

## **Confucian Tradition, Civil Law Elements or Socialist Legacy: What is Chinese about Chinese Civil Law?**

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On May 28, 2020, the People's Republic of China promulgated a Civil Code that will take effect on January 1, 2021. However, this legislation is not a new codification in a strict sense. Until the adoption of the new Civil Code, Chinese civil law was encompassed in a variety of individual laws and judicial interpretations of the Supreme People's Court, which have now been replaced by a comprehensive civil law codification, albeit with some revisions of existing provisions and with new, supplemental rules in fields previously neglected by Chinese lawmakers.

Together with a team of Chinese and German researchers, the author has translated the new Civil Code into German.<sup>1</sup> The translation benefits from a thorough knowledge regarding the development of Chinese law as well as an understanding of Chinese legal culture that extends beyond the mere foreign-language aspect. One of the special achievements of the translating team is the introduction of paragraph headings that are accompanied by explanatory footnotes. These footnotes detail, inter alia, the previous legal situation as well as changes in the law's content and terminology as compared to earlier provisions

Based on this work, the paper endeavours to identify those rules in the Civil Code that qualify specifically as Chinese, i.e. having no equivalent in other jurisdictions. It takes a historical approach in order to trace these rules back to the first efforts at civil law codification in China at the end of the Qing-Dynasty. In so doing, the author aims to ascertain some indications of just what is Chinese about Chinese civil law.

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<sup>1</sup> See “[Zivilgesetzbuch der Volksrepublik China](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3747931)”, translated by Yijie DING, Peter Leibkühler, Nils Klages, Knut Benjamin Pißler, published in: German Journal of Chinese Law, Vol. 27 (2020), pp. 207–417. Also available at <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3747931](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3747931)>.

## **The Development of Chinese Law and the Study of Ancient Greek Law**

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Since the end of the Eighties of the past century, Roman Law has been experimenting with a new era of rediscovery in China. It is somehow surprising but, in reality, only apparently paradoxical that the study of an ancient legal system such as the Roman one might still be used as a valuable tool to develop legislation in line with the most complex challenges connected with the economic development. The drafting itself of the most important law enacted in China in the field of private law in the first decade of the new millennium, the Real Rights Law or Property Law of the People's Republic of China of 2007, shows an extremely deep imprint of Roman Law. Such Real Rights Law will now be superseded by the first Civil Code of the People's Republic of China (second book), approved on May 28th in Beijing during the third session of the thirteenth National People's Assembly, which will officially enter into force on January 1st, 2021, and touches upon almost every dimension of civil society in a constant dialogue with both the civil law traditions based on the Roman legal structure and the common law experiences. Based on the fact that the cultural milieu in which Roman Law developed was clearly influenced by the ancient Greek legal culture, and that specific fundamental principles of Roman Law, although institutionalized in such juridical context, find their origin in rules already existing in ancient Greek law – such as the possibility of multiple hypothecation, as well as the specific modalities provided for the satisfaction of creditors depending on their order of registration – this paper supports the idea that the study of Greek legal culture might be of great interest in China in the next years, even in a *de iure condendo* perspective.

## **The Interplay between *Ius* and *Lex* in the Development of Philippine Law on Quasi-Contracts: From Roman Law to the Philippine Civil Code**

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The development of Philippine law on quasi-contracts from its origins in Roman law to the current legal regime of the Philippine Civil Code demonstrates the interplay between the Roman law concepts of *ius* (roughly translated as “the equilibrium between rights and obligations”) and *lex* (roughly translated as “black-letter law”).

This paper will first discuss how both concepts were understood in Roman law and will identify the origin of the concept of “quasi-contract” from the Roman law on contracts.

The paper will then explain how the concept of “quasi-contract” was further refined in the *ius commune* of the Middle Ages in Europe. Emphasis will be given to the development of the concept of *causa*.

The paper will also trace how the concept of “quasi-contract” got incorporated in Philippine legislation through Spanish colonization, particularly through the *Partidas* and, later on, through the imposition of the Spanish Civil Code of 1889 on the Philippines during the nineteenth century.

Then, the paper will discuss how the drafters of the current Civil Code of the Philippines further refined the concept of “quasi-contract” that existed in the Spanish Civil Code of 1889. The paper will elaborate on how the concept of “unjust enrichment” is understood in Philippine law as “enrichment without cause” and how the drafters of the current Civil Code of the Philippines identified this as the foundation for the law on “quasi-contracts”. Examples of rulings of the Philippine Supreme Court on “quasi-contracts” will be discussed.

The paper will conclude by explaining how the history of the development of Philippine law on quasi-contracts exemplifies the interplay between *ius* and *lex*.