

## THE MAKING OF THE CHINESE CIVIL CODE

The Chinese Civil Code (2020) is the first civil code in mainland China since 1949. As well as consolidating existing civil legislation, the Code incorporated a number of doctrinal and structural changes that are significant both in and beyond China. The chapters in this volume demonstrate the extent of European influence on Chinese civil law and also show how Chinese law innovates, building upon those influences. The book shares insights from both the key Chinese scholars who were directly involved in the drafting process and veteran Western scholars who study Chinese private law.

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# THE MAKING OF THE CHINESE CIVIL CODE

Promises and Persistent Problems

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—H. J.

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—P. S.

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## PREFACE

The passage of the Chinese Civil Code was a monumental event both for China and the international community. Yet, it is a daunting task to present a scientific account of the Code to a readership in and out of China. In fact, it is difficult for private law experts in the West to understand Chinese law without context if they only rely upon a superficial reading of the text. It is also difficult for Chinese scholars to understand their own law if they only seek internal explanations for incompatible yet coexisting doctrines that were likely the products of legal transplants from different sources. Moreover, any civil law would have to serve the socio-economic context in which it operates.

Therefore, we decided to approach Chinese Civil Code through comparative law and cross-disciplinary research. The vision of this book, as pointed out in Chapter 1, is to trace the root cause of a number of persistent problems such as the tensions between the rise of private law and the dominant state sector, the contradictions among legal transplants, the incompatibility between doctrinal innovations and the existing structure, and the clash between distributive justice – the foundation of Chinese moral philosophy – and commutative justice – the foundation of Western private law. In this regard, we owe a debt to Rodolfo Sacco's *Legal Formants* or *Formanti Giuridici*.

We are incredibly fortunate to have gathered a group of leading scholars to join this endeavour from mainland China, Hong Kong, Italy, Germany, the United Kingdom, and the United States. They are not only extremely diverse in origin but, more importantly, in expertise and methodology.

In fact, we went far beyond what is in the text. The breadth of expertise involved allowed us to carefully examine the core doctrinal changes through a comparative view and take a close look at the ideological, historical, sociological, and philosophical dimensions of Chinese civil law. Specifically, we invited contributors to explain the development of Chinese law through the lens of Soviet law (Gianmaria Ajani,

Chapter 14), evaluate the applicability of liberal rules to state-owned enterprises (Hao Jiang and Antonia von Appen, Chapter 13), assess the sheer positive effect of codification in the Qing dynasty (Zhang Taisu, Chapter 12), and present the Confucian model of rule of law (James Gordley, Chapter 11). They also critically evaluated some fundamental doctrines in civil law such as change of circumstances (Han Shiyuan, Chapter 4; Liu Qiao, Chapter 3), security interests (Lei Chen, Chapter 6), and causation (Marta Infantino and Weiwei Wang, Chapter 8). Mauro Bussani (Chapter 9) offered a pluralistic view of tort law and explained why we should absolutely take the aim or societal function of torts into consideration when we assess the black-letter law. Ding Chunyan (Chapter 7) demonstrated how the doctrinal system of tort law has been transformed under the new Code. Wang Liming, the main architect of the Chinese Civil Code, along with Xiong Bingwan, presented a persuasive account of why personality rights law deserves an independent status in modern civil law (Chapter 2). Enrico Toti (Chapter 15) made a surprising connection between the procedural rules in Roman law and the green principle in Chinese Civil Code. Our deepest gratitude goes to all of them.

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ABBREVIATIONS

BGB	Bürgerliches Gesetzbuch
CCC	Chinese Civil Code
ECL	Economic Contract Law
GPCL	General Principles of Civil Law
ISPs	internet service providers
NPC	National People’s Congress
NPCSC	National People’s Congress Standing Committee
PRC	People’s Republic of China
ROC	Republic of China
SASAC	The State-Owned Assets Supervision and Administration
SOE	state-owned enterprises
SPC	Supreme People’s Court
TLB	Book on Tort Liability
TLL	Tort Liability Law
TVE	township and village owned enterprise