

Merchants, Law and the Social Transition of China  
: From 1840 to 2010

Dr. &Professor: Wang yuyu

## Introduction:

This book addresses the role of merchant, law (especially merchant law) and their interactions in the development of China's Social Transition from 1840 to 2010. Merchants and merchant law, as viewed by numerous historical, economics and legal researches, are the pioneers, engines and primary contributors to western countries' modern social transitions. Comparing with the merchant's triumph to political powers, merchant's logics & norms dominating the operations of the real economy, western countries has risen. Is this the same in China? How about the past, the present and the future of merchant and merchant law in China? What's their Chinese characteristics? Are they positive to the "China Enigma"? Unlike most of other related researches concerned China's law and development<sup>1</sup>, this book inquires merchant & merchant law in China's long historical transition processes to discover the intrinsic & essential relationship among merchants, merchant law and China modern social transition. This book is modified from the doctorate dissertation of Professor Wang yuyu, which has been awarded as the Excellent Doctorate Dissertation of Southwest University of Political Science and Law, China; the Excellent Doctorate in Dissertation of Chongqing Municipality, China; the Academic Library Fund on the 30<sup>th</sup> Resuming Anniversary of Southwest University of Political Science and Law, China.

This book argues the periodical limitation, the driving mechanisms and the characteristics of the China's modern social transition. Based on the theories of social transition and its related, comparing with the modern social transition proceedings of U.K., United States and Japan, this book concluded that, as the dynamic and physical foundation of merchant law, China's modern social transition is definitely different from the modern social transition of the western countries. From 1840, with the distinct passivity characteristic, China has had been pushed into "historical three gorges", has had been pushed into the national survival struggle from subjugation, has had been pushed to learn from western countries including legal systems. Merchants in China, as the most dispicable class, have had never been independent. They had attached to the feudal bureaucracies and were lack the capacities to create a new world like

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<sup>1</sup> which always took China's formal statutes as their analysis subjects and put them in a much longer or shorter time analysis context (Luman 1999; Peerenboom 2002; Clarke 2003 2006; Huang 2006; Michael & Leng 2006; Potter 2010),

their western counterparts had done. Merchant law, enacted in 1904, was not the Bible for merchants but the “grasp straw” for the Qing Government. Characterized with passivity, chronicity, cataclysm, integrity and complexity, China’s social transition provided the special context and background for the development of merchant and merchant law.

This book makes a comprehensive research frame on merchants and merchants law. Aid with philosophy analysis, economics analysis, politics analysis, sociology analysis, literature analysis and legal science analysis, merchants’ portrait has been outlined. As the summary of entire social relationships regulated by the social organizations and institution norms when the productivity, the exchanges and the expenses of human beings has developed to a certain stage; as the “typical rational economic man”, the “middle class”, the “shylock” and “person in law”, merchants have had been the traditional objective of law, merchant law is an ancient law department with long history. Extracting the general institutions of modern western merchant law, this book examines the institutional connotations, the institutional formations and the institutional effects are essential and indispensable for merchant law. Employing with institutional analysis, qualitative analysis, quantitative analysis especially OLS regression, the book proved: modern merchant law is the inevitable requirements&results of the modern western social transition, it has played importantly positive effects on western’s modern social transition.

This book examines the institutional changes’ history of China Merchant law, argues its institutional changes’ model and indicates its existing problems. As another sample of the “Chinese Problem” and “life problem”, China merchant law has had been transplanted in the last years of Qing Dynasty where merchants lack both of political and property rights. Decided by China’s special social transition, depended on the demands of various authorities, China merchant law is labelled with compulsory institutional change. Although it had developed during the Northern Warlords&Republic Period, and get most prosperous after 1978, the compulsory institutional change model affected the efficiencies of China merchant law. Employing historical analysis, institutional analysis, comparative analysis, case analysis and chart analysis, this book proves the current process of China’s social transition do need efficient merchant law while the inefficiency problems of China merchant law, which

performing as institutional absence, dislocations and offside, has do existed. The basic reasons of China merchant law’s problems is the characteristics of China social transition; moreover, while the transplantation and dependence nature of China merchant law are the direct reasons. The inefficiency of China merchant law plays negative influences on the China social transition.

To improve the efficiency of China merchant law and satisfy the objective needs of China social transition, according with the Weber’s formation rationality and essence rationality, following the step from the metaphysics to reality, with the aid of probit regression, this book reconstruct China merant law from value, principle and institution system. This book argues that the appropriate merchant law in the background of China social transition should make its value orientation on “operating profit”,choose the “efficiency principle”and “safety principle”as its essential principles, and integrate the whole merchant law with “merchant in law”and the business operating capacity as its institutional connotation, the company and parntership as the main organization formation. The assumed merchant law is oriented to satisfy the demands of China merchants, who has become more indepent and important . It can not only improve the institutional efficiency but aslo promote the process of China’s modern social transition. The life of law has been experience, it has not been logic. This book finally concludes that the life of China merchant law would get its breath when merchants are mainstay and independent in the society, it would depend on the successful practices of the China social transition radically.

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**Competing Titles:** Studies on Merchant and Merchant law in China, or Merchant, Law and China Social Transition. *Merchant, Law and China's Social*

*Transition: from 1840 to 2010* is the first focused study of the situations and relationships among merchant, merchant law and China's social transition both in the Chinese and the English language. Although there has been growing interests in merchant's and law's role in China's social transition process in China and Western academic circles and policymaking lobbies, there is no single-volume scholarly study on the topic to date. Early studies on the law issues of China, such as Stanley B. Lubman's, *Bird in a Cage---Legal Reform in China after Mao* (Stanford, Calif.: Stanford University Press, 1999); Randall P. Peerenboom: *China's Long March toward Rule of law* (NY: Cambridge University Press, 2002) mainly discuss the role of law in China after 1978 with external perspective; Recent studies on the law issues of China, stimulated by the China's highly-increasing commercial opportunities, are mainly just guiding for foreign investment, such as Paul Thaler: *Chinese Business law* (Stampfli, 2009); Jianfu Chen: *China Master Business Law Guide: Commentary and Analysis* (Wolters Kluwer Law & Business, 2009); James M. Zimmerman: *China Law Deskbook: A legal guide for foreign-invested enterprise* (ABA, 2010) Papers produced to discuss the relationships between law and China's economy development, such as Michael Trebilcock and Jing Leng: *The Role of Formal Contract Law and Enforcement in Economic Development* (Virginia Law Review, 2006); Mo Zhang: *Choice of law in Contracts: A Chinese Approach* (Northwestern Journal of International Law & Business, 2006) limit their perspective on special statute. In contrast, my book provides a detailed survey and critical analysis of merchant, law and China social transition in a historical long shot.

**Sources:** *Merchant, Law and China Social Transition: From 1840 to 2010* is based on a wide range of sources in the Chinese and English language. In addition to books and scholarly articles, I have relied on newspaper accounts to piece together historical narratives, official communiques, government documents, public testimonies, statistical data and chart are also used extensively throughout the book. In addition, I critically examine opinions and commentary by scholar community in China, the United States and Canada. Fieldwork for this project was undertaken in the People's Republic of China. In addition to collecting Chinese-language material that has not been used by Western scholars to date, I interviewed academics and policymakers in China

and North America. These interviews provided me with valuable insight and informed my understanding of the theme.

**Readership:** China's growing stature in world has affected the increasing interests to understand China. *Merchant, Law and China's Social Transition:from 1840 to 2010* will be of interest to academic specialists studying China's law and history. So advanced undergraduates and graduate students in China studies, History Studies, Law Studies and Economic Studies might be interested in this book; Given my extensive discussion of Chinese merchants and merchant law, my book shall also appeal to those interested in invest in China.Books on Chinese law are frequently used in university-level courses.In addition, more universities are developing teaching on China Business Law. Finally, *Merchant, Law and China's Social Transition:from 1840 to 2010* shall also be very relevant to the ordinary people want to understand r the past, the present and the future of China.