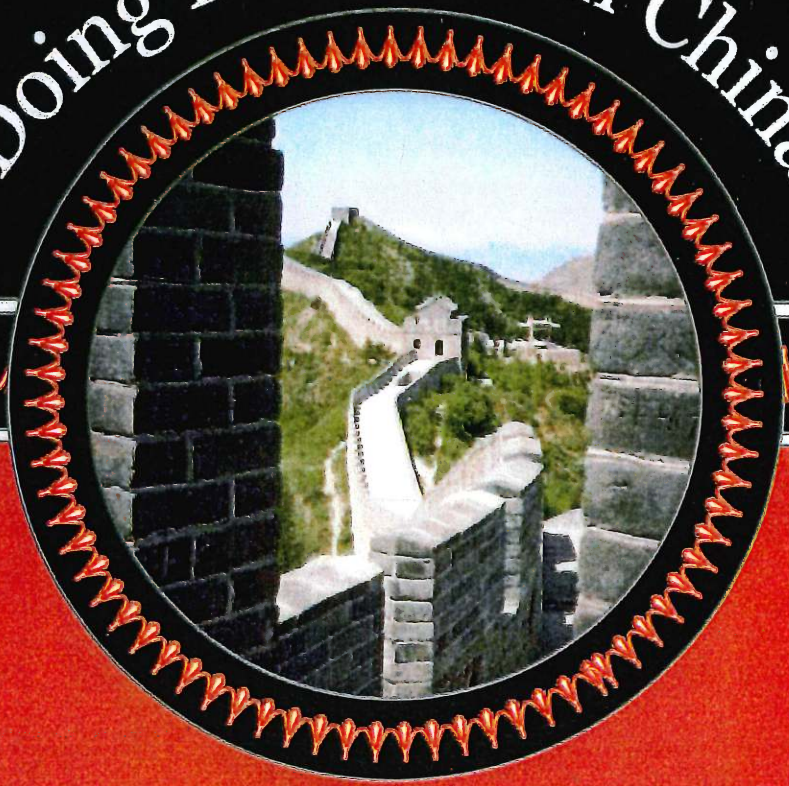
# Culture, Organization and Management in East Asia

## Doing Business in China



Heidi Dahles
Harry Wels
(Editors)

NOVA

*Chapter 2*

# WESTERN AND CHINESE CONTRACT LAW. A COMPARATIVE CULTURAL PERSPECTIVE.

*Axel Hagedorn*

## 2.1 INTRODUCTION

In recent years the interest in the People's Republic of China (PRC) has grown enormously due to at least two factors. On the one hand China started with an open-door policy in an attempt to push its own economy. On the other there is a growing economic interest for Asia, for example because of the new markets and the possibility of cheaper production for multinationals. Besides economic interests, there is a hope in the West that this will lead to an undermining of the socialist idea and a growing acceptance of capitalism which can, and for many will, result in the gradual fall of the communist system in China. There is even a wish to 'civilize' China with a Western concept of society and mainly with a Western idea of law. After a period of 'legal nihilism' during the Cultural Revolution, many authors see a growing Chinese attitude towards a 'rule of law' (even though related to socialist democracy) in the post-Mao era and a drift away from what could be called a 'rule by man' or 'rule by law' (e.g. Keith 1994:225).

In this chapter the focus is on a special intercultural encounter: the Western and Chinese concepts of law. As will be demonstrated, Western legal experts have structural difficulties in coping with legal matters in Chinese Civil law due to their legal education and cultural background. Although globalization is a magic word in world business at this moment, the limits of such an approach should be recognized. Law is a cultural product (Smith & Weisstub 1983:1-4). Therefore, in

order to deal with this cultural product, lawyers, managers and all persons involved need to have a cultural understanding of the Chinese legal system. In my opinion, this requires more than the purely normative approach mostly applied by Western scientists, which is often assumed to fit the Chinese legal system without any further discussion.

Although the import to and export from the PRC shows a rapid growth, there is still much uncertainty regarding the relational behavior of business partners in the PRC. It seems that the expected solution for problems is mostly seen in the harmonization of law. Western legal experts seem to think that if appropriate laws are implemented, all legal problems in Sino-Western business relationships will eventually be solved. The idea behind this is the Western concept of a 'rule of law', that is to say that law is the fundamental framework of society. In contrast, the policy of the PRC is to establish a 'legal system with Chinese characteristics' (Wang Hanbin 1995:59). In this chapter these 'Chinese characteristics' will be traced. Hence the central question: What are the cultural characteristics in Chinese contract law and in which respect do they converge or conflict with Western law? For a detailed focus on contractual law in China a general theoretical introduction is first required in the complexity of the Chinese legal system. This will be the subject of the first section of this chapter, which includes an explanation of the Western concept of law. On the one hand it is necessary to show the contrast between Western legal systems and the Chinese legal system. On the other hand this concept will be connected to the legal thinking of Western jurists and the limitations with respect to the Chinese legal system. It will be demonstrated that in order to obtain a more comprehensive idea of the Chinese legal system one has to abandon the restricted legal approach and adopt a multiperspective approach, which includes anthropological, sociological, historical, political and ideological views. The second section will offer an introduction in the Chinese legal tradition and the Chinese civil laws and the way they have developed. The third section will deal with 'Chinese characteristics' in greater detail. The conclusion critically evaluates the practical use of the findings for expat managers and companies who are involved in Sino-Western business relations.

## 2.2 THE WESTERN CONCEPT OF LAW

Discussing the Western concept of law one has to realize that not all countries share exactly the same rules[1]. These different legal rules are based on the same legal concept or principles. In the Western notion of law these principles are combined in what is called the 'rule of law' or, in other words, the 'principle of legality' (Barton et al 1983:9). This, for example, includes government by law, equality before the law and the fair mediation of human relations within the community (Keith 1994:8). In this concept 'legalism' stands for the belief that law should be the basic organizing xand society in contrast with a framework where, for example, policy, religion, relationships or other (not legal) factors play a major role in this framework. Countries, which follow this concept, have a 'rule of law' and are therefore legalistic (Barton et al 1983:9). From a socialist point of view the 'rule of law' in the Western concept is to be criticized because the 'civil law' embodies ideologies without clearly stating this fact (ibid.:7).

In the Western concept of law all persons within the state are subject to the law of the state, and the rights of the individual are protected by the state (ibid.:11). The separation of power into legislative, executive and judicial components is regarded as a guarantee for this protection. On the basis of the emphasis on the protection and enforcement of private rights it could be concluded that there is a possible relation with individualism and assumptions of equality. Because Western law-making proceeds according to a logical mode based upon generic rules, Weber described what he called 'logically formal rationality' as a uniquely Western style of legal thought. From a Weberian point of view one might understand that Western jurists tend to the ideology of legal centralism. This ideology assumes that law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions (Griffiths 1986:3, Snyder 1981:155). Law in the West does not reflect the full reality of social life (not all offenses are prosecuted, not all taxes owing are collected and not all judgements are executed) (David & Brierley 1985:14), but still the basic belief in the 'rule of law' is not seriously questioned. Although important differences in legal systems are related to cultural differences, Western jurists nevertheless often tend to approach the Chinese legal system through a purely (Western) legal point of view. The underlying basic assumption is a universalistic one in the sense that all legal systems can be reduced to the

[1] Cf. Barton et al (1983:1) who also point out that the nationalistic emphasis on national characteristics and traditions is one of the reasons that there is 'no such thing as the civil law system, the common law system, or the socialist law system' (ibid.:5).

same legal necessities. Eventually all countries and societies will have to deal with a kind of natural, universal law that will more or less lead to similar, but different sets of legal rules. This has rarely been expressed as perfectly as in the statement of David and Brierley:

> But there is on the other hand, no true science of law unless it aspires to be universal in scope and in spirit. Comparative law is only one element in this new universalism so important today, but it has and will continue to have in time to come a primary part to play in the progress of law (1985:17).

It is surprising that a comparative law study on the 'major legal systems in the world today', like this book of David and Brierley, pays so little attention to the cultural background of other law concepts. The problem of comparative law studies in this context is that Western jurists approach the Chinese legal system with two basic assumptions, first, that the main source of a legal system are the written rules and, second, that the Western concept of law with, for example, its basic principle of the 'rule of law' is more or less a universalistic need and appreciated in the same way by members of all societies.

In an attempt to make China more attractive to Western business companies the PRC in the post-Mao era started many codification projects, in particular in the area of civil and economic laws. Most of these laws are adopted Western-style laws[2]. It is therefore widely believed that Chinese society may be in the early stages of a transition to a formalized legal system (Li 1996:41, Keith 1994). Simply in using written laws, for example the Foreign Economic Contract Law or the General Principles of the Civil Code, it should be no problem from a 'rule of law' viewpoint to discover how the legal options in a given situation are. But a fact is that the distance between written regulations and law in action is much bigger than in Western legal systems (Benson 1996:188).

The problems that occur with a purely legal approach to the Chinese legal system have different reasons. These causes can be divided into internal and external matters. One internal reason is that, from a proletarian point of view, the laws have to deal with a language that can be comprehended by the masses and that rules are often unclearly formulated to be able to adjust the meaning due to practical requirements (Von Senger 1994:173). This can have an impact on the

---

[2] Benson (1996:188) with further references; the American legal sinologist Jones (1989) even states that the General Provisions of Civil Law in essence are 'the General Part of a German-style civil code' (introduction, p. XV) and, later, that it is in effect 'German civil law' and therefore 'China has now joined the world of Western law, specifically the world of German law' (introduction, p. XVI); similar statements by Jones (1994: 98).

discrepancy between written law and law in action. Another reason lies in the fact that law (in the Western sense) played a minor role in the traditional Chinese legal system, because of the ideas of conciliation and consensus. As Tsao notes: "It is a time-honored tradition of the Chinese to settle disputes by resorting first to *Ch'ing*, human sentiment, then to *Lii*, reason, and lastly to *Fa*, law" (in David & Brierley 1985:519).

Confucianism had an impact on the individual's duty to live according to the rite or 'style of life' (*li ji*) (Tsien Tche-Hao 1982:6). The observance of these rites, as laid down by custom, was the principle that took the place of law in China. Despite (major) changes in economy and politics these traditional concepts have persisted and have continued to dominate the realities of Chinese life.

Furthermore, it should be mentioned that any approach to Chinese law should bear in mind that the policy of China is still based on the idea of building up a socialist market economy. It is the merit of Von Senger that he showed that the wave of codification since the late seventies in an attempt to push Chinese economy is a means and no ends of Chinese policy (1994:290-303). According to Wang Hanbin (1995:95), vice-chairman of the standing committee of the National People's Congress the role of law in this context is 'to establish a legal system with Chinese characteristics'. One of these 'Chinese characteristics' is still the dominant role of the policy of the Chinese Communist Party (CCP), which is expressed as follows:

> The policy of the Communist Party is the soul of the People's democratic legal system; the People's democratic legal system is the tactic by which the policy of the Party is realized (quoted by Benson 1996:190).

Therefore, policy is not only an essential component of the Chinese legal system, but 'policy itself is law'. It might not be surprising that Li does not view the recent codifications as a phenomenon only related to a transition to Western practices, but also as the adjustment of an old legal system to a new social environment (Li 1996:41).

Two external reasons shall be mentioned here. First of all, it should be taken into account that language is an obstacle. Even when one knows the language there are still difficulties with translating Chinese legal terms into English or otherwise, because the range of meanings in English or Chinese is different[3].

---

[3] Barton et al (1983:104) give a good description of the difficulties with the Chinese words '*fa*' (law) and '*li*' (propriety) on the one hand and the meaning of 'law', 'droit' and 'Recht' on the other; also see Keith (1994: 39-53) and Hungdah Chiu (1970:139-157).

Secondly, we have to reckon with the difference between a Western and Chines concept of law which is clearly explained by David and Brierley:

> The work of a few men wishing to westernize their country could not possibly have resulted in the sudden transformation of Chinese mentality or accustom the people and jurists of China, in only a few years, to the Romanist concept of law which itself developed only after a thousand years in the hands of the Christian jurists of the West (1985:523).

A legal culture, which is a few thousand years old, surely is more persister than the written laws of almost the last twenty years. Therefore, Western lega researchers have to consider that their own underlying basic assumptions can be hindrance to understand the Chinese legal system if these assumptions are no named and questioned.

## 2.3 CHINESE LEGAL DEVELOPMENT

### Chinese Legal Traditions

Although different opinions are held as to when written law first came into existence in traditional China (Folsom et al 1992:5), the earliest code of law is probably the Book of Punishment (*Xingshu*) which was promulgated in 536 BC (Chen 1992:8). In the last centuries BC important schools of political, social and legal thought developed, e.g. Taoists, Yin Yang School, Logicians, Chinese Buddhists. Two other types of these schools had the greatest importance Confucianism and Legalism, which were beneficial for understanding the development of law in the PRC. They differed on the relative roles of law and morality in society. Legalists based their idea of law on man's natural tendency towards bad behavior (David & Brierley 1985:522). They emphasized strict enforcement of state rules and therefore what can be called a government by law. In this theory there was a need for permanent laws to which individuals, without exception, would be subject.

In contrast Confucianists, named after their founder Confucius (551-479 BC), stressed personal morality as the main factor on the way to human satisfaction and political stability (Folsom et al 1992:12). Therefore, excessive use of legal coercion was rejected, and the merits of education, persuasion and moral example by the government highlighted (Chen 1992:8). In the Confucian philosophy of law there are two polarities, *li* and *fa* (Folsom et al 1992:13). While *li* can be translated as 'moral code', *fa* is used as a dichotomy with *li* and customarily means

criminal law only. Confucianism was re-established as a favored philosophy during the Han dynasty (206 BC - 220 AD) (Ladany 1992:35) and has ever since dominated Chinese thought (David & Brierley 1985:522, Redding 1993:49). Therefore, legislation was never anything but complementary, because the main basis was laid in the concept of *li*. From this point of view one has to understand that the standing of a Chinese private law was very different, because if somebody wished to obtain state intervention in a private matter he had to accuse the other party of a crime. This behavior would not be according to *li* where the ideal thought is that laws are never applied and courts never have to make decisions (Von Senger 1994:18, David & Brierley 1985:519). As a consequence, re-education, as found in the criminal system of the PRC today, is at no means a new Maoist invention, but based on Confucian philosophy, and the concept of *li* is, for instance, still found in the preference for a non-litigious dispute settlement in the PRC, as will be shown below.

However, Confucianism recognizes that some elements have to be controlled by *fa* in human society. It is acknowledged as a necessity but deprecated (Barton et al. 1983:108). Therefore, the two concepts of *fa* and *li* became more and more intertwined as time passed, because where *li* is ineffective in maintaining public order *fa* has to take over (Folsom et al 1992:17, Weggel 1993:367-370). It should be noted that the urge for a Western concept of a 'rule of law' is in line with the traditional Chinese ideas of the 'Legalists'. As these ideas were not accepted in Chinese traditional society, one should be sceptical that this concept will overthrow the traditional forms of Chinese thinking within a short period of time.

At the beginning of this century there was a change to the traditional system because China had come in contact with Western legal concepts (Folsom et al. 1992:18, Chen 1992:21). In the period of 1928-1935 China adopted codes from the Kuomintang that were based on European-Continental models of civil law (Folsom et al 1992:19), such as the laws of Germany and Switzerland (Von Senger 1993:21, Chen 1992:22). The Kuomintang never established control over the whole of China because of the fight with the Chinese communists and Japanese invaders. Since the late 1920s the Chinese communists have tried to establish their own laws. These laws often were adopted from the Soviet Republic (Chen 1992:22).

## Law in the PRC

With the establishment of the PRC in October 1949 the abolition of the existing legal system was a fact. At the same time Western legal concepts were

banned, because they were considered as supporting bourgeois relationship (Folsom et al 1992:26). Different approaches for a new legal system wer subsequently attempted. The influence of the Soviet Union can be seen by th introduction of the Constitution of the PRC in 1954 (Chen 1992:26), however, i was rejected at the end of the 1950s when the relationship with the Soviet Unio deteriorated (Folsom et al 1992:28). For a brief period Mao pleaded for laws tha were uniquely Chinese, but the turning-point came with the new policy of 'lettin a hundred flowers bloom and a hundred schools contend' which started in 195 (Epstein 1994:33, Chen 1992:28). This movement which encouraged people t criticize the Party resulted in the launching of the Anti-Rightist Campaign i which many jurists, lawyers and judges were critically active and therefor became victims of the Anti-Rightist Campaign (Ladany 1992:65, Che 1992:28,129).

Although Mao sometimes declared that criminal and civil laws should b enacted, a period of 'civil anarchy' and a 'reign of terror' began with the start of th 'Great Proletarian Cultural Revolution' in 1966 (Chen 1992:29-30). The demise o the legal system in the Cultural Revolution was not an incidental side-effect, bu the target of deliberate attack to discredit the idea of law (Zheng 1988:4, Folson et al 1992:33). Even though the most serious disorders came to an end aroun 1969, the 'radicals' who had launched the Cultural Revolution still played a dominant role. This period ended with the death of Mao Zedong in 1976 and th take-over of power by Deng Xiaoping.

The changing perspective is best expressed by a quote of Deng Xiaoping a the Third Plenum in 1978:

> To ensure people's democracy, we must strengthen our legal system. Democracy has to be institutionalized and written into law, so as to make sure that institutions and laws do not change whenever the leadership changes, or whenever the leaders change their views or shift the focus of their attention. The trouble now is that our legal system is incomplete, with many laws still to be enacted. Very often, what leaders say is taken to be law and anyone who disagrees is called a law-breaker. Such law changes whenever a leader's views change (Lo 1992:649-650).

At the end of the 70s the 'new legalists' (Folsom et al 1992:35) started a wave of codification and ever since the promulgation of much more than a hundred laws and codes has taken place (Chen 1992:36). The three reasons for the development of the legal system are as follows:

- the weakness of the legal system is considered a cause for the successful usurpation of political power through the 'radicals' during the Cultural Revolution;
- therefore the feeling grew that law and legality can contribute to political stability and social order;
- the new economic policy of the PRC (economic development and socialist modernization) needs a legal framework which can guarantee the rights, especially for foreign parties (Chen 1992:34-36).

This led to the formulation of civil codes for the first time since the establishment of the PRC (Mao 1995). However, one has to keep in mind that these laws are imposed top-down and it cannot be assumed that they have become rooted in Chinese society (Lubman 1991:319).

## Chinese Civil Laws

Here civil law is not only understood as private law, in the sense of law dealing with private rights of citizens, but law that harmonizes the special nature of commodity relationships in a society (Jones 1989:6). Therefore civil law also encompasses laws that deal also with juristic persons and all types of obligations or contracts between enterprises located in or outside of China. In China the relationship between civil and economic law is not always clear (Zheng 1988:15-18, cf. Feinerman 1994) and therefore, civil law also includes commercial or economic law. Therefore, all Chinese contract law is viewed here as a part of the Chinese civil law. Although there are many regulations, provisions, orders, procedures etc. concerning special forms of contracts or obligations in the special Chinese 'Economic and Technological Development Zones', the main codes in relation to Chinese contract law are the following:

- General Principles of Civil Law of the PRC
- Economic Contract Law
- Foreign Economic Contract Law (Zheng 1988:45-49).

These will be introduced in the next sections.

*General Principles of Civil Law (GPCL)*

The PRC has never issued a uniformly codified contract law despite years of discussions about a civil code that would incorporate a comprehensive contract

law (Zheng 1988:49). Initially, this code was intended to be comprehensive in dealing with contract problems in most areas. This approach was altered because of the promulgation of other laws, as for example the Economic Contract Law and the Foreign Economic Contract Law. Although the first attempt to draft such a Civil Code appeared in 1954, it took more than 30 years and four drafts to finally promulgate the General Principles in 1986 (Von Senger 1994:129), which came into force on 1st January 1987 (article 156 GPLC). Sixty of the 156 articles of the GPCL concern contracts in general (Zheng 1988:49).

*Economic Contract Law (ECL)*

This law stems from the first years of codifications and took effect from 1st July 1982 and was amended in 1993. The ECL:

> shall apply to contracts concluded between legal persons of equal civil standing, other economic organizations, individual, industrial and commercial households and rural contracting households in order to define mutual rights and duties and conclude contracts so as to achieve certain economic goals (article 2 ECL).

Article 46 of the total of 47 articles assures the domestic application of the ECL by stating that the Foreign Economic Contract Law and the Technology Contract law apply to foreign economic contracts. The ECL mainly includes general principles, regulations about formation and breaches of contracts as well as provisions about dispute settlements.

*Foreign Economic Contract Law (FECL)*

The FECL came into force on 1st July 1985 and contains 43 articles. The FECL applies to economic contracts:

> concluded between enterprises or other economic organizations of the PRC and foreign enterprises, other foreign economic organizations or individuals... (article 2 FECL).

The FECL includes general provisions and regulations about formation, performance, assignment and modification of contracts as well as dispute settlements. The FECL focuses much more on Western concepts of freedom of contracts and party autonomy than the ECL (Feinerman 1994:231), however it still shows typical Chinese features as will be discussed in the next section.

## 2.4 Chinese Characteristics in Detail

### Relation between Law and Politics

In the concept of Western law we always find a strict hierarchy of normative regulations (e.g. Jones 1989:23-25, Lubman 1991:319). A law in this concept may not violate the Constitution, as a regulation for example may not violate the law it is supposed to support. At the same time laws are related towards each other so that legal scientists can place them within the legal hierarchy or determine their exact correlation. A core element in this legal system is a set of rules of legal interpretations, which might be and in fact often are very different in Western legal systems. But they all follow the general principle of the rule of law. It includes also a separation of power into a legislative, executive and judiciary part, so that the implementation of law is, for example, not influenced by factors that are not genuinely legal. One basic idea is that the political influence is exerted in the process of legislation and does not play a (major) role afterwards. Once a law comes into effect, the ideal situation excludes political influences, personal interferences etc. when the law is applied. Now, for everybody who lives in a democratic system there is a discrepancy between the ideal situation and the law in practice. Although it is often believed that law is neutral, one has to accept that in Western democratic countries law is supposed to support the political (economic) situation, namely capitalism, and therefore it is political (Kirchheimer 1961). But still, in the Western attitude towards law a jurisdiction is less accepted if influences outside the law are established. This also applies to civil law. Developed from the Roman law civil law in the West has two central guidelines: private autonomy and freedom of contract.

The situation in Chinese civil law is different. One of the problems jurists face when working with Chinese laws is not only the lack of a strict hierarchy within the law, but also within authorities (e.g. Tanner 1994a:57, Von Senger 1994:165-170). A separation of powers does not exist. Besides, 30% to 40% of the existing laws and regulations in the PRC are only intended for internal use and therefore not known to foreign parties (Von Senger 1994:310). Especially the Chinese civil law does not intend to give the idea that the laws are non-political. Although Western jurists who try to trace the 'rule of law' in China are anxious to see a reduction in the political influences, the concept of Chinese civil law does not always match this hope. This will be demonstrated in the following examination of the Economic Contract Law (ECL), the Foreign Economic Contract Law (FECL) and the General Principles of Civil Law (GPCL). In order to explain matters to those readers, who are not legally trained, the Chinese civil

laws will be compared with some aspects of Western law, specifically the Germa law.

The ECL starts with the aim of the law as follows:

> This law is formulated in order to safeguard the healthy development of the socialist market economy ... to maintain social and economic order and to facilitate the development of socialist modernization (article 1 ECL).

With this article the political dimension of the ECL is clearly pronounced, bu it is difficult to see what the impact of such an article is. However, this become clearer with the article about invalid contracts. There it is ruled that 'contract which are in violation of State or public interests' are invalid (article 4 7 ECL). A basic problem of these civil laws is that they include terms, which are not defined and therefore remain vague. For example, it has to be assumed that the term 'socialist modernization' in Article 1 ECL is of State or public interest. This also applies to the entire preamble of the Constitution with principles as the leadership of the CCP, the guidance of Marxism-Leninism and Mao Zedong Thought etc. It is therefore clear that it is quite difficult to know whether a contract is 'in violation of State or public interests', because all these terms depend on the actual policy of the CCP. The political dimension of the ECL is obvious, and it may be conceivable that contract partners will have to know much about state policies and in particular about the content of special terms such as 'socialist modernization' etc to find out if their contract is valid. Article 7 of the ECL does not take any changing policies into account. A contract that is in line with the current state policy might be against state policy tomorrow.

Whereas the ECL is a domestic law, the FECL is directed at 'the development of China's foreign economic relations' (article 1 FECL). Furthermore:

> Contracts must be made in accordance with the law of the PRC and without prejudice to the public interests of the PRC (article 4 FECL).

Although these contracts have to be approved by the 'competent authorities of the state' (article 7 FECL), the rule about invalidity of contracts is the same as in the ECL:

> Contracts that violate the law or the public interests of society of the PRC are invalid (article 9 FECL).

The question can be raised whether this is likely, when 'competent' authorities have approved the contracts. Nevertheless, the point I want to make is that every

contract has to be viewed in the light of the 'public interest'. This would be acceptable in Western terms if interpretations of the term 'public interest' would be available. As stated above, the problem is that this term is a political term, and therefore depends on power relations within the Party. This is the reason that Von Senger states that the interpretation of legal standards should always start and end at the political line of the CCP (Von Senger 1994:196).

Such an interpretation of civil law according to Western legal concepts is not acceptable, because the application of law ideally depends on the political opinion of the ruling party. In German law private autonomy and freedom of contract is protected by the Constitution.[a] The comparable term of public interest in German law is 'öffentliches Interesse'. This is a perfect translation, although it is never mentioned in the German civil law called 'Bürgerliches Gesetzbuch', because it is rather a term of administrative law. In China the distinction between administrative and private law is indifferent, because of the strong interference of the state in contractual relationships. The international private law of all countries maintain a regulation where the 'ordre public' is protected, but because of different interpretations of this term the practical application is more important (Seitz 1994:74).

In the PRC an economic contract with a business partner of a state that has good relations with China at the time of signing the contract might be regarded to be against the 'public interest' or the 'interests of society', if the relationship with this country has deteriorated or ended. A discussion about, for example, human rights in China or the position of Tibet may be a reason to view economic contracts differently. This does not mean that the contract has to be terminated, because economic interests and the Chinese mentality of rather long-term relationships are involved. However, the influence of political views in the contract law is apparent.

It would be a bit too easy to expect that the PRC should harmonize its laws, because the political situation of China is different from Western capitalist countries. According to the Constitution (cf. its Preamble 1982) the PRC is a socialist society, although still in an initial stage of socialism. While capitalism encourages individual business and the accumulation of individual capital, socialism strengthens the collective idea where capital has to be used for the well-being of the whole society.

Economic contracts were always suspect in the PRC, because the idea of economic contracts is to gain profit. And profit could corrupt the people or result in changing views on capitalist ideas and undermine the power of the CCP. It is for this reason that the individual economy is limited and remains in second place, as can be seen in the following regulations:

> The private economy is a complement to the socialist public economy (article 11 of the Constitution)
>
> or:
>
> No unit or individual shall be permitted to conduct illegal activities, disrupt social or economic order, damage state or public interest... (article 4 ECL).

As long as economic relationships were limited, the system of control wa easier to handle. However, with the possibility of contracts as a result of the intro duction of the ECL, FECL and the GPCL, the CCP tries to remain in control witl regard to the economic relationships (cf. Tanner 1994b:21). Therefore, the ECL FECL and the Constitution include regulations in which this control has been lai down.

The objective that the policy of the Party is a part of the law is also quit clearly expressed in the GPCL:

> Where the law has no provisions with regard to civil activities, they shall respect State policies (article 6 GPCL).

State policies are formulated according to the policy of the CCP. Althougl according to the GPCL, the State policies are supplementary and do not have th status of law, Von Senger (1974:198) points out that they are still governmenta rules. Moreover, it is difficult in practice for the PRC to ignore the official polic of the CCP. As Von Senger (ibid.:203-206) stated in his analysis, the CCP play the leading role in the process of legislation. In China judges are not independen (cf. Li 1996:54, Epstein 1994:41) and have rarely read law[4]. They also have t follow the State and Party policy[5]. This is even more true for lawyers who are no independent at all, but state legal workers (Chen 1992:130-144).

It may be concluded that State policy is therefore the guideline for th legislative, executive and judiciary powers, which must not differ from Part policy. State policy and State law are on the same level of normative orders, an politics and law form a unity. Consequently, law does not exist as an independen autonomous ordering power (Von Senger 1994:27, Lubman 1991:317). Moreover

---

[4] Folsom & Minan (1989:171); Epstein (1994: 41) mentions that legal scholars usually do no become judges; Von Senger (1994:326) gives the example of the chairman of the Supremc Court (*Ren Jianxin*) who in fact has studied chemistry.

[5] Although the People's Courts are required to operate independently, the judges are appointe and may be removed without a reason by the People's Congress or their standing committee (Folsom & Minan 1989:171).

politics does not only exert an influence on law-making, but it also should be regarded as a second legal order which is perpetuated in the policy and published policy standards of the CCP. In this sense, the policy of the CCP also has a normative character. Therefore, each application of Chinese legal standards faces the problem that one cannot be completely sure which normative order will be of more importance: law or policy. However, each interpretation of the law should deal with the policy of the CCP in order to obtain a more comprehensive understanding of the rules. All this affirms the theoretical starting-point of this chapter that a single unified and exclusive hierarchical normative order does not exist in China. Bearing in mind these findings, an existing legal pluralism in the PRC as defined above with at least two normative orders (law and policy) should be accepted.

## Confucian Influences

The Chinese view on contracts is different from the Western view, because of Confucian influences in the legal tradition. The basic dichotomy between the concept of *li* and the concept of *fa* has created a different attitude towards contracts in modern China. While in the Western concept a contract implies rights and obligations between the parties, the Chinese concept of a contract is not as formal (Hopp 1996:33). A contract is only part of a relationship that goes far beyond a single agreement, and is based on equality, mutual benefit (Zhang 1996:67, Folsom & Minan 1989:559) and personal trust (Faure & Pang 1995:13). Actually, in China business relations are personal relationships which is affirmed by Chinese business people. While Western business partners see the signing of a contract as the end of the negotiations, it is the basis for further negotiations for the Chinese. That is the reason why special clauses are included in Chinese contracts, which state that negotiations can be started again after an agreement has been signed (Hopp 1996:34). This cultural background has led to formulations in the contract laws about contracts being legally binding. For example, article 16 of the FECL states that:

> A contract formed in accordance with law is legally binding. The parties should fulfill their obligations stipulated in the contract. No party should arbitrarily alter or terminate the contract. *The Confucian view that where men are guided by li, conflicts are easily resolved, has made it possible for Confucianists to develop an acute feeling for the uniqueness of every human situation - for the fact that 'no two cases are alike' and a corresponding*

> *skepticism toward all attempts to subsume all possible circumstances under certain generalized legal categories* (in Barton et al 1983:109).
> From here there is a straight line to a statement by a Chinese that 'it is the judgement and not the law which makes justice (ibid.).

In the Western concept, law is of interest in a given legal action, while *li* in the Confucian tradition focuses on social relations and on conduct. Therefore, one can state that insisting on one's rights in China is entirely contrary to the spirit of *li*. This is one of the reasons that conciliation/mediation and arbitration play a major role in Chinese contract laws. The Chinese way of settling disputes has its gradual forms, but the exact meaning of the English words is often examined. It is divided into four steps:

- (friendly) negotiation to adjust contracts without participation of a third party
- (friendly) consultation with participation of lawyers or other persons
- arbitration with participation of a arbitration court, mostly called conciliation or mediation
- if the contracts do not have an arbitration clause, a suit can be filed at the People's Court.

Once a suit is filed in court arbitration still is preferred as can be seen in article 9 Civil Procedure Code:

> When hearing a civil action, a people's court shall carry out mediation based on the principles of voluntary participation and legality.

The practical importance of all types of dispute settlements without litigation can be seen in the following data. Chinese sources say that over 90 per cent of contract disputes are solved through arbitration (Hopp 1996:56). In 1988, the Chinese courts solved four out of five cases through some type of arbitration, and there were as many as 4.5 times more arbitration cases outside the courts. A pessimistic Chinese estimate believes that legal rules are applied in only 20 per cent of the legal cases. Law has much less influence on legal practice than in the West (Gerke 1992:15).

In order to give some idea where this specifically Chinese feature is found in the contract law, these aspects will be discussed in relation to the ECL and the FECL. First of all, a distinction has to be made between negotiation in the initial stage of concluding a contract and as a matter of settling disputes. The first

chapter of the ECL includes the general principles about contracts. Two articles are important in this context. Article 5 ECL states:

> The conclusion of economic contracts shall comply with the principles of equality and mutual benefit, and of achieving unanimity through consultation.

And article 9 ECL provides a kind of definition of a legal contract:

> An economic contract is formed when the parties to the contract achieve unanimity on the principal clauses of the contract through consultation in accordance with the law.

Tetz states that Chinese jurists do not see any equivalent to the 'freedom of contract' (Tetz 1994:82), as the basic principle is called in the Western concept of contract (Jones 1989:198). But what is the essence of consultation anyway? This is not sufficiently explained in the literature about Chinese contract law. The question could be easier to answer if the legal consequences of concluding a contract without consultation would have been included in the law. However, such a standard is missing in the ECL. Therefore, I would suggest that this is rather a matter of social morality, in the sense of equality and mutual benefit as culturally expressed through *bao* (reciprocity), *renqing* and *guanxi*. When examining the FECL, the same rule is applied in article 3 FECL. However, when international contracts are negotiated the PRC often uses a tactic, which is not in line with article 3 FECL. The PRC argues that the rich countries have to give more then they can get because of their privileged economic situation (Von Senger 1994:46). Although one may wonder whether there can be equality in this case, the PRC applies this article, because they require unrestricted consultations. This article could be interpreted in the following way: unanimity is achieved through consultation and therefore results in the conclusion of contracts.

Regulations concerning the settling of disputes are found in the ECL (articles 42 and 43) and the FECL (articles 37 and 38). There is a slight difference between the regulations of the ECL and the FECL. While the ECL gives the parties the right to settle dispute through consultation and mediation, article 37 FECL states that disputes 'ought' to be settled through consultation or mediation. But in both laws one can clearly see that the way conflicts are solved is as follows: consultations or mediation, arbitration, litigation. The dislike of litigation in the Chinese culture is clear from the fact that in many villages litigations do not take place. Although the civil laws provide the right to file a suit against the People's

Court and cases have been growing over the last years, the mediation procedure still strongly prevail, as the statistics show (Folsom et al 1992:228).

## Guanxi

The last point that deserves attention is the importance of *guanxi* in the Chinese contractual system. In the literature about Chinese contract law the term *guanxi* can hardly be found as an element of Chinese contract law. The meaning of *guanxi* in the sense of a personal relationship has already been mentioned. If contracts are seen as personal relationships, it could be argued that contracts are forms or a part of *guanxi*. As has been shown in chapter 1, the key concepts such as *guanxi*, *renqing* and *mianzi* are closely related. But as Yan (1996) showed in his work about the flow of gifts in a Chinese village, these concepts in their turn are related to reciprocity. Because man is a relational being in the Confucian system, *guanxi* is the product of the social dependent being in Chinese society. At the same time a part of individual autonomy remains in the Confucian philosophy (King 1991:67). This is best seen in the two meanings of 'face'. On the one hand there is a social face (*mianzi*) that can be increased by establishing contacts with powerful or well-known people, because these connections are considered part of one's resources and prestige (Yan 1996:167, Menkhoff 1992:267-271). On the other hand moral face (*lian*) refers to basic moral characteristics, which is more individually orientated as it covers the moral reputation of a man in the group (Yan 1996:136).

As networking or *guanxi* is very important in Chinese society, there are rules to be observed which are connected with *renqing* as a system of ethics (Yan 1996:128). If *guanxi* is built up in the form of gift-giving, a person will have to know, for instance, at what event the gift should be given, what kind of gift and how the gift should be given to save one's face. As reciprocity is expected, the gift-receiver has to follow *renqing* again in returning an appropriate gift, at the appropriate time etc. (Yan 1996:122-146). Another part of *renqing* is sharing within one's *guanxi*. This also means that because one is a social being, one is obliged to let others take part in one's resources (Yan 1996:128-133). As business relations are personal relations, they are part of the social network of the Chinese involved. From this viewpoint all contractual relations or pre-contractual relations have to be considered as a part of *guanxi* and therefore it seems logical that one has to become familiar with the rules of *guanxi* in Chinese culture. It is stated that the utilitarian aspect of *guanxi* has increased enormously in China through socialist influences (King 1991:73, Yan 1996:236-238). This implies that 'walking

through the back door' is widely known. This has to be kept in mind when dealing with Chinese partners, but the influence of *guanxi* and the other sociocultural concepts around *guanxi* should not be viewed negatively.

Hopp gives two different examples for arbitration clauses where the concepts of *guanxi* and *renqing* are obvious. A western business partner would like to include the following sentence into contracts:

> All disputes shall first be settled amicably by negotiation, notwithstanding either party may at any time shall have recourse to arbitration.

Whereas his Chinese partner prefers another clause:

> Arbitration should always be avoided as far as there is a possibility of conciliation (Hopp 1996:151).

This example shows the impact of *guanxi* on contracts, because the Chinese side tries to keep the personal relationship intact as long as possible. Once disputes have left the inner circle of the relationship, other influences may become more important and disturb the *guanxi*. Moreover, an arbitration case can be seen as a sign of mistrust from the Chinese side. The sayings about suits in court give an idea how negative Chinese may view an appearance in front of a court. I can imagine that arbitration is less threatening, but already a first step to a lawsuit, which is culturally condemned.

Another example, which is described by Hopp, again stresses the maintenance of the relationship:

> An American importer received goods that were damaged. He asked his Chinese counterpart to negotiate. He explained that his insurance would only pay if he would lose a lawsuit against his Chinese business partner. The Chinese side never reacted, but with the next order the conditions in the contract had been modified in such a positive way that the American partner was compensated for all his losses (Hopp 1996:58).

This example can be interpreted in terms of *guanxi*. The American had a *guanxi* with his Chinese partner, because the damage was due to the Chinese side. The Chinese had to return something to keep the personal relationship intact and improve *guanxi*. With his solution he tried to save his face and at the same time he fulfilled the necessity of *guanxi*.

In his analysis of eighteen arbitration cases that were solved by the CIETAC[6] Hopp never mentions *guanxi* and argues that these cases are arbitrated according to legal terms. In the case of exceptions Hopp thinks that they are based on economic reasons and less on legal terms, but he calls them 'salomonic' and fair (1996:229). Because he does not consider his selected cases to be representative, it would be very interesting to especially examine cases where the application of laws did not play any role and instead other factors were important for the outcome of the arbitration. I think that cases will be found where the preservation of the personal relationships and *guanxi* was a very important factor.

As a conclusion it should be stressed that *guanxi* plays an underestimated role in Chinese contract law, but that the actual impact is very difficult to trace. This is because literature is lacking about this phenomenon in relation to contracts. Descriptions as 'old friends' (Folsom & Minan 1989:672) or the emphasis on long-term relationships may be seen as a synonym for *guanxi* or as a part of *guanxi*, but in order to be certain more information about the concrete assumptions of these terms is required for a better judgement. Therefore, one has to look at daily events in contractual relationships for a more comprehensive description of the influence of *guanxi* on contracts.

## 2.5 Conclusions

This chapter demonstrates that a purely legal approach to Chinese law has serious shortcomings, because of the Chinese cultural background that influences the idea of law and lawmaking. The main factors of this cultural background are the legal history and the impact of Confucian philosophy, the current influence of the political economy and sociological phenomena such as *guanxi* or personal relationships. All these cultural factors have a strong influence on the Chinese legal system and the contract law in particular. Chinese legal history is over two thousand years old and has chiefly been influenced by Confucian philosophy. It has therefore developed completely different from the Western concept of law, which is based on Roman law. Besides the fundamental idea of a harmonious cosmic order, harmonious relationships between men are also favored. This leads to the primacy of conciliation and consensus in social relations. Confucius (551-479 BC) taught that one had to live according to a certain 'style of life' (*li*), which was stated higher than law (*fa*). *Li* in this sense took the place of law and therefore

[6] CIETAC = China International Economic and Trade Arbitration Commission; see Tang (1995) about the work of the CIETAC.

legal doctrine played a minor role in China. Although authorities used law to govern, this was mainly administrative and criminal law ('rule by law'). 'Private law' was always neglected because of the persistence of traditional ideas that favored the culturally bound *li* instead of *fa*, which was used as *ultima ratio* if conciliation or education did not succeed.

It was only a very brief period that the legalists (400-200 BC) expressed a concept of legislation that was similar to the Western idea. As a result there is no real tradition of contract law in China. Civil laws were introduced as copies from the West. It is not astonishing that the first Civil Code only took effect in the PRC in 1987. For the Chinese, who have a long-term orientation, the wave of codifications since the late seventies is a very brief period in the legal history of China. The same also applies to the power of the Communistic Part of China. A history of 45 years in the context of a thousand of years of political changes is viewed as quite temporary. This is extremely important when the consequences of all the new laws are examined with respect to their cultural impact.

A certain effort to adjust to Western legal concepts is noticeable, but the power of the cultural background in China is underestimated if it is viewed as a straight step to a Western concept of a 'rule of law'. The wishes of a part of the political elite to establish a 'socialist rule of law' should not be confused with its cultural 'implementation'. In addition, a socialist - whatever this will be in practice in China - rule of law consists of many political intentions, means and ends that are quite different from the Western (capitalistic) concept of a rule of law. A democratic system as in the West will endanger the power position of the political elite in charge now. It is to be assumed that this is no genuine objective. Instead the approach to the West has to be considered as an attempt to strengthen the power through a concept of 'socialist modernization' in- and outside the PRC. This political background, due to a 'socialist' government in the PRC, has to be taken into account when dealing with Chinese contract law.

The third factor that has been studied in this essay is the complex phenomenon of *guanxi,* which is an important concept for understanding interpersonal relationships of all kinds and thus in contractual relationships. It is more than just a network of relationships, because it is closely linked to concepts of reciprocity. Although *guanxi* is often seen as a mainly particularistic tie, which is used instrumentally and individually, it is much more. *Guanxi* is connected with the principle of reciprocity, which in its turn is connected to gift-giving. This concept can also be traced in Chinese contract law. As business relations are personal relations they at the same time are part of *guanxi.* A contractual relation that turns out bad automatically affects the *guanxi* of the Chinese partner. This

influence cannot be separated from Confucian ways of harmonious thinking (e.g conciliation and mediation) and still plays a significant role.

When examining the two different concepts of law in the West and in the PRC it might be useful to see them in terms of a closed and open system. The Western concept is rather a strict hierarchical normative ordering and therefore a closed legal system where influences are restricted to a fixed methodology of legal arguing, acting and enforcement. The Chinese system is much more open because of the stronger cultural influences where power can be related to the amount of *guanxi* one has. The major role of *guanxi* means that the application of law is not restricted to legal terms, but that a constant change in personal relationships or guanxi relentlessly effects the application of law.

In order to wind up this chapter, the question may be raised what lessons could be learned from these findings. First of all, in dealing with business partners from the PRC one should not only know Chinese contract law, but also the political 'climate' of the CCP and maybe in particular political cadres. When one wants to obtain this information I am convinced that *guanxi* is needed. This *guanxi* may be based on utilitarian aspects, because it is quite common in the PRC now, but it still requires being familiar with the cultural background of *guanxi*, i.e its applicability in terms of *renqing*. This total concept cannot be learned within a brief period of time, but everyone who wants to invest in the PRC for a longer period of time should pay a lot of attention to the whole concept of *guanxi*. It is doubtful whether a pure utilitarian use of this *guanxi* will be very successful over a longer period of time, because the non-utilitarian aspects of *guanxi* probably still often play an important role. If *renqing* is only viewed in terms of utilitarian aspects, the old Confucian way of *renqing* could be ignored. Neglecting or not being aware of this still existing moral code will probably mean that Western business partners will lose face, which most likely will have an impact on the contractual relations.

Secondly, as contractual or pre-contractual relationships are part of *guanxi* it is also necessary to understand the whole concept of *guanxi*. The cultural codes expressed in *renqing* can be a source of creative instruments when negotiating with Chinese partners. This does not have to result in a pay-off, but a flexible use of ideas of reciprocity will probably make it easier to get things done which otherwise would have taken much more time.

Thirdly, it should be recognized that Western business people have to adjust to Chinese culture to a certain extent, which has a long-term orientation, because short-term relations do not correspond, in terms of *guanxi*, with the special Chinese cultural background.

Fourthly, *guanxi* and the knowledge of the rules regarding *guanxi* are required in order to be really effective in doing business in the PRC. Therefore *guanxi* is the connecting phenomenon for all activities. If one wants to obtain the right information, meet the right people or negotiate effectively the concept of *guanxi* should be known. In this sense it is possible to say that a 'rule of *guanxi*' exists in the PRC.

## REFERENCES


Barton, J.H. (ed.) (1983) *Law in Radically Different Cultures*. St. Paul, Minnesota: West Publishing Co.

Benson, T.R. (1996) 'Taking Security in China: Approaching U.S. Practices?' *Yale Journal of International Law*, Vol. 21: 183-227.

Chen, A.Y.(1992) *An Introduction to the Legal System of the People's Republic of China*. Singapore: Butterworths.

David, R. & J.E.C. Brierley (1985) *Major Legal Systems in the World Today*. London: Stevens & Sons.

Epstein, E. J. (1994) 'Law and Legitimation in Post-Mao China'. In P.B. Potter, *Domestic Law Reforms in Post-Mao China*, pp. 19-55. Armonk, New York: M.E. Sharpe.

Faure, D. & A. Pang (1995) *The Power and Limit of the Private Contract in Ming-Qing China and Today*. Paper for the International Workshop South China: 'State, Culture and Social Change during the Twentieth Century' (Amsterdam, May 1995).

Feinerman, J.V. (1994) 'Legal Institution, Administrative Device or Foreign Import: The Roles of Contract in the People's Republic of China'. In P.B. Potter, *Domestic Law Reforms in Post-Mao China*, pp. 225-244. Armonk, New York: M.E. Sharpe.

Folsom, R., J.H. Minan & L.A. Otto (1992) *Law and Politics in the People's Republic of China in a Nutshell*. St. Paul, Minnesota: West Publishing Co.

Folsom, R.J. H. & J.H. Minan (1989) *Law in the People's Republic of China: Commentary, Readings and Materials*. Dordrecht: Kluwer.

Gerke, G. (1992) *Die Schlichtung im chinesischen Recht.* Hamburg: Mitteilungen des Instituts für Asienkunde Hamburg, Nr. 211.

Griffiths, J. (1986) 'What is Legal Pluralism?' *Journal of Legal Pluralism* 24:1-55.

Hopp, K.-P. (1996) *Schlichtung im Außenwirtschaftsrecht der Volksrepublik China und Gewährleistung materieller Rechte*. Hamburg: Mitteilungen des Instituts für Asienkunde Hamburg, Nr. 261.

Hungdah Chiu (1970) 'The Development of Chinese International Law Terms and the Problem of their Translation into English'. *Harvard Studies in East Asian Law 4, Contemporary Chinese Law: Research problems and perspectives*. Harvard University Press, Cambridge, Massachusetts, pp. 139-157.

Jones, W.C. (ed.) (1989) *Basic Principles of Civil Law in China*. Armonk/New York: M.E. Sharpe.

Jones, W.C. (1994) 'The Significance of the Opinion of the Supreme People's Court for Civil Law in China'. In: P.B. Potter, *Domestic Law Reforms in Post-Mao China*. Armonk, New York, M.E. Sharpe, pp. 97-224.

Keith, R.C. (1994) *China's Struggle for the Rule of Law*. New York: St. Martin's Press.

King, A.Y.C. (1991) 'Kuan-hsi and Network-building: A Sociological Interpretation'. *Daedalus*, 120 (2): 63-84.

Kirchheimer, O. (1961) *Political Justice. The Use of Legal Procedure for Political Ends*. Princeton: University Press.

Ladany, L. (1992) *Law and Legality in China: The Testament of a China Watcher*, edited by Marie-Luise Näth with a Preface and Concluding Chapter by Jürgen Domes and Marie-Luise Näth. London: Hurst & Company.

Li, J. (1996) 'The Structural Strains of China's Socio-legal System: A Transition to Formal Legalism?' *International Journal of the Sociology of Law*, 24: 41-59.

Lo, C.W.H. (1992) 'Deng Xiaoping's Ideas on Law: China on the Threshold of a Legal Order'. *Asian Survey*, Vol. XXXII, No.7: 649-665.

Lubman, S. (1991) 'Studying Contemporary Chinese Law: Limits, Possibilities and Strategy'. *The American Journal of Comparative Law*, Vol. 39: 293-341.

Mao, D. (1995) 'China's present Legislation'. *China Law*, Vol. 1: 60-64.

Menkhoff, Th. (1992) 'Xinyong or How to Trust Trust'. *Internationales Asienforum*, Vol. 23 (No. 1-2): 261-288.

Redding, S.G. (1993) *The Spirit of Chinese Capitalism*. Berlin, New York: Walter de Gruyter.

Seitz, K. (1994) *Grundprinzipien der Rechtsanwendung im Außenwirtschaftsvertragsrecht der Volksrepublik China*. Hamburg: Mitteilungen des Instituts für Asienkunde Hamburg, Nr. 232.

Smith, J.C. & D.N. Weisstub, D.N. (1983) *The Western Idea of Law*. Toronto/Vancouver: Butterworth & Co.

Snyder, F.G. (1981) 'Anthropology, Dispute Processes and Law: A Critical Introduction'. *British Journal of Law & Society*, Vol. 8, No. 2: 141-180.

Tang, Houzhi (1995) 'Latest Information about International Commercial Arbitration in China'. *China Law*, Vol. 4: 62-67.

Tanner, M.S. (1994a) 'Organizations and Politics in China's Post-Mao Law-Making System'. In P.B. Potter (ed.), *DomesticLaw Reforms in Post-Mao China*, pp. 56-93. Armonk New York: M.E. Sharpe.

Tanner, MS. (1994b) 'Law in China: The Terra Incognita of Political Studies'. *China Exchange News*, Vol. 22, No. 4: 20-24.

Tetz, S. (1994) *Abschluß und Wirksamkeit von Verträgen in der Volksrepublik China. Zugleich ein Beitrag zur Entwicklung des chinesischen Vertragsrechts nach 1978*. Hamburg: Mitteilungen des Instituts für Asienkunde, Nr. 235.

Tsien, Tche-Hao (1982a) *Le droit chinois*. Paris: Presses Universitaires de France.

Von Senger, H. (1993) 'Die Einwirkung der Rezeption westlichen Rechts auf die sozialen Verhältnisse in der chinesischen Rechtskultur'. In H. Scholler (ed.), *Die Einwirkung der Rezeption westlichen Rechts auf die sozialen Verhältnisse in der fernöstlichen Rechtskultur*, pp. 19-34. Baden-Baden: Nomos.

Von Senger, H. (1994) *Einführung in das chinesische Recht*. München: C.H. Beck.

Von Senger, H. (1995) Book Review on Ronald C. Keith, 'China's struggle for the rule of law'. *China Information*, Volume X, No. 3/4: 179-182

Wang, Hanbin (1995) 'NPC Creates Good Legal Environment for Reform and Opening-up' - Interview with Wang Hanbin, Vice-chairman of the Standing Committee of the NPC. *China Law*,Vol. 1: 57-60.

Weggel, O. (1993) 'Wo steht China heute? Die Rückkehr der Tradition und die Zukunft des Reformwerks: Werkzeuge der Macht, Teil VII, Nr. 2: Recht und Moral'. *China aktuell*: 358-390.

Yan Xunxiang (1996) *The Flow of Gifts. Reciprocity and Social Networks in a Chinese Village*. Stanford: Stanford University Press.

Zhang, Yuejiao (1996) 'Achievements in Foreign Trade Laws'. *China Law Quarterly*, Vol. 1: 65-67.

Zheng, H.R. (1988) *China's Civil and Commercial Law*. Singapore: Butterworth & Co.