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Comparative View of Marriage Law in the period of Republic of China

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Abstract

The study of comparative marriage law in the Republic of China took the impact of western institutional thoughts as the thrust and the mission of modern national salvation as the gravity. It extensively referenced the marriage and family system of different countries, different traditions and different regions while constantly reflecting on the reform road of domestic marriage and family system. Thus, three views are formed, namely, the theory of overall Westernization, the theory of Respect oneself and be contemptible and treating the condition of the country. Among them, the theory of Respect oneself and be contemptible is deeply criticized by the theory of overall Westernization and the theory of considering national conditions. On the other hand, the theory of overall Westernization and the theory of considering national conditions have their own arguments, and they are interwoven in the comparison of Chinese and Western marriage and family system views and the comparison of specific marriage and family norms. No matter how different their positions are, they are both deeply influenced by Western liberalism and individualism. Therefore, the perspective of comparative marriage law in the Republic of China shows distinct characteristics of The Times, criticism and westernization.

Keywords

Comparative Law; Marriage Law; The Triumph of Western Liberalism on Marriage; Limited Improvement Theory; The Republic of China (1912-1949)

1 Introduction

The intellectual competition among global civilizations has blended the political and academic trends of the world into two major currents: Eastern and Western, which intertwine and merge. However, the first confrontation between Eastern and Western cultures in recent history occurred amidst fierce battles and immense sacrifices. Eastern ideologies suffered a comprehensive defeat at the hands of Western thought. This was a source of regret and lamentation for the Chinese people in the 19th century, and a catalyst for reflection and exploration in the 20th century. This journey of modernization, marked by a transition from arrogance to frustration and then to earnest pleas for change, is a twisted microcosm of modern Chinese history. The three shifts in mentality, reflected in the exchanges and debates between Chinese and Western ideologies, exhibit a gradual and progressively deepening process. From the utilitarian adoption of Western technology during the Self-Strengthening Movement, to the institutional reforms of the Hundred Days' Reform and the Xinhai Revolution, and then

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to the ideological upheaval of the New Culture Movement and the New Democratic Revolution, the intellectual awakening of modern Chinese people gradually unfolded amidst turmoil and struggle. The quest for a path suited to the nation's development and self-strengthening has traditionally manifested in three forms: firstly, the theory of wholesale westernization; secondly, the doctrine of upholding Chinese civilization and disparaging foreign civilizations; and thirdly, the national conditions-based approach.In this way, the same applies to the exploration of modern Chinese legal system. When placed in the realm of ideological debate, where institutional exploration is particularly intense, it is most prominently embodied in the comparative analysis of Chinese and Western marriage and family systems. Therefore, the author intends to delve into the true nature of modern China's exploration and practice in the marriage and family system from the perspective of comparative law. This not only fills the gap in the existing research on comparative law but also enriches the local value orientation and practical significance of comparative law research.

After consulting the literature since the establishment of the Republic of China, it can be seen that Chinese scholars have presented two types of expressions in their citations of foreign marriage and family systems and comparisons between Chinese and Western systems: firstly, the perspective of comparative marriage and family systems, which focuses on the consideration of the relationship between legal and social changes; secondly, the comparison of specific marriage law norms, which emphasizes the reference of specific systems. Of course, there are also many articles that combine both types of comparisons.Therefore, to ensure the clarity of the narrative, the author tentatively divides these into two distinct categories for easier identification of the ideological forms in the field of comparative marriage law during the Republic of China period. Below, the author will present a three-dimensional view of the comparative marriage law in the Republic of China period from three aspects: the overall research overview of comparative law, the perspective of comparative marriage and family systems, and the comparison of specific marriage norms.

2 The Overview of Comparative Law Research During the Republic of China Period

The article "Research on Comparative Law," published by Zhang Dingchang in 1937, elaborates on the initial formation of the discipline of comparative law in China during that period. It introduces, respectively, the reasons for the emergence of comparative law, the effectiveness of comparative law research, the methodology of comparative law research, and the mission of comparative law research.

Firstly, regarding the reasons for the emergence of comparative law, Zhang Dingchang states that "comparative law, as an imported discipline," is a new branch of Western legal studies. This discipline originated from the Historical School of Law in the 19th century, which advocated the theory of national spirit and held the dominant idea that "codification must be tailored to the local customs and practices of the nation." Guided by this idea, the school extensively collected legal texts from various countries, pioneering the trend of legal exchange.However, due to the uniqueness and decisiveness of national spirit, this school was unable to further promote the exchange and mutual recognition of laws with an objective and neutral attitude after discovering the laws shaped by different national cultures. Therefore, the author proposes the need to introduce the values of analytical positivist jurisprudence to correct the cognitive biases in comparative law

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theory. Meanwhile, the trend of positivist jurisprudence in the same period took the artificial construction of law as a new concept, recognizing that the commonality of human legal civilization lies in human intelligence and interpersonal issues. This opens the door for the cross-cultural exchange of comparative law.

Secondly, regarding the effectiveness of comparative law research, Zhang's article primarily elaborates on comparative jurisprudence, analyzing historical jurisprudence, analytical positivist jurisprudence, and sociological jurisprudence one by one. It is stated that all three of them perceive one aspect of law subjectively. Hence, it is a fallacy and an absurdity for any school of thought to claim the truth of jurisprudence exclusively. Therefore, comparative legal studies need to integrate these three approaches and continuously promote the extension and expansion of the inherent ideas of law.

Next, regarding the methodology of comparative law research, Zhang's article lists four categories of methods: country-specific comparative law, which focuses on law as a product of geography and uses national laws as the unit of comparison; ethnological comparative law, which uses the laws of a single ethnic group as the unit of comparison. This method originated from comparative law studies in Nazi Germany; legal family-specific comparative law, proposed by Hozumi Tetsushige, which involves a classification and comparison of seven major legal families: Chinese, Indian, Islamic, Roman, Germanic, Slavic, and English legal systems; and legal issue-based comparative law, which conducts institutional comparisons based on specific legal technical issues.

Lastly, regarding the mission of comparative law research, the author outlines three major missions. Firstly, to improve China's legal system. Zhang Wen believes that "China's social legislation and the construction of social institutions are still in their infancy." Therefore, introducing foreign legal systems is to draw on the strengths of others, seek advice humbly, and use the experiences of others to achieve progress and improvement in China's legal system. Secondly, to strive to regain consular jurisdiction and realize the integrity of the country's judicial sovereignty. Since the signing of the Treaty of Nanking, Western powers have been eroding China's sovereignty. The infringement of consular jurisdiction and extraterritorial legal rights is a significant manifestation of the loss of sovereignty.Therefore, the author advocates adopting Western legal experience to promote the legalization of modern China and subsequently regain consular jurisdiction, which is a logical consequence. Thirdly, in order to catch up with and surpass Britain and the United States, and thus realize the revitalization of Chinese legal civilization. Zhang Wen's thorough analysis of Western legal thoughts enables him to maintain an objective and sober attitude. On the one hand, he recognizes the characteristics and advantages of modern legal systems. On the other hand, he also observes the one-sidedness and inadequacies of Western laws, which claim to represent modern legal systems. Consequently, the author advocates being vigilant about the learned tools while seeking guidance from the West. Simultaneously, it is necessary to integrate one's own situation and adopt the most suitable direction and path for the development of one's own legal system.

As can be seen from the above, the study of comparative law during the Republic of China period had already begun to form a systematic and objectively rigorous approach. Although comparative law originated from the West, it did not hinder Chinese scholars from fully exerting their subjective initiative and adopting a pragmatic attitude of "taking the initiative and using it for our own purposes" in the exchange of Chinese

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and Western legal systems.However, influenced by the prevailing trend of the time to save the nation from subjugation and ensure its survival, it was inevitable that some radical (total westernization) or conservative (adherence to old systems) arguments would emerge in actual comparisons of specific systems. This demonstrates that the intense ideological struggles and the critical situation of the time had imbued the discipline of comparative law, which is oriented towards systems, with the era's connotations of saving the nation and ensuring its survival.

3 Comparing the Perspectives on Marriage and Family Institutions between China and the West

During the Republic of China era, scholars compared marriage and family systems from the perspective of social change and its influence on law. Yu Wei's "Differences in Chinese and Western Legal Systems" comprehensively expounds on the mutual differences in legal systems arising from the disparities between Chinese and Western societies. As he eloquently stated, "The kind of society one has determines the kind of legal system it produces; society is the cause, and the legal system is the effect."Based on this, he summarized six major characteristics of the differences between Chinese and Western legal systems. Chinese law, influenced by the natural agricultural economy, family values, and Confucianism, exhibits a tendency towards conservatism, family-orientedness, natural development, serving as an adjunct to etiquette, emphasizing the monarchy, and being duty-based. In contrast, Western law, shaped by industrial and commercial economics, individualism, and democratic thought, displays characteristics of progressiveness, individualism, being widely influenced by external factors, distinguishing between morality and law, emphasizing the state, and being rights-based.This comparison provides a comprehensive look at the differing paths of Chinese and Western legal systems. However, Yu Wei's work goes beyond merely listing the differences; it also engages in a critical analysis of whether China should adopt the essence of Western legal systems to promote its own legal civilization and enlightenment, particularly in terms of whether socialist legal concepts should be embraced. The author argues that the recent situation in Western society differs from the reality of Chinese society, and thus its legal reforms should not blindly adopt Western ideas. The reason why the West has turned to socialism to address systemic ills lies in the severe antagonism between labor and capital. In contrast, under China's current social development, labor-capital relations have not yet developed to the point of forming class antagonisms. Therefore, the author believes that adopting socialist reforms in China may be somewhat premature.

From the above, it is evident that Yu Wei conducted a comparative analysis of Chinese and Western legal systems from a macro perspective, without specifically focusing on the comparison of marriage and family systems. However, the essential characteristics of the differences between Chinese and Western legal systems summarized by the author reflect the collective consensus among scholars at that time in comparing the two systems. Nevertheless, Cai Wei's work, "On the Improvement of China's Marriage System," applies this consensus to the comparison of micro-level family institutions, delving deeper into the specifics.

In Yan Caiwei's article, he first outlines three historical stages of human society's marriage and family systems: the promiscuous period, the monogamous marriage period, and the free marriage period. The

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promiscuous period refers to a time when there were no institutionalized norms governing male-female unions. The monogamous marriage period signifies a time when marriages were arranged primarily for the purpose of union between two families. The free marriage period, on the other hand, represents a time when men and women voluntarily unite. The evolution from the promiscuous period to the free marriage period is seen as an inevitable path in the progress of social civilization.Subsequently, he applies this evolutionary framework of institutional change to the comparative analysis of Chinese and Western marriage and family systems. He asserts that China's marriage and family system is still in the stage of monogamous marriage, while Europe's has already evolved to the more civilized stage of free marriage. In doing so, the author highlights the feudal and authoritarian shortcomings of China's existing marriage and family system and emphasizes the urgent need to learn from European systems to achieve social progress. This article reflects a strong argument for wholesale westernization.

Influenced by these ideas, comparative law scholars during the Republic of China period formed the following two comparative perspectives.

3.1 The Superiority Theory of Western Free Marriage System

This argument follows the analytical framework of Yan Cai's three-stage evolution of institutional change, attempting to demonstrate the backwardness of China's traditional social system and the advancement of Western Europe's modern social system by positioning China's marriage and family system as being at an earlier stage than that of Western Europe. Consequently, it argues that in order to achieve institutional modernization, China must comprehensively emulate the West. This argument is exemplified by the viewpoints presented in the writings of scholars Chen Daquan and Tong Kexin. Below, the author will conduct an analysis by combining the targeted works published by these two gentlemen.

Chen Daquan's "Retrospect on China's Marriage Law" constructs a three-stage temporal framework based on the freedom of marriage and divorce. The first stage is marked by the lack of freedom in both marriage and divorce. This period's marriage system is exemplified by ancient Chinese marriage institutions, which were characterized by familialism and patriarchy. The second stage is characterized by freedom in marriage but not in divorce. This period's marriage system is illustrated by regulations and judicial precedents from the late Qing Dynasty to early Republic of China. It shows that the marriage and family system during this time gradually leaned towards individualism and egalitarian traits, but was still constrained by traditional stubbornness, making the changes less pronounced. Therefore, this stage can be considered a transitional period.The third stage is marked by freedom in both marriage and divorce. This period is exemplified by some judicial precedents from the Dali Court. Due to the fact that the Civil Code of the Republic of China was still in the draft stage, the newly implemented marriage norms nationwide were primarily based on military and administrative orders, supplemented by judicial precedents. The spirit of these judicial precedents mostly adopted the concepts of Western marriage law, advocating the view of marriage as a contract, respecting individual freedom and human rights, and pursuing gender equality.

Tong Kexin's "The New Marriage Law of the Modern Era" vigorously calls for a new marriage law to accompany a new era. What constitutes a new era? It is an era of sexual freedom. And what is a new marriage

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law? It is a marriage law centered on individual freedom, with European marriage laws as the benchmark. The author describes the characteristics of the new marriage law through enumeration: firstly, the elimination of status restrictions; secondly, the voluntary and scientific nature of the relationship; and thirdly, the reduction of state intervention.The resulting specific marriage norms should embody the contractualization of marriage forms, the liberalization of union methods (such as cohabitation or companionate marriage), the scientific and formalized restrictions on marital relations, and the equalization and harmony of marriage and family relations. This fully reflects the individualism and liberal trends of thought in Western European socialist societies.

In summary, whether it is the evolution from a non-free marriage system to a free marriage system or the improvement from a status-based marriage system to a contractual marriage system, the Western-style marriage legal system, centered on the individual and guided by the spirit of free contract, is the direction in which the backward Chinese marriage legal system strives to catch up and improve. Therefore, the theory of marriage system reform based on the above-mentioned institutional evolutionism is a thoroughly Westernized argument. However, the aforementioned works also point out in their conclusions that "although the rationality lies in the Western spirit for the civilized improvement of China's marriage system, the essence of family is deeply rooted in the foundation of Chinese society, and cannot be thoroughly changed overnight." As a result, the idea of smooth and gradual reform becomes an optimized viewpoint that, despite its seemingly fanatical advocacy for complete Westernization, actually implies calm and deep reflection.

3.2 Limited Improvement Theory

This argument presents a comprehensive and practical plan for institutional change. A key characteristic of this plan is that China's marriage and family system needs to adapt to changing times. Its direction of change neither follows the past nor leans exclusively towards the West, but rather proceeds based on its capabilities and seeks practical and adaptable solutions. This leads to the theory of limited improvement in the marriage system. One of the most significant works that elaborates on this argument is Pan Guangdan's "The Family Problem in China." Although published in the "Shishixinbao Xue Deng" (New Times Daily Academic Lamp) in 1927, discussions and disagreements over the viewpoints presented in this article have never ceased. A review of related works reveals articles such as Yu Sheng's "Book Review: The Family Problem in China," Yunyan's "On Pan Guangdan's The Family Problem in China," and Li Jingwen's "Talking About Today's Family Problem in China." All of these articles discuss the path of reform for Chinese families. Despite their different expressions of viewpoints, they share a commonality: none of them support the complete Westernization of the family. Based primarily on Pan Guangdan's article, the following viewpoints can be summarized.

Firstly, neither the authoritarianism of the extended family nor the individual authoritarianism of the nuclear family should be adopted, but rather a balanced and moderate family form should be embraced. On one hand, the moderate family, with its simplified scale compared to the extended family, will not hinder the free development of individual family members. The limitation of the size of kinship relations in a moderate family will reduce the burden of obligations on individual family members. At the same time, a small-scale family can sustain a loving atmosphere among relatives, fostering the healthy growth of individual

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family members. On the other hand, the moderate family will maintain the socialization function of the family. As the basic unit of society, the family plays an important social role in nurturing the young, supporting the elderly, and carrying on the family lineage.

Therefore, the moderate family, while ensuring the free development of individual family members, also reinforces the existing family structure. This parallel advancement of individuals and families will contribute to social harmony. Secondly, the author advocates an ethically centered family order. They believe that the law should not excessively intervene in family affairs, but rather allow the family to fully exert its autonomous functions of moral education and empathy cultivation. In this way, the author promotes the elevation of social morality through the spirit of "extending love" within the family. Finally, from the perspective of eugenics, the author advocates for early marriage, monogamy, and the preservation of bloodlines.

Thus, it is evident that Pan Guangdan advocated a gradual and practical approach to reforming Chinese families based on their capabilities. On the one hand, he recognized the deficiencies of the existing family-centered marriage and family system, which is closed and oppressive to individual freedom. On the other hand, he also observed the social ills derived from the individual-centered Western marriage and family system, such as family breakdown, ethical decay, and the unchecked pursuit of personal desires. Furthermore, he examined the Western marriage and family system in the context of its specific socio-economic conditions and religious trends, which are currently unattainable and fundamentally non-existent in Chinese society. Therefore, reforming China's marriage and family system can only be done according to local conditions and with a realistic approach. As Pan Guangdan stated in "On the 'Chinese Standard'": "To talk about cultural construction without considering capabilities and conditions, even if there are minor achievements, they are definitely not the cultural construction of the 'Chinese Standard'."

Summarizing the above two perspectives of comparative analysis, it can be found that Chinese scholars of comparative law, when contrasting and analyzing the differences between Chinese and Western marriage and family systems, have consistently stood on either side of the Western marriage system, adopting either an "imitation of the West" or a "Chinese essence with Western applications" approach. The former corresponds to the argument for wholesale Westernization, but this argument is not a compromise or capitulation to Westernization. Although it uses Western advanced systems as a benchmark to tailor solutions for China's social progress, ultimately, it still requires Chinese society itself to assess whether this Western-style "modern garment" fits comfortably. Therefore, even though their views may be radical, they all advocate for 磨合 domestic customs and public opinion through practice. As for the latter, it corresponds to the argument of considering national conditions and acting according to one's abilities.This argument seems not only unradical but also pragmatic in nature. However, it also exhibits a certain degree of short-sightedness, providing a generally correct answer to immediate problems while entirely shifting the responsibility for future development to a hypothetical scenario where conditions are met. As such, once those conditions (which are often economic and cultural conditions found in Western societies) are met, the question of what kind of marriage and family system should be adopted will once again be shrouded in an unspecified Western model. To truly understand what constitutes a "Chinese Standard" marriage and family system, perhaps we need not only answer questions pertaining to the present moment but also envision the future of the Chinese modern family.

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4 Comparing Specific Marriage Norms

Comparing specific marriage norms is akin to comparing legal issues within the realm of comparative methods. In the context of comparative studies on marriage laws during the Republic of China era, a broad introduction and analysis were conducted on marriage norms (with French and German marriage laws often mentioned in overview comparisons) from countries and regions such as the United Kingdom, the United States, Northern Europe, the Soviet Union, Islam, and Japan.

4.1 Comparing American Marriage Laws

The introduction to American marriage laws can be roughly divided into two aspects: firstly, the comparison of marriage laws among different states within the United States; and secondly, the comparison between Chinese and American marriage laws. Taking Chen Tingzhao's "American Marriage Law" as an example for the former, the author first outlines the characteristics of American marriage laws, namely, their non-uniformity and dualistic nature. In terms of non-uniformity, each state has its own exclusive marriage system, and there is no single, unified marriage law across the entire country. As for the dualistic nature, American marriage laws are categorized into two types: ceremonial marriage laws that require a formal ceremony, and non-ceremonial marriage laws (also known as common-law marriage), which do not require a ceremony. This underscores the common law characteristics of American marriage laws. Secondly, the author introduces various aspects such as the legal age of marriage, marriage licenses, interstate marriage regulations, and prohibited marriage situations. Finally, with a value-neutral stance, the author advocates for the scientific values in marriage legislation.

Regarding the latter, Sun Zuji's "Comparative Perspective on British-American Marriage Laws and Chinese Marriage Laws" serves as an example. In this article, the author first distinguishes the differences in social organization between Britain-America and China, stating, "British-American social organizations emphasize individuals and the law, while Chinese social organizations emphasize the family and moral education." Based on this, the author then discusses the differences between British-American and Chinese marriage laws from four aspects. Firstly, in terms of marriage forms, Britain-America views marriage as a civil contract, emphasizing the voluntary union of individuals of both genders. In contrast, China emphasizes marriage as a union between families, negating individual will. Secondly, regarding engagement regulations, Britain-America places less emphasis on engagement, while China places greater importance on it. Thirdly, in terms of the essential conditions and regulations for marriage, Britain-America emphasizes individual autonomy and personal rights (with men's rights being dominant and women's rights being weaker), while China emphasizes family and social hierarchy, focusing on individual contributions and family obligations. Lastly, in divorce regulations, Britain-America adopts an interventionist approach, requiring legal conditions and litigation for divorce, whereas China also allows for divorce by mutual agreement between spouses.

4.2 Comparative Soviet-Russian Marriage Laws

The introduction to Soviet-Russian marriage laws can also be roughly divided into two expressions:

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firstly, the comparison between Soviet-Russian and Tsarist marriage laws before and after the revolution; and secondly, the comparison between Soviet-Russian marriage laws and capitalist marriage laws. Taking Zhang Biwu's essay "Marriage Laws in Soviet Russia" as an example for the former, the author fully affirms the progressive significance of the Soviet Revolution on Russian society. Using the newly enacted and implemented marriage laws as a representative, the author discusses the new revolutionary aspects manifested in the de-religiousization of marriage, gender equality, free marriage, prohibition of bigamy, respect for individual property rights, establishment of marital joint property, no-fault divorce, and so on.

For the latter, let's take Wang Ruqi's translation of "Family and Marriage Laws in Soviet Russia" as an example. This article criticizes the hypocrisy of bourgeois marriage laws from a Marxist perspective, which manifests in the patriarchal oppression and the dual exploitation of proletarian families by capitalists (exploiting both the productive labor of the proletariat and their reproductive labor). As a result, Soviet-Russian marriage laws are presented as a true guide to equitable marriage laws. The author introduces Soviet-Russian marriage laws on various aspects such as freedom of marriage, registration of marriage, emphasizing the obligation of factual marriages to support children, safeguarding individual property, respecting joint property of married couples, freedom of divorce, and protection of the rights and interests of vulnerable groups within families.

4.3 Comparing Nordic Marriage Laws

The introduction of Nordic marriage laws is primarily represented by those of Denmark and Sweden, and the content primarily focuses on the introduction of individual systems. However, Nordic marriage laws exhibit characteristics distinct from those dominated by European marriage laws of England, France, and Germany, indicating that the internal landscape of Western European marriage laws, renowned for their modernity, is not uniform but rather diverse and complex, each with its unique features. Among them, the most prominent feature is the strong family-centric collective aspect of Nordic marriage laws. "Marriage Laws in Denmark" is authored by an anonymous writer. In this article, the focus is on the provisions of Danish marriage laws regarding marital contracts, property systems, and separation and divorce systems. From this, the following characteristics of Danish marriage laws are summarized: firstly, women have the divine right of possession over their children; secondly, women have the right to work outside the home; thirdly, both spouses have equal rights to manage joint property after marriage.

The introduction to Swedish marriage laws is primarily exemplified by the article "Marriage Issues: Swedish Marriage Laws" written by Mr. Ershi (pen name). This article introduces several highlights of Swedish marriage laws. Firstly, it adheres to the legislative principles of gender equality and scientific rationality (not all close relatives are prohibited from marrying, but rather the specific nature of the blood relationship is comprehensively considered). Secondly, it implements a no-fault divorce system and establishes a separation trial period (where both spouses agree to apply for divorce in court, and after undergoing a one-year separation trial period during which there is no reconciliation, they can request the court to grant the divorce, which the court will allow. If there is emotional improvement during the one-year trial period, both parties can apply to the court to withdraw the divorce application within the separation trial period). Thirdly, it specifies the divorce compensation system. Fourthly, it requires self-certification of physical and mental health before marriage.

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4.4 Comparison of East Asian Marriage Laws

This section primarily focuses on the introduction of Japanese marriage laws, with a somewhat limited comparative aspect. However, the emphasis on introducing Japanese marriage laws lies in exploring how China, as part of the East Asian cultural sphere, can leverage Western influences to enrich and enhance its own efforts in constructing a unique marital and family system with local characteristics. Taking Wu Xueyi's "The Great Amendment to Japanese Marriage Laws" as an example, the author briefly outlines several aspects of Japan's revised marriage laws, including respecting the free will of both parties involved in marriage, promoting de facto marriages, simplifying marriage requirements, abolishing the term for illegitimate children, safeguarding the property rights of wives, standardizing the order of inheritance under a will, and specifying the formal requirements for making a will.

It is evident that in the face of the gradual encroachment of Western laws in modern times, changes in traditional Eastern societies were inevitable. However, the established social customs and practices could not be completely overturned in an instant. Therefore, while Japanese marriage laws are marked by significant innovations, the strong family-oriented color remains intact.

4.5 Comparative Islamic Marriage Laws

Taking Xie Songtao's "Outline of Islamic Marriage Laws" as a typical representative, the author proposes using the Islamic marital and family system as a benchmark for modern marital and family systems, a viewpoint that signals the beginning of a trend to "not consider the West as the sole standard of modernity." To explain why Islamic marriage laws are considered superior to Western ones, the author first outlines the evolution of marriage systems. Similarly, the author distinguishes three periods: the primitive society period, the patriarchal society period, and the modern society period. The primitive society period is characterized by purposeless union between the sexes. The patriarchal society period is marked by union between the sexes without individual freedom. Finally, the modern society period is distinguished by union between the sexes based on individual freedom.These three periods represent a progressive development, with each subsequent stage being superior to the previous one. However, the marriage system during the patriarchal society period offers greater stability in marital and family relationships compared to the casualness and fragility of modern society's marriage system. Islamic marriage laws draw on the strengths of both these periods, emphasizing on one hand the voluntary union between men and women, and on the other hand, advocating that the sacred purpose of marriage lies in procreation. This results in an ethical marriage system that combines both freedom and stability.As a result, the author strongly recommends the Islamic marriage system. Following this, the author briefly outlines the unique features of Islamic marriage laws, including: relatives are not solely classified based on male standards, but also take into account the female perspective; both husband and wife have their own personal property, with the husband bearing the financial responsibility of the family; children are not distinguished by whether they are born from the primary or secondary wife; marriage unions require compatibility (in terms of bloodline, religious beliefs, status, morality, property, and skills); the waiting period for remarriage is based on human physiology (for example, women must wait for three menstrual cycles, roughly four months and ten days, before remarrying); the laws are derived from religious scriptures and are expressed in a way that is easy to understand; and the grounds for divorce adopt a generalist approach.

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From a comprehensive review of the comparative analysis of marriage laws across various countries and regions mentioned above, it becomes evident that the comparative law scholars during the Republic of China period had a broad perspective. Their analysis not only encompassed comparisons between Chinese and Western systems but also delved into comparisons within the same social formations, between different ideologies, and between religious norms. Moreover, the majority of their discussions did not merely consist of simple translations and introductions but instead combined an understanding of national conditions and current events to conduct comprehensive analyses of institutional differences, changes, and unique patterns. Additionally, their value orientations exhibited a trend of diversification. In terms of a singular Westernization theory, various arguments emerged surrounding the path to Western-style institutional reform, including theories based on Anglo-American common law, continental European law, socialist legal systems, and Nordic legal systems. Therefore, the comparative law perspective during the Republic of China period was not only broad in scope but also conducted in-depth analyses, providing a wealth of reform proposals for the improvement of China's marital and family systems. However, due to the constraints of the times, these proposals were not implemented, and they even failed to spark widespread discussions within the academic community, ultimately remaining buried in the dust of history.

5 conclusion

Three types of comparative law were described in Professors Zweigert and Kötz's book "An Introduction to Comparative Law": comparative law, comparative descriptive law, and critical comparative law. Descriptive comparative law does not actually compare; rather, it only reports on various national standards. Conversely, comparative law emphasizes the superiority of one's own national legal standards through comparison with those of other countries. In critical comparative law, comprehensive foreign standards are first cited, their origins and evolution are carefully examined, and then legal policy is critically examined or inferences about how to interpret one's own national laws are made. This justification shows that genuine comparative law study can only be found in critical comparative law.Comparative marriage laws during the Republic of China period in China are analyzed, and it is evident that despite the fact that Chinese comparative law was introduced later than other legal systems, it lacked a strong theoretical foundation and was influenced by the historical context. Nevertheless, Chinese scholars introduced and referenced foreign legal norms—particularly Western legal norms—with a certain degree of scrutiny of social structures and value judgments based on seeking truth from facts, whether consciously or unconsciously. Thus, the critical analysis established the spirit of fairness and initiative in Chinese comparative law study, providing insightful information for our own comparative law research in the new millennium.In addition, homogeneity has emerged as a key aspect of our day due to the growth of modern global economic markets, the rising secularization of society, and the urbanization of lifestyles. Although homogeneity might help us compare and learn from other systems by removing bias and prejudice, it can also make it harder for us to recognize diverse elements. Therefore, in order to revive the ideological notions of our national culture, it is imperative that we continue to be able to investigate and uncover various values as well as to consistently participate in comparison analysis. In our day, this ought to be the new goal of comparative law scholars.

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