

Zhiping Liang

# A Study of Legal Tradition of China from a Culture Perspective

Searching for Harmony in  
the Natural Order



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*Now the whole world had one language and a common speech. As people moved eastward, they found a plain in Shinar and settled there. They said to each other, “Come, let’s make bricks and bake them thoroughly.” They used brick instead of stone and tar for mortar. Then they said, “Come, let us build ourselves a city, with a tower that reaches to the heavens so that we may make a name for ourselves; otherwise, we will be scattered over the face of the whole earth.” But the Lord came down to see the city and the tower the people were building. The Lord said, “If as one people speaking the same language, they have begun to do this, then nothing they plan to do will be impossible for them. Come, let us go down and confuse their language so they will not understand each other.” So, the Lord scattered them from there over all the earth, and they stopped building the city.<sup>1</sup>*

—Old Testament—Genesis 11:1–8

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<sup>1</sup> <https://www.biblegateway.com/passage/?search=Genesis%2011%3A1-8&version=NIV>.

## Preface to the English Edition

The book in front of you was initially for Chinese readers, written in Chinese. The original Chinese version of this book was first published thirty years ago. Even for today's Chinese-speaking readers, the intellectual atmosphere of the era from which the book was written is quite alien. Therefore, on the occasion of the publication of the English edition, it may not be superfluous for the author himself to explain the original writing background, the problem awareness, and some other issues related to the book.

First of all, it should be noted that the book was written in the second half of the 1980s when the “cultural fever”<sup>2</sup> sweeping China's intellectual circles was at its height. Therefore, it is natural that my thinking and writing during that period, including the writing of this book, bore a noticeable mark of “cultural fever,” and the most significant point of these marks is naturally the focus on the concept of “culture.” At that time, I borrowed a phrase from Montesquieu, arguing that “culture must be illuminated by law, and law, by culture,”<sup>3</sup> and then explored the concept of legal culture. In addition, such a study of legal culture was, from the very beginning, comparative, especially between China and the West, which was also the common way in cultural studies at that time. Finally, such cultural studies, which focus on current problems, are usually conducted in a manner critical of tradition. These characteristics can be seen in one of my early and important articles on the Chinese legal tradition—Explicating “Law”: A Comparative Perspective of Chinese and Western Legal Cultures. A few more words can be said about this article.

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<sup>2</sup> As an ideological and academic movement, the “cultural fever” of the 1980s can be seen as an extension of the ideological liberation movement in the post-Cultural Revolution period. Although the movement was highly enlightening and critical, in hindsight, it fell far short of the intellectual depth required by the times.

<sup>3</sup> Montesquieu's original phrase is “History must be illuminated by law, and laws by history.” Baron de Montesquieu, Charles-Louis de Secondat. 1989. *The Spirit of Laws*. 675. Edited by Anne M. Cohler, Basia C. Miller & Harold S. Stone. Cambridge: Cambridge University Press.

First, this article was published in 1986 in the most authoritative social science journal in China at that time, and now,<sup>4</sup> and attracted wide attention and praise once it was published.

Second, three years later, the English translation of this article was published in the *Journal of Chinese Law* at Columbia Law School<sup>5</sup> It became the first article of mine that the English readers read, and even more, it was almost the only source from which they learned about my research for a long time.

Third, as my earlier attempt to systematically explore the ancient Chinese legal concepts, this article has special significance in my later research. In a sense, the current book can be seen as the development and deepening of this earlier research, in which earlier research methods have been applied more systematically and consciously.

Of course, this book is not a simple extension of the earlier articles. Instead, it is the transcendence and sublimation of the latter. As mentioned earlier, the enlightening “cultural fever” of the 1980s inherited the “anti-tradition” spirit of the May Fourth Movement, keen to discover in tradition why China was and is lagging behind the world. However, unlike the May Fourth generation, the generation of Chinese who had just experienced the “Cultural Revolution” in the 1980s lacked an understanding of the traditional culture. Therefore, the criticism of “traditional” in this period lacked intellectual and cultural depth and was more likely to become simple and crude. In this case, it is extremely important but difficult to get rid of the simplistic black or white thinking, liberating from the new prevailing ideological domination that proclaims “ideological liberation.”<sup>6</sup>

Comparatively speaking, Explicating “Law” is not a typical example of the criticism of tradition mentioned above. Although its topic setting was inevitably influenced by the ideology of the time, it was still academic, trying to establish its conclusions based on solid historical materials and academic argumentations. It is the persistence of the research approach that contributed to a shift in the process of writing of this book, namely a turning to a more tolerant and friendly attitude toward the tradition based on the understanding of it,<sup>7</sup> a cognitive mode of keeping temporal distance while closer to the object of study in historical studies, and a kind of more open critical thinking that gets rid of the ideological domination consciously.

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<sup>4</sup> Liang, Zhiping. 1986. “Fa Bian,” in *The Chinese Social Sciences* (Zhongguo shehui kexue), no. 4.

<sup>5</sup> Liang, Zhiping. 1989. Explicating “Law”: A Comparative Perspective of Chinese and Western. in *Journal of Chinese Law*. 55–91. New York: Columbia University Press.

<sup>6</sup> The “ideological liberation” is the most crucial thought movement after the Cultural Revolution in China. It marked the end of the old era and the beginning of the new one.

<sup>7</sup> Unfortunately, this “shift” has not been aware of by some commentators of my research. In an introductory remark, David Ownby wrote: “Like many scholars of his generation, Liang wrote from a liberal perspective early in his career, . . . . Yet as China’s rise eroded the liberal consensus among many Chinese intellectuals, Liang, . . . . broadened his research to embrace facets of the Chinese legal tradition of which he had originally been more critical.” (<https://www.readingthechinadream.com/liang-zhiping-tianxia-and-ideology.html>) Therefore, my shift in thought was delayed for 30 years and confused with the changes of other people’s thoughts for other reasons. Besides, the change he described is simplistic and inaccurate.

The concepts and methods mentioned above may not be special to today's readers, especially English readers. But, back in China in the 1980s, it was pretty new to introduce a cultural perspective into legal studies, explore the thoughts, ideas, values, and meaning systems behind the legal institution, and differentiate and understand different legal traditions by comparing different cultural types. What prompted me to make this attempt, to be clear, is not some theory but the dissatisfaction of the prevailing research methods and theoretical paradigms at the time. For example, the legal history was handled as two separated parts: legal institution and legal thought,<sup>8</sup> and legal studies, in general, had almost nothing to do with humanities and social sciences. The theoretical paradigm that governed the study of legal history was simply a part of a dogmatic orthodox ideology, according to which all human societies go through the same stages of development. Therefore, the differences between Chinese and Western cultures are reduced and simplified to differences in historical stages of development. This set of dogma taken as truth, in my view, prevents us from having a real understanding of the law and its actual relevance to society in general and systematically distorts the historical, social, and cultural picture of China in particular. Things are different today, of course, but despite the veneer of academic development, the phenomenon that inspired my inner discontent has not completely changed. This is partly because the influence of the old ideology—official orthodoxy and its opponents—persists and partly because the causes of these phenomena are much deeper and more broadly based. With that in mind, the thinking that runs through this old book may not be entirely out of date.

Here, I would like to say a few words on the editions of the book and my subsequent research that related to the theme of the book since its publication. This should help readers to have a better understanding of the book.

So far, there are four versions of this book in Chinese altogether. Shanghai People's Publishing House published the original one in 1991. As the preface to the revised edition of it explains, I was not able to rework the whole manuscript from beginning to end at the time because of the rush to deliver it, so there were some regrets left in the first edition, including the traces of the above-mentioned "shift." So, as soon as the book was published, I set about revising it, mainly by removing the emotional expressions that marked the era from the earlier chapters.<sup>9</sup> It took another five years for the revision to be published.<sup>10</sup> Since then, the book was republished in Taiwan in 2012<sup>11</sup> and in Mainland China in 2013.<sup>12</sup> The two editions did not make any substantial changes to the previous edition. It does not mean that the second edition is satisfied enough and no further revision is necessary. The revision of the second edition is limited. I prefer not to change the original structure and questions and let the subsequent thinking be reflected in the later research. That means that taking a look

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<sup>8</sup> They are two different major directions in the subject setting.

<sup>9</sup> For an explanation of the reasons and contents of the revision, see the preface to the revised edition of this book.

<sup>10</sup> This edition was published in 1996 by China University of Political Science and Law Press.

<sup>11</sup> The publisher is Taiwan University Publishing Center.

<sup>12</sup> The publisher is Beijing Commercial Press.

at these studies together would provide a better understanding of the development of the author's ideas and their relevance and significance to each other.

Among the studies I completed after this book, there are two that are directly related to this book, namely the lengthy article *A Cultural Interpretation of Law* (1993)<sup>13</sup> and *The Customary Law of the Qing dynasty: Society and the State* (1996).<sup>14</sup> The former aims to make further theoretical thoughts on my previous cultural study of law (especially on the basis of this book), while the latter takes over the questions raised but not fully answered in the book, trying to understand the normative order in daily life by focusing on the little tradition at that time. I will not repeat those relevant issues since the preface to the revised edition of the book has made an explanation, but I will add a little information related to English readers. The *Cultural Interpretation of Law* was subsequently translated into English and published in the *Chinese Social Sciences Annals* (1994). And part of my research on customary law can be found in some English publications,<sup>15</sup> the simplest version of which was the item *Customary Law, 1800-1949* I wrote for the *Encyclopedia of Modern China*.<sup>16</sup> It is also mentioned in a handbook for the study of Chinese history edited by Professor Endymion Wilkinson.<sup>17</sup>

In my recent research, I can mention several other works that are closely related to this book. The first is the booklet *Confucian Code of Ethics and Law: Cultural Conflicts in the Age of Legal Transplantation*, published in 2013. It began almost at the end of the book and focused on the debate over the making of a new Western-style criminal code, which the latter touched upon but did not discuss in-depth, analyzing a series of major problems that were and are faced by the Chinese. What can be mentioned next is an article reviewing the scholarship of the "history of civil law" in China in the last decades or so. The existence of "civil law" in traditional China has been a controversial issue in studying Chinese legal history from the very beginning. Thirty years ago, this book devoted several chapters to discussing this question from the perspective of legal culture. My following research on customary law could also be seen as an answer to this question. Today, despite all the developments in the study of Chinese legal history, with new materials, methods, theories, and works, the questions and debates surrounding the "civil law" in traditional China remain,

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<sup>13</sup> Liang, Zhiping. 1993. "A Cultural Interpretation of Law," in *China Social Science Quarterly* (Hong Kong). Based on this, I compiled a collection of essays with the same title, which was published in 1994 and updated version republished four years later. Liang, Zhiping. 1994, 1998. *The Cultural Interpretations of Law*. Beijing: SDX Joint Publishing Company.

<sup>14</sup> Liang, Zhiping. 1996. *Customary Law of the Qing Dynasty: Society and the State*. Beijing: China University of Political Science and Law Press.

<sup>15</sup> See, for example, Liang, Zhiping. 1998. "State and Society: From a Perspective of Chinese Legal History," in Beiheft 72 of the *Archiv für Rechts- und Sozialphilosophie*; "Mediation by Whom?," in Alfonso Catania and Luigi Lombardi Vallauri (eds.), *Concezioni del Diritto e Dintorni Umani Confronti Oriente-Occidente*, Edizioni Scientifiche Italiane, 2000.

<sup>16</sup> Liang, Zhiping. "Customary Law, 1800-1949," in *Encyclopedia of Modern China*, Volume 1. 376-377.

<sup>17</sup> See Endymion Wilkinson. 2013. *Chinese History: A New Manual*. 313 Harvard-Yenching Institute Monograph Series.

and the cultural interpretation of the law as a methodology seems still valid. Again, of interest to English readers, this article was edited and translated into English and appeared in *Ancilla Iuris* 2021.<sup>18</sup>

Finally, I can mention my new book, *Governing (Wei Zheng): Ideas of Achieving Good Governance in Ancient China*, published last year. The book focused on five basic political and legal ideas of traditional China, such as family-state (*Jia Guo*), under the heaven (*Tian Xia*), rites-law (*Li Fa*), the people-based (*Min Ben*), and the public (*Wei Gong*). These ideas are equally important in this book, but the difference is that the new book deals with these ideas in a more systematic, complete, and objective way.

Before ending this preface, I would like to take this opportunity to thank all those who made this edition possible. I want to thank the translators first.

As a study of comparative legal history with an extended period and space, the translation of this book is undoubtedly a challenging task. The cultural study of law focuses on the discrimination of words and concepts and the subtle analysis of the meaning of laws, which certainly increases the difficulties in translation. To overcome these difficulties, translators are required to have good training in language, law, history, as well as rich translation experience, not to mention that they should have relatively ample time. None of these conditions are easy to meet. In fact, finding the translator and getting the translation finished took much longer time than expected. I am very happy that Profs. Li Jingrong, Pan Junwu, and Xue Jie joined the project and took this difficult job. As the author of this book, I am ashamed to say that I have little to offer them other than to answer a few questions they ask during the translation process. I did not get around to reading the translations, but I knew how difficult the job was. I would like to thank Prof. Yu Xingzhong and Wang Kai of Cornell University Law School for proofreading and editing the translations. My thanks also go to Dylan Penza and Rachel Wolf for editing Chaps. 1 and 2 of the book.

In addition, I want to thank Ms. Wang Langping of the Commercial Press, who is the editor of the Commercial Press edition of the book and the leader of the translation project. Because of the reasons mentioned above, the extraordinary efforts she made for the translation and publication of the book were easy to see. I also want to express my gratitude to the editors of Springer, who have done an excellent job in the last stage of publishing the book.

I hope that the publication of this edition will live up to the efforts of all those mentioned above and, as the project designers expect, will make a small but due contribution to the exchange of scholarship and ideas between different disciplines and countries.

Beijing, China  
May 2021

Zhiping Liang

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<sup>18</sup> Liang, Zhiping, 2021. "The Vernacularization and Localization of Civil Law in China." Translated and edited by Philipp Renninger, published in *Ancilla Iuris*.

## Preface to the First Chinese Edition

As organized violence in society or as a specialized means of social control, law is a phenomenon that initially existed in all civilizations. But just as civilizations themselves can be divided into different types, so can the laws that belong to different civilizations. People see and interpret the world in different ways. They judge things differently, act according to different norms, and develop very different behavior patterns as a result. From here, not only specific cultural styles emerge, but also different spirits of law.

Whereas Montesquieu sought the spirit of law in history, we seek the spirit of the law in culture. This is still a historical study, but the focus is on the cultural character of the system. The cultural element in a legal system has been described as “the values and attitudes that integrate the (effective legal) system and determine the place of that legal system in the culture of the society as a whole.”<sup>19</sup> It is such a value and attitude that legal culture seeks to examine in the first place. It asks, “How do people view the law? Are they willing to settle disputes through the courts? What kind of training do judges have? How do they decide cases? How does law relate to religion, and how does it relate to morality? What is the place of law in the culture as a whole? What is its social function? What does it mean for the members of that society? And so on. The answer to these questions goes beyond the general study of the history of legal institutions, the history of ideas, or even historical sociology. It seeks to elucidate law through culture and to examine culture through law. As a result, however different the place and significance of the laws it deals with in their respective societies and cultures, the studies themselves are equally important. The fields they must cover are similarly broad, the problems they need to solve equally complex, and, of course, the final rewards may be equally rich.

In the case of the study of traditional Chinese legal culture, the difficulty lies first in recognizing and grasping the so-called culture? What principles should be used to cut and choose from the vast array of historical materials? And how to extract from it the “character” of Chinese culture, the “spirit” of ancient Chinese law?

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<sup>19</sup> Friedman, Lawrence M. “Legal Culture and Social Development,” *Law and Society Review*. p. 34. vol. 4, No. 1.

The “culture” we talk about today in the intellectual world has become more and more like metaphysics. In fact, culture, as a living thing that governs human life, is an entirely empirical thing. It can be the philosophical understanding of a sage, but it can also be a particular ornament on a bronze object; it is cohesive in ancient gardens and buildings and people’s daily speech and behavior. In this sense, the “culture” in ancient literary works is no less important than the “culture” in the sage classics or less worthy of attention. There is no reason to focus only on the classics and even the sages’ quotations while completely ignoring the much larger number of ordinary texts. Likewise, there is no reason to only look for and argue for “culture” in documentary materials while leaving non-documentary materials such as artifacts and architecture unattended. Of course, this does not mean that all cultural symbols are of equal value. The meaning of historical materials varies depending on the issue. Sometimes, the authenticity of a historical material may be crucial to the topic, but on another occasion, a pseudo-history may be no less valuable than a credible one. We can and should use all possible historical materials together. By comparing, referencing, and cross-checking these materials, we can seek the character of culture and the spirit of law.

Culture is a complex system with multiple sources and can be divided into many different levels according to various criteria. These multiple sources and levels are connected and distinct and have created traditions at different times in history to varying degrees. The interplay and interaction among them are critical to our understanding of Chinese culture.

There is a firm opinion that ancient Chinese law is just a product of Confucianism. Escarra writes: “From ancient times until the end of the nineteenth century, China knew and used a concept of law that was very distinctive and very different from the Greek and Roman concepts accepted in most Western countries. The Confucians did not create this Chinese concept, but it was expressed for them with exceptional precision. It might be said that for two and a half thousand years, China was sustained by ‘Confucian metaphysics,’ by its theory of the interaction between the human order and the natural order, of the sovereign’s responsibility for the harmony between society and the universe, and the harmony achieved by the demonstration and observance of manners rather than by law and punishment. The representations that preceded the recent codification of positive Chinese law are steeped in such metaphysics.”<sup>20</sup> A serious Chinese scholar also believes that “the deepest and most profound influence of Confucianism on the Chinese nation over the past 2000 years has been in the area of institutional law and public and private life.”<sup>21</sup> Although these views are not without merit, if we want to explore the character of culture and the spirit of law, we cannot focus only on Confucianism. Confucianism is only one of the many schools of thought in Chinese history, and it has grown up in confrontation and

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<sup>20</sup> Quoted in Yoshiyuki Noda. “The Far Eastern Conception of Law,” in *International Encyclopedia of Comparative Law*. Vol. II. The Legal Systems of the World. 128.

<sup>21</sup> Chen Yinque’s “review” of Feng You-lan’s *History of Chinese Philosophy*, vol. 2, in Feng You-lan. 1984. *A History of Chinese Philosophy* (second volume), Beijing: China Bookstore.

exchange with other schools of thought. It cannot avoid incorporating and integrating the old and the new.

Sometimes, the confrontation was based on a particular cultural consensus. The dispute between Confucianism and law in the pre-Qin dynasty was based on the common understanding of “law is punishment”; the discernment between righteousness and profit, which lasted from the pre-Qin dynasty to the Qing dynasty, implied the familiar premise of “removing selfishness.” These shared understandings and premises are the same among the differences. They are often hidden but not visible, quietly running through the whole culture, which can be an unexamined tradition. The true spirit of culture is embodied in these unexamined and uncritical but consistent traditions. Therefore, we will not gloss over the history of the early years of ancient Chinese civilization, a crucial period for both ancient law and ancient civilization, as researchers of ancient law usually do, or, for that matter, not say a word about it. Nor do we make an “either/or” division of history, pitting pre-Qin legalism against Confucianism and describing the laws of the Qin or Qin-Han periods as purely legalistic and the laws of the post-Wei-Jin period as purely Confucianistic. Culture is complex yet unified. The unity of complexity lies in the many opposites.

In the following historical study, I do not apply the familiar five-stage theory of social development,<sup>22</sup> nor do I analyze history according to a simplistic class perspective. This is not because it is a legal study from a cultural perspective, but because the artificially presupposed premises are myths that ignore the uniqueness of Chinese history and culture and lead people astray in vain. Some researchers of cultural history have been surprised to discover that “the advent of black powder weapons brought relatively little change to warfare in and around China, while in Europe it destroyed feudal castles and knights in armor. The invention of the stirrup put the Chinese at the forefront of the world, but the cavalry archery tools of East Asia remained the same. The magnetic compass and axial rudder enabled Europeans to discover America, while Chinese captains sailed unchanged in the Indian and Pacific Oceans. Whereas in the West, printing helped the rise of the Reformation and the Renaissance, in China, it had the sole result of extending the recruitment of clerical staff to a wider social sphere, apart from preserving many books that would not otherwise have survived.”<sup>23</sup>

These facts cannot be explained by the methods mentioned above. For such a strong ability of ancient China to dissolve those world-shattering inventions precisely indicates a unique cultural position. Following this path, we will also find that not only in the use of science and technology, but also in many fundamental questions concerning society, life, and even the universe, the ancient Chinese had their unique views or attitudes, which were often very different from the Western views on almost the same issues, and which constituted the Chinese philosophy, the paradigm of Chinese culture. The spirit of ancient law is bred in them. Of course, we do not

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<sup>22</sup> Such a theory holds that human society will collectively go through five stages, namely primitive society, slave society, feudal society, capitalist society, and socialist society.

<sup>23</sup> Joseph Needham. 1986. *The Collected Works of Joseph Needham* (Chinese edition). Shenyang: Liaoning Science and Technology Press. 291–292.

seek the spirit of the law from an abstract cultural type, just as we do not derive a cultural type from a sage's quotation or some predetermined abstract idea. This is not a treatise on metaphysics but a work of cultural history with a historical–sociological dimension. I want to grasp the law through the understanding of culture as a whole and to explore the spirit of the law through the cross-referencing of different types of materials such as legislative principles, legal texts, and jurisprudence. Naturally, this is not a work of cultural history in the general sense, but a particular study of ancient Chinese law, which is not lacking in detailed arguments. However, isn't the spirit of ancient law, and indeed the character of Chinese culture, embedded in such great details?

Some readers may find that my discussion of many issues begins with specific words and phrases. This is not surprising. For, at least in my view, words and languages always represent the very core of a culture. Differences in language and words are directly cultural differences. This, of course, poses some unique difficulties for our research.

As a particular type of civilization, Chinese culture has been radically altered in recent times. The ancient civilization has died, just as the ancient Chinese language has become a “dead language.” Modern Chinese is full of foreign languages and modified vocabularies that represent modern industrial civilization and bear the stamp of Western civilization. In this regard, ancient Chinese and modern Chinese represent two different civilizations. The attempt to speak about old things in modern languages inevitably encounters the same difficulties in translating Chinese and Western languages. In a sense, these difficulties are insurmountable. With this in mind, in a book written for people who read in Chinese, I prefer to quote from the original in every possible context. This may affect the reading flow, but at least it will reduce cultural misunderstandings and misinterpretations, thus enhancing academic accuracy. I believe that this latter point is more important. I also think that the patient reader will appreciate more the spirit inherent in Chinese culture and ancient Chinese law through the ineffable charm conveyed by the original text.

Beijing, China

Zhiping Liang

## Preface to the Second Chinese Edition

This book was completed in 1988 and published in 1991. Looking back at this book after such a long time, I feel on the one hand that there are still many unsatisfactory points in it, and on the other hand that this reprint offers an opportunity to recapture the main ideas of the book.

As I have repeatedly emphasized, this book is a so-called factual study. What does this mean? Does it mean that what I have done is to observe and describe “historical facts” in a completely objective way? If so, the following question may arise: Is it possible to study “facts” in an unbiased and impartial manner? And is there such a “fact” out there waiting to be discovered? According to Ernst Cassirer, historiographical facts are symbolic rather than physical, and they exist only in the work of historians.<sup>24</sup> This is true of historical facts and the facts of the present. Clifford Geertz points out that the source of anthropological knowledge is not the social reality but the artifacts of scholars.<sup>25</sup> In the end, the “facts” that historians and anthropologists deal with are cultural and therefore symbolic. And the only way to “discover” and understand such facts, whether we admit it or not, is through interpretation. Is it possible for interpretation to be unbiased and completely objective? If we acknowledge the finiteness of human beings, our answer must be in the negative. Modern hermeneutics constructs its theory of understanding based on the finiteness of human existence. Having said that, one may have more reason to ask, “If so, what do you mean by “factual studies”? What is so special about it compared to other legal history studies?”

The term “factual study” can be used, on the one hand, to mark the nature of the book and, on the other hand, to emphasize the researcher’s position, which is aimed at identifying similarities and differences rather than comparing strengths and weaknesses, or, to put it more clearly, the book is not concerned with questions of

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<sup>24</sup> Cassirer, Ernst. 1985. *An Essay on Man*, Chapter 10, translated by Gan Yang. Shanghai: Shanghai Translation Press.

<sup>25</sup> Geertz, Clifford. 1973. “Thick Description: Toward an Interpretive Theory of Culture.” In *The Interpretation of Cultures*. 3–31, translated by Yu Xiao, published in *Culture: China and the World* (1).

“what should be” but with “what is” and “why it is.” Instead, the book is concerned with questions of “what happened” and “why.” Of course, such questions can be asked in different ways, such as the historiographical way,<sup>26</sup> or sociological way.<sup>27</sup> However, the approach this book has adopted is what may be called an interpretive approach. This is because, first of all, from the very beginning, I have consciously considered the “facts” to be explored as cultural and symbolic. That is why the subtitle of this book is “A Study of Legal Culture.”

I prefer the Geertzian school of thought, which sees culture as a semiotic concept, a so-called web of meaning that people weave and live within themselves.<sup>28</sup> In this way, what I call “factual research” is not “an experimental science that seeks laws, but an explanatory science that seeks meaning.”<sup>29</sup> Of course, historical research is not the same as anthropological or philosophical research, and this book was not originally designed from an anthropological or philosophical point of view. What, then, makes me describe it as “interpretive”? In other words, where does the analytical approach adopted in this book suggest a so-called cultural position and an interpretive orientation?

In the terminology I used at the time, this book is about a particular “spirit of the law” rooted in a specific “cultural pattern.” The term cultural patterns imply that culture is grasped in the sense of different types. Cultural types are shaped by historical experience over time, with the early adventures being particularly important. The concept of cultural types helps us understand a culture from an intracultural standpoint. To “understand the culture of a people,” as Geertz puts it, “is to reveal its normality without diminishing its particularity. (The more I try to imitate what the Moroccans do, the more logical and unique they appear,) and by placing them in their everyday system, they become comprehensible. Their incomprehensibility is then dissipated.”<sup>30</sup> This position, which might be called “sympathetic understanding,” is also what is meant by “factual studies.”

This book uses anthropomorphic terms such as “cultural character,” “spirit of the law,” “cultural choice,” and so on. In a sense, I believe that cultural types are the result of people’s choices. This choice indicates people’s likes and dislikes and their thinking about the meaning of life. From this perspective, social institutions, including laws, are tools and means to organize social life and solve social problems and some manifestation of the values pursued by certain people. In other words, the law is not just a means to resolve disputes but also a symbol to convey meaning. This does not mean, of course, that the content and form of law in society have nothing

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<sup>26</sup> This approach is represented by Yang Honglie’s *History of the Development of Chinese Law* (Shanghai: Commercial Press, 1930). The vast majority of Yang’s previous and subsequent works on legal history belong to this kind.

<sup>27</sup> This approach is represented by Qu, Tongzu. 1981. *Chinese Law and Chinese Society*. Beijing: China Bookstore. Another outstanding sociological study of Qing law is Sybille van der Sprenkel’s *Legal Institution in Manchu China*. (London: The Athlone Press, 1962).

<sup>28</sup> Geertz, *supra* 2. See also Lin Tongqi, “Geertz’s ‘Depth Portrayal’ and the View of Culture,” in *Chinese Social Sciences*, 1989, no. 2.

<sup>29</sup> Geertz, *supra* 2. 263.

<sup>30</sup> Geertz, *supra* 2. 276.

to do with the material development of that society, but rather that law is never a simple reflection of material development. After all, man creates law, and man's reaction to the world must be mediated through culture. Thus, law is both "objective" and "subjective," "reflective" and "creative" in nature. Previous studies of Chinese legal history have more or less started from the "objective" aspect, without paying attention to the symbolic meaning of law. The approach of this book is the opposite of that. It does not ignore the social function of law, but it focuses more on its cultural significance or the "cultural character of the system." Therefore, it always asks about the "grounds" behind legal arrangements (both in terms of content and form). To this day, I still regard this as one of the critical points of cultural analysis.

In the past, because it was mainly based on objective aspects, the study of legal history tended to be homogeneous, i.e., to assign the world's different legal systems to the various stages of a unified human development pattern, in which the differences were only of degree. The presuppositions contained herein also largely govern the study of Chinese legal history, whether or not these studies appear in a "comparative" light. This book's commitment to "legal culture" attempts to introduce a new research paradigm whereby identifying differences replaces the search for commonality. Differences within similarities are emphasized and often considered incommensurable because they arise from different cultural types, which are inherently incommensurable. Here, the emphasis on cultural types not only implies a rejection of cultural and ethnic "centrism," such as "Western centrism," but also suggests a rejection of modern man's self-righteous "modern centrism." The problem is that previous discourses on the "what" of ancient Chinese law have been marked by too many unconscious cultural and contemporary "biases." This makes this book's discussion of "what is" often start with "what is not," with the result that it becomes more discriminatory.

As an effective method, discernment often begins with a strict lexical analysis. I assume that language and culture are inextricably linked, that the words of a people condense the experience of that people so that one may trace and even reproduce the history and culture of that people along the trajectory of the words. The method of linguistic analysis applied in this context is both critical and constructive. The critical side is mainly expressed in analyzing "what it is not." As mentioned above, previous studies on the "what it is" of ancient Chinese law have been influenced by various biases and have been rather specious. The most obvious and typical example is the rigid application of modern academic concepts and terminology to historical materials. Since the so-called current theoretical concepts, categories and classifications are basically of Western origin, the above approach is "modern-centric" and "Western-centric." This book addresses this situation in the first place by identifying the concepts of law, legal statutes, morality, public law, private law, criminal law, civil law, the rule of law, and natural law. This is the first step into "factual studies."

The analysis of words has both positive and constructive implications. This is evidenced by the analysis of the concepts of state, family, punishment, law, legal statutes, public law, rites-law, nature, rites, righteousness, profit, public, private, governing man, and governing law in this book. However, the examination of word origins and the identification of word meanings are neither the whole content of

what I call the analysis of words nor the primary purpose of this book. They are merely necessary and effective ways to help me penetrate different empirical worlds. A related question is whether this approach of using words to understand other people's ideas and thus penetrate different empirical worlds is what historians often call putting ourselves in another time, thinking in terms of the concepts and views of the people of that time rather than our concepts and ideas. Only in this way, it is said, can we ensure the objectivity of history. But this is not the goal I am aiming for. The above discussion has already shown that this so-called historical objectivity is illusory because no one can observe and understand the world outside of their own "field of vision." The question, therefore, is not simply how to abandon oneself (which is neither possible nor necessary), but rather how to transcend both one's inherent horizon and this historical horizon while remaining in a particular historical horizon, and to achieve some higher degree of unity through a circular and fruitful dialogue between the two.<sup>31</sup> The importance of discourse analysis is shown at this point as well. Of course, its content here goes far beyond the examination of words. Still, it includes a re-examination of many concepts, categories, classifications, principles, and even doctrines that we are accustomed to using and that seem to have an irrefutable universal meaning. Since concepts and categories (and, more fundamentally, language) are the mediators by which we must observe and understand the world, this discursive analysis in the sense of intellectual self-consciousness becomes a prerequisite for understanding. And since the re-examination of language here is carried out with the help of various specific experiences (various horizons), the result may be novel.

Does the hermeneutic position, which emphasizes subjectivity in cognitive activity to the extent that it denies the existence of the so-called objective reality that is external and unrelated to human mental activity, imply that there is no objectivity in interpretative activity, that there is no way to measure the results of interpretation, and that interpretation can therefore be arbitrary? It should be admitted that interpretative knowledge is not as cumulative as scientific knowledge. Instead, it is closer to artistic ability. "There is no explanation of poetry, and the possibilities of interpretation are unlimited. However, there is a difference between good and bad interpretations, and "for anything—a poem, a person, a history, a religious ritual, a custom, a society—a good interpretation will always take us into the depths of the nature of the thing it explains."<sup>32</sup> In Geertz, a good explanation is layered and polemically clever and objective, resisting subjectivism and mysticism by analyzing symbolic forms as closely as possibly linked to concrete social events and occasions, the public world of ordinary life.<sup>33</sup>

The principles hinted at by Geertz in seeking the harmony of the natural order apply to historical research as well, except that it is unlikely to be based on direct

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<sup>31</sup> Gadamer. 1992. *Truth and Method*, translated by Hong Handing. Shanghai: Shanghai Translation Press. 373–394.

<sup>32</sup> Geertz, *supra* 2, 281.

<sup>33</sup> Geertz, *supra* 2, 294–296.

observation so that solid materials partly ensure the objectivity of historical interpretation. Of course, the materials themselves do not tell us anything; meaning can only be derived through interpretation. Likewise, following those minimal rules in the use of materials is only a primary condition to prevent arbitrariness. These rules do not tell us what kind of materials to choose and organize. In the 1980s and even today, we often see the kind of discursive cultural studies that conceive of so-called Chinese culture in terms of the thoughts and words of some historical figures. Even if it conforms to the rules of discourse interpretation, such an interpretation is bound to be unconvincing. This is because culture is a complex whole containing the rich substance of which ideas are only a part. Moreover, the meaning of a statement or idea is often uncertain, and the statements and ideas of the same person are often incoherent or even contradictory. As a result, such studies cause almost infinitely more confusion and chaos than they can achieve. This book is careful to avoid falling into this trap, although it also emphasizes historical thought. I have taken the approach of placing the materials of the history of ideas in the same place as that of institutional and, to a lesser extent, social history, looking for what is common among them; of probing the issues debated by the major schools of thought of the same era to see what they contend for and what they do not; of tracing the themes that have long troubled and excited people throughout history to see what, amidst the countless subtle but significant changes, can be constant and what has changed. It seems that what is familiar, indisputable, and unchanging has been buried deeper and more enduring in this culture. Artifacts, ideas, texts, words, events, and actions are all symbols, and the question is simply how to connect them into a meaningful structure through a reasonable interpretation.

As an “after-the-fact” summary, the above description of the book can only be an explanation of the interpretation, and the latter, like the former, inevitably brings in the subjective activity of the interpreter. Specifically, this “after-the-fact” summary includes my reflections on my past research in recent years. However, it is also true that the theoretical elaborations here are not simply added from the outside at this moment, but are based on previous research, except that the theoretically significant reflections at that time were usually carried out only in the analysis of specific problems and were less concentrated and systematic. In this sense, the preceding description may again be understood as a descriptive summary. However, this does not mean that this book can be considered a model for the practice of such a theory. For what is described here is first and foremost a goal that it strives to pursue, not a mission that has been accomplished. So, is it successful in its attempt? Is the explanation it offers convincing? Is it even possible to achieve the goals it has set for itself? Take the above-mentioned “factual studies” as an example. Does the book reject all value judgments and ask only “facts”? Not to mention whether it can consistently adhere to this point, what does it rely on to do so? And even if the book does inquire into rather than judge “facts,” on what criteria are the “facts” of interest selected? If the selection of questions is not exempt from value judgments, does that mean that the answers to the questions may already be potentially contained in the process of asking them? How much self-awareness does it have regarding these? Or, even if it is aware, what are the ways to keep an open eye throughout the research process and

avoid the harm of parochialism? These are all questions that can be asked about this book.

By the time this book was completed, I had thought my research on this topic would end, but I soon discovered that this was far from the case. Over the past five years, I have published several studies related to the topic of this book that not only broaden and enrich my original research but also have the potential to deepen it by raising new and meaningful questions. The following are two of these studies.

In 1993, I published the paper “The Cultural Interpretations of Law,”<sup>34</sup> in which I try to make some relatively systematic theoretical reflection on my previous “legal culture research,” which, at this time, takes this book as the main object of introspection. Naturally, this is also a kind of post-event summary, an explanation of an explanation. In the sublimation from practice to theory, the problem is deepened step by step. In my opinion, this is normal and desirable. If the relationship between theory and practice is entirely one-to-one, theoretical discussion and practical exploration will lose their meaning. Although the analytical method of so-called cultural interpretation comes from some specific studies, its significance is not limited to these studies. It can be used to guide many new studies, and we can and should further test its validity and explore its potential meaning through these new studies. This consideration may determine the subject of my research in the coming years, and both the paper and those future studies can be seen in some ways as a response to this book and a deepening of related themes.

Another study was completed in the first half of 1995. This treatise on Qing customary law is detailed in my book, *Qing Customary Law: Society and State*.<sup>35</sup> Like the article mentioned above, it was also written immediately after the issues addressed in this book.

*Qing Customary Law: Society and State* discusses the “civil law” issue in ancient China at considerable length. In the Western cultural tradition, the doctrines and theories of civil law have had an extensive and important influence in shaping the ancient and modern codes of the West and penetrating deeply into Western thought and thinking. In stark contrast, this part of the Western cultural and legal tradition with such significance has no counterpart in ancient Chinese society. What does this mean?

Previous scholars have focused on such superficial phenomena as the absence of a “civil code.” The lack of “civil” provisions in ancient Chinese codes or have said that ancient Chinese civil law was underdeveloped, or that ancient Chinese law was a “unity of laws” (a term often used to summarize early Chinese law). “(a term often used to summarize the characteristics of early codes). This approach of viewing ancient Chinese law primarily (and often unconsciously) from a modern and Western standpoint, without exception, obscures the autonomous meaning of

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<sup>34</sup> This paper was originally published in *Chinese Social Science Quarterly* (Hong Kong), vol. 4, 1993, and later included in Liang, Zhiping (ed.). 1994. *The Cultural Interpretations of Law*. Beijing: San Lian Bookstore.

<sup>35</sup> Liang, Zhiping. 1996. *Qing Customary Law: Society and State*. Beijing: China University of Political Science and Law Press.

the object and thus leads to a loss of its integrity. This book argues that ancient Chinese law was sufficiently mature in its inherent form. According to its intrinsic logic, the separation of civil and criminal law lacks basis, and the claim of private law is a self-contradiction. The ancient Chinese law has its unity, which is rooted in culture, and therefore the law should be grasped first and foremost according to the type of culture in which it is embedded. If the Western culture, which gave birth to Roman private law and at the same time was deeply influenced by it, can be properly called a “private law culture,” the Chinese culture can be described in the same sense as a “rites-law culture.” In this so-called rites culture, civil law, or private law have no origin.

In this example, Western law is cited as a reference, but this reference is not “hard” and exclusive; that is, it is not a simple criterion of giving and take and judgment, but rather it is “soft” and fluid. This reference is introduced to understand better and explain the qualities of Chinese legal culture (although there are obvious practical reasons, in addition to theoretical considerations, for using the West as a reference rather than other cultures). I believe that the analysis in this book is still unique and worthy of attention. Is this analysis complete and adequate concerning the more prominent topic of traditional Chinese legal culture? If we change a little and consider more the practical character of law in solving social problems rather than just its symbolic meaning, expanding research horizons and synthesizing research methods will be necessary and valuable.

Although this book talks several times about the opposition and interaction between elite culture and popular culture and argues that this type of relationship may be the key to understanding China’s formation and development of its cultural character, it does not discuss these issues in depth. Strictly speaking, this book focuses on what anthropologists call “grand traditions,” i.e., cultural traditions from the state, rulers, and elites, rather than popular and folk traditions. In a culture as old and culturally developed as China, the influence of “grand traditions” cannot be underestimated in any case. However, it is also clear that starting from the “grand tradition” alone is not enough. This understanding is especially important in issues such as “civil law.” Since the Tang and Song dynasties, there have been considerable changes within Chinese society, especially in economic life, and many forms of civil interaction have emerged. After the Ming and Qing dynasties, with the dramatic increase in society’s population, this development became even more remarkable. This situation contrasts sharply with the relative invariance of state law (above all, as a system of symbols). This may mean that the satisfaction of this aspect of social demands was mainly sought in “small traditions.”

The book *Qing Customary Law: Society and the State* systematically discusses a series of important issues such as the nature, functions, characteristics, and expression of customary law in the Qing dynasty, as well as its place in society at the time, including the complex relationship between customary law as a “minor tradition” and state law as a “major tradition.” Although these issues were raised mainly in the context of the Qing dynasty, they have much broader implications. This is because the tradition of customary law has a long history, and this tradition itself is only one of the so-called minor traditions that has its form. Then, how to look at the “small

traditions” including customary law, how to grasp the relationship between the “big traditions” and the “small traditions,” how to understand the culture through these inherently complex traditions and the more intricate relationships between them, and how to use cultural interpretation in this broader context are questions that can be further considered.

Finally, a few questions can be raised about the revision of this book.

The Shanghai People’s Publishing House originally printed this book in 1991. There were several problems with the initial edition, and they focused on two main aspects. The first aspect is technical: the original book cites different versions of ancient documents, the citations have not been carefully checked, and there are inconsistencies in the style of annotation, mainly due to the tight turnaround time and the haste of the book. In addition, there are many typographical errors in the book, which need to be corrected. The second problem concerns some wording and phrases: Some are inappropriate or imprecise, and some are even emotionally charged, which are harmful to the integrity and seriousness of academic thinking and need to be corrected. By June 1992, a more complete revised version was completed. In addition to the above-mentioned revisions, this manuscript also made partial gains and losses to the original book. This work does not change the arguments of the original text but has the merit of eliminating redundancy and enriching the material. Such changes are mainly in Chap. 7, Sect. 4, Chap. 9, Sects. 7 and 8, Chap. 11, Sect. 13, and Chap. 12, Sect. 4. Unfortunately, this revised manuscript never had the opportunity to go to the press. The book has not been reprinted since its publication in 1991, and its first edition had a print run of only 2000 copies, making it difficult to see it on the market from the very beginning. In addition to adding a few notes and revising a few words from the 1992 manuscript, this reprint has been prepared with “References” and “Index” at the back of the book. This revised edition does not change the original book’s structure and basic ideas but makes it more complete. This does not mean that there is no more room for improvement in this book. On the contrary, if it were possible to rewrite the text now, I would probably make structural changes. The problem is that the book was written long ago and reflects the results of my research in stages. I have no reason to change so much in the original title and chapters as to make history completely unrecognizable, not to mention that the basic positions and approaches taken in the book and some of its main arguments are still held by myself. For the reasons discussed above, the community’s demand to understand this research has not been met. Under these circumstances, such a revised edition may be necessary and valuable.

I hope that the reprinting of this book will further promote related research and that through such research, we can gain a deeper understanding of history, society, law, and culture.

At His Apartment in Wanshou Temple,  
Beijing, China  
Written in July 1995, Revised in  
October 1996

Zhiping Liang

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# Chapter 1

## Family and State



*Under the wide heaven,  
All is the king's land.  
Within the sea-boundaries of the land,  
All are the king's servants.* (Legge, James. 2019. Translation of  
Bei Shan. In *Chinese Text Project*. Ed. Donald Sturgeon. [https://  
ctext.org/book-of-poetry/decade-of-bei-shan](https://ctext.org/book-of-poetry/decade-of-bei-shan). Accessed 16 Jul  
2021).  
—*Book of Poetry · Bei Shan*

### 1

The primary symbols of a civilization's emergence are generally recognized as writings, cities, metal industries, religious architectures, and great arts. This is accompanied by society divided into classes and state that gradually emerged in the midst of social conflicts. However, the specific forms of civilization have always been disparate, just as the languages and writing used by different groups of people have been diverse since the dawn of time. In fact, pointing out the differences in language and writing itself is sufficient. They are the deposition of past history and the materialized form of human memory. By following this chain link, we can touch mankind's longest experience, glimpse the special path by which different civilization was formed, and see the consequent hidden characteristics that form and constitute the core of civilization. The choice of the words “*Jia*” [家 family] and “*Guo*” [国 state] as the opening topic for discussing traditional Chinese legal culture is based on such considerations.

### 2

The concept of state is well-known among modern people; at the very least, they understand that it is a special kind of political organization. No one would confuse it with other social units of very different nature, such as families based on consanguinity. In the eyes of modern people, a state is a state while a family is a family; these two things are completely different. Of course, this does not prevent modern Chinese people from using the term “*Guo Jia*” to refer to the special kind of political organization known as “State” in political science, which is a thought-provoking point.

“State” or other corresponding synonyms in western languages never contain the slightest meaning of “family” based on word composition, and this is an unquestionable fact. However, if we translate this group of words into Chinese, we will see amazing results: The word used in modern Chinese language to refer to a kind of special political organization that has nothing to do with “*Jia*” [家, Mandarin for “family”] happens to be not just “*Guo*” [国, Mandarin for “state”] or another single Chinese character, but a compound word— “*Guo Jia*” [国家, Mandarin for “state”], which has absorbed the word “*Jia*” [家, Mandarin for “family”]. This kind of word formation is self-contradictory from a logical standpoint, unless we know the historical and cultural context behind these words ahead of time.

In the view of Chinese ancients, the boundary between state and family was not very clear. The ancients used to refer to loyalty and filial piety together, mention emperor and father family affairs, and view state administration as an extension of housekeeping; even if the two were not completely confused, at least ancients believed that family and state could be linked and that there were no clear lines between them. In fact, in ancient times, the family was not the atomic family that we are accustomed to, but rather a community based on the principle of single kinship, which is structurally similar to the so-called clan in anthropology. This kind of community, which we commonly refer to as a family, performs a variety of social functions, including some administrative and judicial ones. It is tough to identify which is the cause and which is the consequence when dealing with such thought and reality; they each have their own reason for being, yet they influence each other, which is, at the very least, the scenario following the Han dynasty. Going further back in time, the concept of family and state appears to be more bizarre. In the Zhou dynasty (maybe earlier), feudal lords were called states, while scholar-officials were called families, which appears to be another situation. Apart from distinctions in humility, superiority, size, and so on, both state and family refer to a political clan organization that holds a certain amount of land (feuding land and mining land), and the two can even be lumped together. The word “*Guo Jia*” [国家, “state”] was used together by the ancients to refer to vassal states, (For example, according to *Han Feizi · Ai Chen*: “The state will be in danger, and the king’s power will be taken away”.) or “*Tian Xia*” [天下, “world”], (For example, according to *The Book of Documents · Li Zheng*, “(You) should strive to govern our state by appointing kind and wise people”.) which indicates their similarity (if not uniformity). However, in the standpoint of modern people, where do these terms like “*Guo*”, “*Jia*” and “*Guo Jia*” belong? Do these belong to family or state? This is not an easy question to be answered. These political clan organizations that are also family and state are already qualified to be called states from an anthropological standpoint, but they are not nations in the modern sense, and they cannot even be classified in the same way as ancient western countries, which modern people are more familiar with. The latter question is noteworthy because people can learn something about a civilization or a kind of civilization indirectly: the internal driving force of civilization development, the path through which it passes, its representation and characteristics, and so on. I believe it is absolutely necessary that we clarify the answers to these questions in order to deeper understand Chinese civilization with a-five-thousand-years history.

### 3

The origins of a civilization are an extremely complicated question. People only have some clear and reliable views on this question after more than a century of excavation, investigation, and research by archaeologists and anthropologists. The main factors leading to the emergence of a civilized society, according to general doctrines in the west today, are:

The change in quality caused by changes in production tools and methods is the most frequently mentioned. This primarily refers to the emergence of metalware, as well as the combination of metal and manufacturing techniques....

The second factor is the replacement of kinship groups by geographical groups. That is, kinship became less important in interpersonal relationships as geographical proximity became more important, eventually leading to the birth of state.

The third factor is the emergence of writings. Technical and commercial needs are said to have been the driving force behind the creation of writings....

The fourth factor is the separation of urban and rural areas. Cities grew into a hub for trade handicraft....<sup>1</sup>

This theory on the origin of civilization begins by mentioning “qualitative changes caused by changes in production tools and means of production”, and hits at a fundamental viewpoint, namely, that the technological revolution that began in the field of production has a notable status in the history of human civilization. Obviously, this is correct. The invention of bronze and even iron tools resulted in significant changes in human life. The resulting civilization, in fact, “reflects the first break of human society from the constraints of the ecological system”.<sup>2</sup> The complexity of social relations has increased as technology and commerce have progressed. On the one hand, it produced writing to document the complicated human relationship; on the other hand, it encouraged the separation of urban and rural areas, turning the former into a centre of handicraft and trade. Old consanguineous groups were gradually dismantled as the social division of labour expanded, and new social groups divided by professional standards gradually emerged. Social mobility and intermixing became more common, and the social structure became more complex; the old clan organizations had almost completely lost their old social functions, and accordingly, states ruled by the territorial principle took their place. This is the history of western civilization’s evolution. This period of history is summed up in the above-mentioned theory of civilization’s origin. In other words, this theory is first and foremost a summary of western civilization’s historical experience. As a result, when studying

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<sup>1</sup> Chang, Kwang-chih. 1986. *Six Lectures in Archaeology*. 14. Beijing: Wenwu Press. In general, we are not unfamiliar with this kind of theory. As early as the late nineteenth century, when Engels researched the history of Athens and Rome state’s growth, he specially emphasized the significance of various factors, including the rise of iron tools, especially iron-made farming tools, the division of residents not according to kinship group but geography, as well as the opposed relationship of urban and rural areas. See Engels, Friedrich. 1972. *The Origin of the Family, Private Property and the State*. In *Collected Works of Marx and Engels Volume 4*. Ed. Central Compilation and Translation Bureau. Beijing: People’s Publishing House.

<sup>2</sup> Chang, Kwang-chih. 1986. *Six Lectures in Archaeology*. 23. Beijing: Wenwu Press.

the evolutionary trajectory of ancient Chinese civilization, on the one hand, we can be vigilant and avoid prejudging, mistaking a particular experience for mankind's universal experience; on the other hand, we can think of it as a positive experience.

The earliest state in China, according to tradition, is Xia. Archaeological excavations in recent decades have confirmed the existence of this legendary state. However, so far, we still know little about this period of history. According to current evidence, the Xia culture is far behind the later Yin Shang cultures, particularly the Zhou culture; this is without a shadow of a doubt. In terms of cultural history, however, the so-called three generations Xia, Shang and Zhou essentially make up a single epoch, the Chinese Bronze Age.<sup>3</sup> Although metal items first appeared in the archaeological record long before the Bronze Age, the manufacturing and usage of bronzes played a significant role in the lives of ancient Chinese people throughout this period. During this period, writings emerged, nations were formed, and urban and rural areas were divided. As a result, some argue that the concepts of the Chinese Bronze Age and ancient Chinese civilization have been "mixed to a point where they are nearly interchangeable".<sup>4</sup> The Chinese Bronze Age, as the formation period of Chinese civilization, is obviously a key link in the history of the emergence and development of Chinese civilization.

#### 4

One of the most notable distinctions between the aforementioned civilization theory and the Chinese Bronze Age is that "metal has never been the primary raw material for making production tools throughout the entire Chinese Bronze Age; production tools of this era are still constructed of raw materials, including stone, wood, horn, bone".<sup>5</sup> This indicates ancient Chinese civilization did not, or mainly did not, emerge as a result of the aforementioned technological revolution, but rather for other reasons. To put it simply, this cause is primarily due to a shift in people's relationships.

The formation of "surplus wealth" is required for the emergence of any kind of civilization. However, "because human living demands are relative, surplus resources in societies will not be produced spontaneously after production increases but will

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<sup>3</sup> See Chang, Kwang-chih. 1986. *Six Lectures in Archaeology*. 110–132. Beijing: Wenwu Press; Chang, Kwang-chih. 1983. Chapter 1–5. In *Chinese Bronze Age*. 1–121. Beijing: Sanlian Press.

<sup>4</sup> Chang, Kwang-chih. 1983. *Chinese Bronze Age*. 26. Beijing: Sanlian Press.

<sup>5</sup> Chang, Kwang-chih. 1983. *Chinese Bronze Age*. 11. Beijing: Sanlian Press. This kind of view has been supported by solid proof. See Chen, Mengjia. 1956. *Summary of Oracle Inscriptions in Yin's Ruins*. 542 & 549. Beijing: Science Press; Institute of Archaeology, Chinese Academy of Sciences. 1961. *Archaeological Gain in New China*. 46–47 & 52–53. Beijing: Wenwu Press; Shang Zhou Team at Archaeology Teaching and Research Section in Peking University Department of History. 1979. *Archaeology of Shang and Zhou*. 39 & 167. Beijing: Wenwu Press; Ma, Chengyuan. 1982. *Chinese Ancient Bronze*. 12–28. Shanghai: Shanghai People's Publishing House. The book cited after that emphasized the use of bronze agricultural tools at that period, and argued that there were more bronze agricultural tools used at that time than bronze agricultural tools that could be found today. The issue is that the justification for the speculation is insufficient. The widespread use of agricultural tools, including stone, bone, wood, mussel, horn in Chinese Bronze Age, is still a reality, and there are significant historical and cultural reasons behind this phenomenon. This will be further discussed in the later part.

have to be produced artificially. In other words, the more unequal social relations exist, the more wealth concentration can be created, and the more surplus wealth that can be employed in so-called civilizational phenomena can be produced”.<sup>6</sup> The stratification of society appeared in Chinese prehistoric history no later than the late Neolithic period. In terms of its particular cultural connotation, this kind of social stratification is primarily manifested as a minority of people’s monopoly on various means of communicating with heaven, earth, people, and god<sup>7</sup>; from a technical standpoint, this change is a pre-requisite for the Bronze Age to emerge.

A piece of bronze is created through a series of complicated processes that include metal mining, transportation, smelting, and casting. It is impossible to imagine this process being completed without a significant concentration of power. The advent of bronze can be seen as indicating the existence of a social order marked by stratification and power centralization. As a result, bronze itself has a unique social function; it not only serves as a symbol of this kind of order, but also as a tool of advancing and strengthening it. Bronze was infrequently employed as a production tool in Chinese Bronze Age but was utilized in huge quantities to produce swords and ritual artifacts; the specific social function of bronze at that time can explain this unique phenomenon.

*The Zuo Commentary* stated that, “the big affairs of a nation are sacrifice and war”. In the Chinese Bronze Age, the two fundamental events of battle and sacrifice are central to the manufacturing and use of bronze.

Throughout the founding era of ancient Chinese civilization, there were numerous wars, and many of which had significant consequences. War was naturally used to replace the Xia, Shang, and Zhou dynasties, and earlier battles had at least helped to the concentration and consolidation of power. Bronze weapons’ widespread use and constant improvement improved warfare’s efficacy, allowing its owners to capture more prisoners. On the one hand, it encouraged the growth of productive forces, while on the other, it reinforced the social order upon which it was based. Diao Ge 调戈 was a gift for appointment from Zhou’s emperor specially for military

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<sup>6</sup> Chang, Kwang-chih. 1983. *Chinese Bronze Age*. 54. Beijing: Sanlian Press.

<sup>7</sup> The specific form of ancient Chinese civilization involved in here is a complicated and significant question, and it is critical for us to understand ancient Chinese civilization’s features. Chang Kwang-chih has a fantastic argument on this question, and we may summarize his points as follows: Shamanic civilization can be used to describe ancient Chinese culture, and one of its most distinguishing features is that it divided the world into several layers, with wizard in charge of communication within that. At the beginning, with the assistance of witchcraft, animal, and various religious instruments, anybody could encounter god; however, when society had progressed to a certain level, a few people monopolized the means of accessing heaven and earth. It has paramount important significance in the developmental history of ancient Chinese civilization. “The monopoly of various means of accessing heaven and earth, including the monopoly of supplies, arts, ritual artifacts. in ancient rituals, was an important basis for acquiring and occupying political power in ancient China, as well as a requirement for the monopoly of wealth and resources”. (See Chang, Kwang-chih. 1986. *Six Lectures in Archaeology*. 11. Beijing: Wenwu Press.) This was precisely the opportunity that propelled the emergence of ancient Chinese civilization. Also see Chang, Kwang-chih. 1990. *Discussing the Origin of Civilization and State from Shang and Zhou’s Bronze*. In *Chinese Bronze Age (Second Series)*. 115–130. Beijing: Sanlian Press.