorship became shackles that hindered social progress. The promotion of the idea of "democracy" effectively challenged this unreasonable political structure. It advocates that the people are the masters of the country, a concept that fundamentally undermines the theoretical foundation of feudal rule, prompting people to reconsider the source and ownership of political power. The advocacy for political rights such as the right to vote and the right to be elected provided key elements for the construction of democratic politics. The right to vote enabled people to participate in the political decision-making process, expressing their will and interests by electing representatives, while the right to be elected opened the door for direct participation

in national governance, breaking the political power monopoly of the feudal ruling class.

The call for the establishment of a democratic republic pointed the way for the reform of the national political system. The framework of a democratic republic would center on popular sovereignty, with institutional designs ensuring broad participation in political affairs, such as the establishment of parliamentary systems and electoral systems, ensuring that political decisions adequately reflect public opinion and achieving political democratization. This transformation had a profound impact on the development of law. During the feudal autocratic period, law was primarily a tool for the ruling class to maintain its own interests and order, with the rights and freedoms of the people being severely neglected. The rise of democratic ideals prompted a shift in the nature of law, gradually making it a means to safeguard the rights of the people and maintain social fairness and justice.

(2) The Widespread Dissemination of Soviet Socialist Legal Systems

During the May Fourth Movement, Soviet legal ideas were widely disseminated. Publications such as New Youth began to publish articles introducing Soviet Russian socialist legal systems. Influential intellectuals, such as Li Dazhao, actively participated in promoting Soviet socialist legal systems through speeches, articles, and other forms, deeply interpreting their meaning and significance, thus further expanding the scope of dissemination. The spread of Soviet socialist legal systems had the following impacts on Chinese jurisprudence:

1.Establishing a New Direction for Legal Practice (Practicality)

The dissemination of Soviet socialist legal systems was practical, with content such as the Soviet land law and labor law spreading in China. This established a new direction for the development of Chinese jurisprudence. In terms of land, China's traditional feudal land system had long been marked by unreasonable practices, and the rights of farmers were not protected. The introduction of Soviet land law concepts inspired Chinese legal scholars to think about how to use law to safeguard farmers' land rights, promoting the exploration of legal practices related to land. In the labor field, the spread of Soviet labor law encouraged Chinese legal scholars to pay attention to the protection of workers' labor rights, promoting the development of labor law practices and laying the foundation for the integration of theory and practice in Chinese jurisprudence.

2.Establishing a People-Centered Legal Value Orientation (People-Centeredness)

The people-centered nature of Soviet socialist legal systems profoundly influenced the development of Chinese jurisprudence. Traditional Chinese law, during the feudal period, primarily protected the interests of the ruling class, whereas Soviet socialist legal systems emphasized the rights of the people. The dissemination of Soviet laws, such as family and marriage law and the constitution, led Chinese legal scholars to focus on the position of the people in the legal system. For example, Soviet family and marriage law, which emphasized

gender equality and the protection of family members' rights, prompted Chinese legal scholars to reconsider the protection of the rights of women and vulnerable groups in marriage and family law. The concept of popular sovereignty reflected in the Soviet constitution further directed Chinese jurisprudence toward safeguarding people's rights, with a people-centered value orientation. This began the enlightenment of socialist rule of law ideas in China and injected new value content into the development of Chinese jurisprudence.

(3) The Indivisible Relationship Between the Two

The dissemination of Soviet socialist legal systems and China's pursuit of political democracy echoed and mutually reinforced each other. On one hand, the Chinese people's pursuit of political democracy created a favorable ideological and social environment for the spread of Soviet socialist legal ideas in China. On the other hand, the spread of Soviet socialist legal systems provided concrete institutional examples and theoretical support for China in its pursuit of political democracy. Together, the two forces promoted the continuous development and innovation of Chinese jurisprudence in the new historical period, injecting strong momentum into the modernization process of Chinese law.

VI. Conclusion

Before the May Fourth Movement, Chinese jurisprudence began its modernization process against the backdrop of foreign imperialist aggression, but it faced numerous challenges, such as the differences between Chinese and Western legal cultures. The May Fourth Movement holds a somewhat marginal place in contemporary legal studies, as it primarily focused on ideological and cultural aspects, which were distant from the orthodox logic of legal reform. However, the May Fourth Movement had a significant impact on Chinese jurisprudence. In terms of "breaking the old," it critiqued Confucian traditional morality, breaking the shackles of feudal ethics and freeing law from the constraints of feudal rites; it denied the old feudal culture, advocated for scientific spirit, and promoted a shift in legal research; it opposed Classical Chinese and traditional literature, leading to the literary revolution and facilitating the dissemination of legal knowledge. In terms of "establishing the new," it pursued political democracy and safeguarded the political rights of the people, prompting a shift in the nature of law; the spread of Soviet socialist legal systems established a new practical direction for Chinese jurisprudence and affirmed a people-centered legal value orientation. In summary, although the May Fourth Movement did not occupy a prominent position in traditional legal history, its role in advancing the development of Chinese jurisprudence cannot be overlooked. It was a crucial turning point in the shift from traditional to modern Chinese law, laying the foundation for legal theory innovation and legal system reforms, and having a profound influence on the future development of jurisprudence.

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