

Jindai shehui bianqian zhong de Shanghai lushi 近代社會變遷中的上海律師 [Shanghai Lawyers and Modern Social Change], Chen Tong 陳同, [Shanghai: Shanghai Lexicographical Publishing House, 2008, p 377; RMB 45] ISBN 978-7-5326-2425-6

China witnessed tremendous institutional changes during the Republican Period (1912–1949) due to massive influences from the Western powers.

Among these, a legal system modelling on the West is no doubt one of the more far-reaching ones. Dr Chen Tong's latest book is a welcome addition to a growing literature of this important transformative process in Chinese society. The book provides a very detailed historical account on the rise and practice of lawyers in Shanghai during the late Qing and Republican Period of China. The main theme of his book is to discuss the roles and functions of Shanghai lawyers during such a period of social change in China. To discuss Dr Chen's contribution in perspective, I will contextualise its rich data and main theses from a micro approach of why and how Shanghai legal profession emerged under a Shanghai-specific environment, and from a macro perspective of how this important process of legal reform in modern China can be observed from a more structural approach.¹

According to Chen's narrative, legal profession in the late imperial China means something rather different from that of the Western society in the turn of the 20th century. In the former tradition, these professionals (normally referred to as litigation masters or 訟師 "songshi") were those to whom lay people turned to in seeking legal assistance, but at the same time and in a contradictory manner, their legal services were prohibited from becoming open practice by the imperial laws so as not to encourage more litigation. Often, they were also despised by the general public for being a lawsuit-provoking gang that disturbed social harmony. Songshi's services ranged from drafting pleadings, advising on litigation tactics and liaising with court officers. Their merits of practice were judged primarily by their actual services rendered and word-of-mouth reputation, rather than by any formal qualification or quality control mechanism under a legislative regime. In the modern Western legal

¹ For a full elaboration of this conceptual framework of legal development, see Billy K. L. So, "Between Legal Reforms of 1070s and 1990s – A Legal History Perspective", paper presented at the International Symposium on Social Transformation and Legal Reform, Beijing, 2008, pp 1–22; also, by the same author, "Legitimizing New Political Order Legally: Legal Reform in Northern Song China", in Philip Yuen-sang Leung (ed), *The Legitimation of New Orders – Case Studies in World History* (Hong Kong: The Chinese University Press, 2007), pp 25–52, where historical legal reforms were observed from the interaction among ideological, legislative, organisational and enforcement dimensions.

system, the legal profession, in contrast, implies legally defined qualification, disciplinary monitoring by professional organisation with statutory authority, formalised training and exclusivity in practice, notwithstanding in fact they provide legal services which were essentially very similar to those rendered by their Chinese counterparts.

The first chapter of Chen's book tries to examine such differences and attribute it to the differentiating concept of the functions of law between traditional China and the West. In the West, Chen argues, one of the most important functions of law is to protect individuals' rights, no matter versus the state or other individuals; whereas in imperial China, the legal system existed and operated mainly for the purpose of safeguarding interests of the public or the state, and was therefore primarily administered by the executive officials, rather than by an independent judiciary. Development of consciousness about individuals' rights, of division of public and private laws and of independent judiciary from the time of ancient Greece to the Enlightenment led to the rise of Western counsel as a respectable social class that people needed for protecting their interests. On the other hand, litigation masters, though they carried out partial function of Western lawyers such as drafting pleadings and advising on lawsuit strategy, were seen as an obstacle to speedy administration of dispute resolution and were therefore despised by both the State and society in general. The traditional Chinese norm of no litigation (無訟 "wusong") also played an important part in making it impossible for legal counsel to rise as an elite social class in imperial China. Chen went further to discuss why the traditional Chinese society cannot develop the concept of individuals' rights in the way that Western society did. On this rather fundamental issue Chen cites Roberto Unger's work and argues that the belief in transcending natural rights of Christianity in the West is the possible cause of such difference. Insightful as it may be, Unger's work on Chinese legal tradition in the 1970s encountered immense criticism later, for instance, critics from William Alford, who questioned Unger's ideas by arguing that Dao and other traditional Chinese philosophies that existed prior to Chin Dynasty have been playing the role of transcending laws in traditional Chinese society.² This comparative issue of law in Western and Chinese traditions, a prominent narrative through the past century, is far from being settled and indeed promises to remain controversial in this century.

One of the possible ways of efficiently implementing foreign systems and practices (including legal reform) while mitigating possible conflicts

² William P. Alford, "The Inscrutable Occidental: Implications of Roberto Unger's Uses and Abuses of the Chinese Past", (1986) 64 *Texas Law Review* 915.

with the mainstream ideology is to gradually and incrementally diffuse the merits of the new practices into the indigenous value system of mass consumers by educating and role modelling. The arrival, development and activities of foreign lawyers in Shanghai from 1850s gave an effective showcase to the people of Shanghai on how western legal practitioners could add value in protecting their rights and interests. Chapter 2 of the book described this showcase in details. However, this argument may be further elucidated in terms of extraterritoriality. Under this new, and unequal, legal framework, foreign lawyers possessed far more right of advocacy in various courts of Shanghai during such period than ever before. Foreign lawyers' existence and performance boosted the demand for engaging litigators in protecting individual rights at the court. Even the Qing government officials, while continued to ban the practice of traditional litigation masters, started to retain legal counsel as an inevitable way of resolving legal disputes with foreigners. There were cases where foreign lawyers acted for Chinese litigants in lawsuits against Westerners. In this regard, I would suggest, to further expound the implication of this import profession on Chinese legal development, that as the consumers of legal services in China have always been judging the merits by actual service results rather than qualification on certificates, the functionality of foreign lawyers in protecting their commercial interests in the market was diffused into their value system and made Shanghai a city of faster development of westernised ideology of legal representation. But in contrast, I qualified the argument that in other major Chinese cities like Beijing, where foreign courts and lawyers had less appearance and importance, the growth and development of modern lawyers was a lot bumpier owing to the legacy of traditional legal culture. For example, my study showed that people in Republican Beijing engaged non-qualified legal practitioners and phony lawyers to pursue lawsuits.³ Such phenomenon gave a severe blow to the livelihood of qualified Chinese lawyers in Republican Beijing. This means the Shanghai legal profession was a unique production of the Shanghai legal environment, where extraterritoriality was enforced to the highest degree as compared to other cities.

Other chapters in this book describe in detail the area of business in which early lawyers were engaged, their level of earnings, how they solicited their businesses, which areas their offices were located and how they obtained their legal educational qualification as well as the functions and activities of the Shanghai Bar Association. All of this evidence showed that the first generation of local qualified lawyers quickly secured

³ Drawing on contemporary archival materials, I wrote a forthcoming article on the phenomenon of phony lawyers and their impact on the republican lawyers in Beijing during 1920s.

positive attention from the general public and successfully rose to a superior economic and social status that enabled them not only to engage themselves in lucrative legal business but also in social, political and nationalistic movements. Despite the fact that legal practitioners were a traditionally despised group in the history of China, Shanghai lawyers had quickly become a group of social elites for whom the community would look up to in resolving important legal and political issues of the country. This once again echoed my view that early inception of Western legal ideology into Shanghai to a considerable extent led to this speedier development relative to other areas in Republican China. Nevertheless, readers have to note that the social image of lawyers in Shanghai is an interesting but vague concept. While there is some truth in the argument that they enjoyed higher social status as a new class of professionals in modern China, that may not be shared by the public, nor the mass media. Alison Conner has published on the lawyer's image in Republican movies, where we can learn that images of lawyers varied and could be quite bad at times.⁴

Chen concludes the book by contending that lawyers in Republican Shanghai were serving three important functions in an era of social change in China. First, they served to improve the development of legal reform; second, they helped in safeguarding national sovereignty and interests; and last, they helped advocate the value of equality between men and women as more and more women became lawyers or engaged lawyers to publicly defend their rights in marriage and probate cases. Republican lawyers in Shanghai, Chen said, were special products of social change during the Republican Period and played an important role in shaping further social change. This is indeed an insightful observation but it also raises the expectation of the readers to learn more of this argument that may not be satisfied by the space given to it in the book. Dr Chen's further elaboration of the issue in the future would be most welcome.

Despite the fact that the legal tradition of China promoted the idea that legal practitioners were a group of socially despised and legally prohibited lawsuit provoking gangs, Chen's book told us that Republican lawyers in Shanghai went against this tradition by rising up to its elite social status and winning trust from community and consumers in a relatively short period of time. Notwithstanding, as argued above, their peers in Beijing were not enjoying the same level of professional

⁴ Alison W. Conner, "Chinese Lawyers on the Silver Screen" (Mark Sidel and Corey Creekmur eds), *Cinema, Law, and the State in Asia* (New York: Palgrave, 2007), pp 195–211, she pointed out that while modern lawyers in 30s–40s was depicted as a group of wealthy middle class in general, some of them were very snobbish, looking down on the poor and thus blocking them from access to justice; and the others could be very justice-conscious, willing to help the underprivileged class.

prosperity. This is largely because for a long period of time prior to the legalisation of republican lawyers in Shanghai, cultural and ideological change was already underway for 50–60 years since the arrival of foreign lawyers, who had demonstrated the economic and social leadership, practical functionality of legal service and importance of the right of legal representation, and so on, to the people in Shanghai. The relative speedy establishment of modern legal profession in Shanghai was largely attributed to the ideological change brought about by foreign lawyers' participation. From Chen's well researched historical data, suffice to say that the way Shanghai lawyers emerged in this time of change was highly related to the Shanghai-specific social change that began in the 1850s. From this book I would further postulate that, the Shanghai lawyers were an agent of further social change from 1912 onwards, but they were themselves a unique product of social change that took place long before the revolution of 1911. Their success was not only an intended outcome of the legally defining legal practitioners under the Republican law, but also a product of ideological ground for a new legal profession as being redefined through the enforcement of extraterritoriality, practice of foreign lawyers, demonstration of systematic resolution of business disputes in open courts, elite lifestyle of foreign lawyers, Qing government's participation in engaging foreign lawyers throughout the decades in late 19th century, among other factors.

This book is very well researched and refers to a huge amount of archived materials. Dr Chen gives a very comprehensive and detailed description about the rise, development, occupational activities and social impact of lawyers in Shanghai during the late Qing and Republican China. This work should be an important book in the core book list of anyone who would like to study the history of modern legal profession of China. In terms of narratives on activities of foreign lawyers in China, Chen's work should be one of the most detailed scholarly works. I would expect more research to come to describe lawyers' activities in other cities during the same period of time. Such activities should be expected to account for the difference in their role in shaping legal change and being shaped as part of the legal change as compared to the lawyers' development in Republican Shanghai, where culture and values were developed as a unique mixture of those from the East and the West.

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