ISSN 2055-0286
Advances in Social Sciences Research Journal; Vol. 13 No. 01 (2026) (30-39)
https://doi.org/10.14738/assrj.1301.19843

The Development of Commercial Law: Perspectives from Chinese and European Traditions

Zhengyao, Wang & Narantuya, Lkhundev

1. Ph.D student at Graduate school, Ikh Zasag International University, Mongolia
2. (Ph.D), Doctor, Associate Professor. Director of Graduate School, Ikh Zasag International University, Mongolia

Abstract: Our article argues that future reform of China's commercial law should preserve its indigenous legal characteristics while selectively integrating advanced elements of foreign commercial law to enhance systemic coherence, adaptability, and market responsiveness. Commercial law, as a core branch of private law governing commercial transactions and market activities, has been shaped by diverse historical, cultural, and institutional traditions. Through a comparative analysis of the historical evolution of commercial law in Europe and China, the study highlights the distinct legal trajectories formed under Europe's maritime civilization and decentralized city-state autonomy, and China's agrarian civilization and centralized state structure. From the perspectives of legal culture and legal tradition, the article examines differences in conceptual foundations, normative structures, and regulatory principles between the two systems. The findings indicate that the effectiveness of European commercial law derives from its strong emphasis on the autonomy, efficiency, and specificity of commercial activities, whereas Chinese commercial law has historically been embedded within public-law-oriented governance and moral regulation. The study concludes by emphasizing the need for a balanced reform approach that combines institutional continuity with selective legal innovation.

Keywords: China and Europe, Commercial Law, Commercial Legislation.

INTRODUCTION

Commercial law, as an important component of the legal system, reflects how a particular civilization has understood and regulated commercial activities. European commercial law originated from Mediterranean trade and developed into an independent legal system by taking Roman law as the foundation of civil law and relying on the autonomy of medieval merchants through customary merchants' law (lex mercatoria). This evolution eventually led to modern codifications such as the French Commercial Code and the German Commercial Code, forming a distinctive system separated from civil law.

In contrast, although maritime trade flourished in China during the Tang and Song dynasties through the Maritime Silk Road, commercial law for a long period remained subordinated to the tradition of integrating civil and commercial law. Only in the late Qing dynasty did attempts emerge to develop commercial law as an independent field. This divergence cannot be explained solely by differences in economic foundations; it is closely related to ideology, state structure, and governance models. Historical evolution clearly demonstrates how different economic and cultural contexts shape legal systems [1].

Today, as the world's second-largest economy, China faces the improvement of its commercial law as a fundamental condition for the future development of the market

economy. In recent years, major Chinese cities have issued regulations to improve the business environment, and modern understandings of commerce have become increasingly active and influential. Nevertheless, there remains significant room to further refine the national commercial law system. In particular, codification experiences such as the French Commercial Code—which clearly defines commercial activities and the legal status of merchants—are of high relevance to China. Therefore, this article conducts a historical and comparative analysis of Chinese and European commercial law traditions, legislative concepts, and institutional forms, with the aim of identifying lessons for the future development of China's commercial law.

We concluded that the historical comparison between European and Chinese commercial law demonstrates that legal systems governing commerce are deeply shaped by broader civilizational contexts, including economic structures, state organization, and ideological foundations. Building on this insight, China's future commercial law reform should refine its national system by preserving indigenous legal traditions while selectively drawing on mature codification experiences—such as the clear delineation of commercial activities and merchant status found in European commercial law—to better support a modern market economy.

THEORETICAL FOUNDATIONS

The independence of commercial law is grounded in the distinctive characteristics of commercial activities, a principle fully reflected in the historical development of European commercial law. European commercial law theory is based on the principle of merchants' autonomy, seeking to develop specialized rules that ensure efficiency, security, and profitability in commercial transactions. By contrast, due to historical circumstances, Chinese commercial law theory developed under the influence of the concept of integrating civil and commercial law, which limited its ability to adequately capture the unique features of commercial activities. In recent years, increased scholarly attention in China to the independence of commercial law has played an important role in advancing systemic reform [2].

According to Lawrence M. Friedman's sociology of law, differences between Chinese and European commercial law are the result of interactions between "external legal culture" and power structures under different social conditions. Friedman argues that law functions as a mirror of society, reflecting economic structures, social organization, and the voluntarist nature of state power (Gordon & Horwitz, 2008, p. 2). The tradition of contractual freedom rooted in the autonomy of medieval European city-states and merchant guilds contrasts sharply with China's centralized state system, in which state monopolies over salt and iron and intermediary systems operated under strong governmental control, shaping distinct legal forms driven by sovereign will [3].

European commercial law developed through conflicts between merchants and royal authority and through the expansion of municipal autonomy, whereas traditional Chinese commercial regulation primarily served state finance and social stability. Although globalization today creates an appearance of convergence between the two systems, as Friedman suggests, convergence occurs through "functional adaptation," whereby different legal systems achieve compatibility while remaining grounded in distinct legal and social foundations.

From the perspective of Douglas North's theory of institutional change, institutions—defined as the "rules of the game" in society—are historically contingent and path dependent, evolving in response to the need to reduce transaction costs. In medieval Europe, customary merchants' law gradually transformed into formal commercial law, facilitating interregional trade. In China, however, the centralized system delayed the development of formal commercial law, leading instead to a greater reliance on trust-based relationships and network-oriented arrangements [4].

Law and economics theory further suggests that legal traditions directly affect the level of investor protection. In European countries with civil law traditions, such as Germany, high-quality law enforcement, judicial efficiency, and detailed registration standards have contributed to the stability of commercial law. Germany's Commercial Code of 1897 codified commercial practices and norms, exerting a profound influence on subsequent legal development. From a comparative perspective, European commercial law has matured through long-standing market economy experience, whereas Chinese commercial law theory remains in a developmental stage. Looking forward, China needs to learn from international experience while fostering local innovation, thereby constructing a commercial law theory that aligns with market economy principles and reflects Chinese characteristics.

Europe's intellectual tradition adopted a comparatively open attitude toward commercial activity, which profoundly influenced the development of commercial law. Although Christianity initially approached profit-seeking with caution, the Protestant Reformation—particularly Calvinism—reframed commerce and labor as forms of divine vocation. According to Max Weber, Calvinist concepts such as "predestination" and "calling" contributed to the emergence of a capitalist mindset by portraying economic activity as a moral and religious duty [5].

Islamic influence also occupied an important place in the formation of European commercial traditions. An Arabic tomb inscription from Quanzhou, China, dated 1303—stating that "to die in a distant land is an honorable death" (Quanzhou Maritime Museum, 1984)—as well as the teaching attributed to Muhammad, "Seek knowledge even if it is as far as China," encouraged long-distance travel and trade. During the Middle Ages, Arab merchants actively participated in Mediterranean commerce and introduced financial instruments and commercial techniques that significantly influenced the development of European commercial law [6].

In contrast, Chinese religious and cultural traditions exerted a more complex and often restraining influence on commerce. Teachings such as "While one's parents are alive, one should not travel far" (Three Character Classic), along with Confucian doctrines stating that "the noble person does not pursue profit" and that "understanding what is morally right is the concern of the scholar, whereas profit is the interest of the petty person," fostered social attitudes that devalued commercial activity.

Daoist philosophies emphasizing "non-action," inner tranquility, and detachment from fame and profit further impeded the formation of a strong commercial culture. Although merchant associations and private networks existed in China, they did not develop into autonomous and institutionalized organizations comparable to the merchant guilds of Europe. In Europe, Aristotle's theory of "justice in exchange" provided an early ethical foundation for commercial conduct, thereby supporting the evolution of commercial law.

Moreover, Europe's geographical conditions favored maritime trade, while China remained for a long period a relatively closed, agrarian-dominated economy. These structural and geographical differences limited the natural conditions necessary for the sustained development of commercial law in China [7].

We concluded that comparative analysis demonstrates that the independence of commercial law is not merely a technical legal choice but the result of long-term interactions among economic structures, state power, legal culture, and institutional development. European commercial law evolved around merchants' autonomy, market efficiency, and institutional adaptation, while Chinese commercial law historically remained embedded within a centralized governance framework that constrained the recognition of commerce as an autonomous legal sphere.

In the context of globalization and China's ongoing market transformation, future commercial law reform should advance the theoretical and institutional independence of commercial law by integrating international experience through functional adaptation, while grounding legal innovation in China's own historical, cultural, and institutional realities.

TRADITIONS OF COMMERCIAL LAW IN CHINA AND EUROPE

The historical origins of commercial law can be traced to several ancient legal traditions, including the maritime-based Rhodian Law (Lex Rhodia) of ancient Greece around the third century BCE, the Hittite legal codes of the fifteenth century BCE, and earlier normative systems such as the Code of Hammurabi from the eighteenth-century BCE [8].

Table 1: Legislative characteristics and religious-cultural factors

Aspect	Chinese Model	European Model
Religious–cultural influence	Strong influence of Confucianism and Daoism, emphasizing moral order, social hierarchy, and restraint toward profit	Strong influence of Christianity (especially Protestantism) and Greco-Roman thought, gradually legitimizing commerce and profit
Traditional Attitude toward Commerce	Tradition of restricting or discouraging commercial activity	Mercantilist tradition that actively promotes trade and economic expansion
Legislative philosophy	Tendency to restrain, control, or subordinate commerce to moral and political order	Tendency to support, protect, and facilitate commercial activity
Status of Commercial Legal Subjects	Differentiated legal status based on social roles and hierarchy	Principle of equality among participants in commercial transactions

Among these, the Code of Hammurabi is notable for containing provisions regulating merchant activity within a slave-based economy, including distinctions between resident traders and itinerant merchants, as well as rules governing commercial partnerships. Roman

law likewise addressed certain commercial transactions; however, such regulations were embedded within general civil law and never developed into an autonomous body of commercial law. Consequently, Roman law did not give rise to a stable and independent commercial legal system [9].

Most scholars agree that the true foundation of European commercial law emerged in the Middle Ages through the lex mercatoria (law merchant), a self-regulating legal order created by merchants in Western Europe following the decline of Roman authority. Designed to harmonize diverse local customs and facilitate long-distance trade, the lex mercatoria found expression in regional maritime and commercial codes such as the Lex Consolato in the Mediterranean, the Lex Oleron in Atlantic regions, and the Laws of Wisby in the Baltic and North Sea areas [10]. Modern European commercial law systems developed from these merchant-based customs, and many of their core principles and institutional structures have remained fundamentally consistent over time [11].

We concluded that the comparison reveals that the Chinese model of commercial law has been shaped by moral–political traditions that prioritize social order and hierarchical regulation, resulting in a cautious and restrictive approach toward commercial activity. By contrast, the European model, grounded in religious, philosophical, and mercantilist traditions that legitimize profit and equality among market participants, has fostered a legal framework that actively supports and facilitates commercial development.

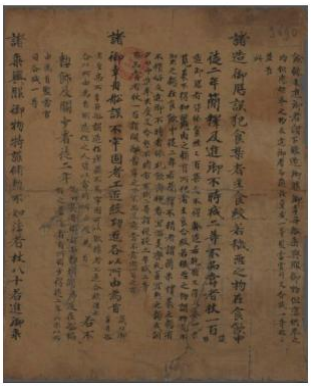

Figure 1: Tang dynasty legal codes, explanatory commentaries, and miscellaneous provisions (唐律疏議)

Source: Legal manuscript pages discovered in Dunhuang

In China, the earliest legal regulations related to commerce can be traced to the Western Zhou dynasty (1046–771 BCE). These rules addressed market zoning, contracts, product quality, and price regulation. For example, the Zhou Li stipulated that "morning markets are for merchants, while evening markets are for petty traders," that "written documents are used in large markets, while agreements suffice in small markets," and that officials such as Jia Shi were responsible for assessing product quality and setting prices. During the Tang dynasty, commerce was governed through a combination of the Tang Code, official commentaries, and supplementary provisions.

The section on "Miscellaneous Matters" in the Tang Code included detailed rules on contracts, price discrepancies, and the resolution of commercial disputes. Nevertheless, commercial law did not develop into an independent system and remained closely

intertwined with criminal and administrative law. This tendency to "regulate commerce through punishment" reflects the traditional society's cautious attitude toward commercial activity.

During the late Qing reform period, China began introducing Western legal models, and in 1904 the Great Qing Commercial Code was promulgated, marking the beginning of modern commercial law in China. However, due to historical circumstances, its implementation was limited and largely unsuccessful. After the founding of the People's Republic of China, the development of commercial law stagnated during the era of the planned economy and only began to be reconstructed following the reform and opening-up policies. These historical divergences between China and Europe continue to shape the development of contemporary commercial law to the present day.

COMPARATIVE ANALYSIS OF LEGISLATIVE FORMS IN CHINA AND EUROPEAN COUNTRIES

The legislative forms of commercial law in European countries are diverse, among which codification is the most common and influential approach. The French Commercial Code of 1807 adopts an objectivist legislative model. It defines the elements of "commercial acts" in its opening section and constructs the commercial law system on the basis of this concept. By focusing on the nature of commercial activities, this model emphasizes objective criteria for determining the scope of commercial law.

Table 2: Comparison of current legislative models

Aspect	Chinese Model	European Model
Form of Legislation	Fragmented regulation through special and sector-specific laws	Codified system with comprehensive commercial codes
Commercial Actors	Dispersed regulation and lack of a unified legal definition	Unified and clearly defined concept of commercial actors
Commercial Acts	Interpreted under civil law principles, with limited specificity and precision	Independently regulated with clear and detailed legal rules
Applicable Legal System	Integrated civil-commercial system, leading to potential conflicts of legal rules	Specialized commercial courts and distinct procedural rules

In contrast, the German Commercial Code of 1897 is closer to a subjectivist approach. It begins by defining the legal concept of the "merchant" and then develops the entire commercial law system on this personal status. Under this model, the application of commercial law depends primarily on whether the actor qualifies as a merchant under the law.

Although these two legislative models differ in methodology—one centered on commercial acts and the other on commercial actors—both embody a high degree of systematic structure and codification. They clearly distinguish commercial law from civil

law and provide coherent, stable, and predictable legal frameworks for regulating commercial activities.

From a structural perspective, European commercial laws generally adopt an organization based on general provisions and special provisions. The general provisions define foundational concepts such as commercial actors and commercial acts, while the special provisions regulate specific commercial institutions and transactions. This structure helps ensure coherence, internal consistency, and systematic integrity within the legal system. Some commercial codes also incorporate decrees (as in French law) as well as administrative and criminal liability consequences (as in German law).

Chinese commercial legislation, by contrast, has developed along a distinctive path. At present, it follows a unified civil–commercial law model, applying a single overarching legal framework. In addition to the Civil Code, the system relies on a large number of specialized laws and regulations, including statutes, administrative regulations, local rules, governmental directives, judicial interpretations, international treaties, and commercial customs. Examples include Company Law, the implementing regulations of Foreign Investment Law, and Negotiable Instruments Law.

This legislative model has certain advantages. It is relatively flexible, can respond quickly to the needs of market innovation, and allows for efficient legal updating. However, it also has notable shortcomings. The lack of systematic integration can easily lead to inconsistencies and conflicts arising from overlapping rules and unclear scopes of application. For instance, conflicts in legal application may arise between the Company Law and the Securities Law in the regulation of listed companies, creating a need for further coordination. Moreover, a single-law model may generate institutional and jurisdictional gaps among regulatory authorities.

European commercial law places strong emphasis on advanced legislative techniques, prioritizing conceptual precision and the internal completeness of legal rules. A clear example can be found in the German Commercial Code, which employs multiple criteria—such as the nature and scope of business activities—to define the legal status of merchants. Such refined legislative techniques provide valuable lessons. Looking ahead, as China seeks to further improve its commercial law system, greater attention should be paid to enhancing legislative technique, clarifying legal provisions, and increasing legal certainty and predictability.

We concluded that comparison indicates that the Chinese model of commercial law remains characterized by fragmented legislation and an integrated civil–commercial framework, which can reduce legal clarity and consistency in regulating commercial actors and activities. In contrast, the European model’s codified structure, clear definition of commercial subjects and acts, and specialized judicial mechanisms provide a more precise, predictable, and efficient legal environment for commercial transactions.

DISCUSSION ON THE FUTURE DEVELOPMENT OF COMMERCIAL LAW IN THE PEOPLE’S REPUBLIC OF CHINA

According to Douglas North’s theory of institutional change, the future direction of economic development is largely determined by the evolutionary trajectory of existing institutions. An institutional system consists of both formal rules, such as legal norms and public policies,

and informal constraints, such as cultural practices and social customs, and these elements are highly interdependent. Institutional frameworks formed through historical processes continue to exert a lasting influence on future choices. Although technological innovation in the new era accelerates economic growth, another crucial driver of sustainable development lies in whether institutional reform can effectively reduce transaction costs.

Without appropriate legal support, economic development may easily encounter structural bottlenecks. Therefore, successful legal reform requires the coordinated development of formal rules and informal constraints.

For China, improving the commercial law system and fostering a market-oriented commercial culture and trust-based mechanisms are essential foundations for achieving sustainable and high-quality economic growth. From the author's perspective, the development of Chinese commercial law should follow a gradual and incremental path. Specifically, drawing lessons from the codification experience of the Civil Code, China should first formulate General Principles of Commercial Law—analogous to the former General Principles of Civil Law—before establishing a comprehensive Commercial Code. Such general principles would clarify the fundamental concepts and core principles of commercial law [12].

At the same time, economic globalization has led to a gradual convergence of commercial law worldwide. Similar or harmonized commercial rules are beneficial to modern economic development. Accordingly, in the process of codifying a Commercial Code, China may draw on provisions from other countries' commercial codes regarding the definition of commercial actors, while also considering domestic laws and local regulations that reflect Chinese characteristics, such as the Several Provisions on Commercial Registration in the Shenzhen Special Economic Zone and the Guangdong Provincial Regulations on Commercial Registration. In addition, the concept and criteria for defining "merchants" in the German Commercial Code may serve as a useful reference.

In regulating commercial activities, it is necessary to fully reflect the distinctive characteristics of commercial transactions and to apply specialized commercial principles that differ from those of civil law. However, the key condition is that reform of the commercial law system must be grounded in China's current commercial practices. To ensure effective implementation and institutional innovation, European legal experience should be selectively and appropriately absorbed [13].

As modern economic development gives rise to new types of commercial organizations within specialized institutional structures, legislation should explicitly recognize and regulate these entities by listing them and introducing necessary supplementary provisions. Moreover, China should establish a commercial credit system and a unified evaluation system for commercial actors that align with international standards. In addition, improving the commercial dispute resolution system is of critical importance. Given the vast scale of China's economy, highly efficient and diversified dispute resolution mechanisms are indispensable. Enhancing the efficiency of resolving commercial disputes will play a vital role in more effectively supporting overall economic development.

CONCLUSION

The differences between the development of commercial law in China and Europe are deeply rooted in their respective legal–cultural traditions and commercial practices. European commercial law evolved on the foundation of Roman law and the autonomous customary rules of medieval merchants, gradually forming a systematic and independent body of commercial law. Its success lies in its full recognition of the distinctive logic of commercial transactions and the need for specialized legal norms tailored to commercial relations.

By contrast, Chinese commercial law has inherited its traditional legal culture while actively seeking to construct a socialist legal system compatible with the demands of modern economic development. These differences are reflected not only in legislative forms but also across multiple levels, including judicial practice and the broader interaction between law and economic culture. The future development of Chinese commercial law therefore requires preserving its traditional flexibility while selectively absorbing advanced international experience.

To achieve this goal, priority should be given to improving specialized legislation, particularly the formulation of "general principles of commercial law" and the enhancement of the commercial court system. This process requires coordinated efforts among legislative bodies, judicial institutions, and the academic community. A proper balance must be struck between theoretical innovation and legislative practice, ensuring that both advance toward shared objectives. Ultimately, the establishment of a Commercial Code suited to China's national conditions—while aligned with international commercial practice—will provide a solid legal foundation for the development of a market economy and the modernization of China's commercial legal system.

Finally, the comparative analysis shows that while China's unified civil–commercial legislative model offers flexibility and responsiveness to market change, its fragmented structure also creates risks of normative overlap, legal inconsistency, and regulatory coordination gaps. Accordingly, the future development of Chinese commercial law should enhance legislative systematization and technical precision—drawing selectively on European codification experience—while preserving institutional flexibility in order to build a coherent commercial law framework aligned with China's legal culture and market-economy development.

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