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Abstract: It is referred as “power of constitutionality review” to examine whether legislations enacted by the legislature of the Hong Kong Special Administrative Region are consistent with the Basic Law or not and to hold them invalid if found to be inconsistent. But the Basic Law is not the constitution of Hong Kong, so it should be called as “power to review legislation of Hong Kong inconsistent with the Basic law”, or simply as “power to review legislation according to the Basic Law”.

The Basic Law has no express provision that the Hong Kong courts have the power to review legislation of Hong Kong inconsistent with the Basic law, for such power belongs to the Standing Committee of the National People’s Congress. According to the legal system and principles previously in force in Hong Kong, the Hong Kong courts have no such power either. According to Article 84 of the Basic Law, the Hong Kong courts may refer to precedents of other common law jurisdictions, but they still cannot acquire such power by reference to the U. S. case of Marbury v. Madison.

There are several factors which drive the Hong Kong courts to exercise the power to review legislation according to the Basic Law without authorization. The fact that several articles of the Basic Law are not very clear and the objective need of the Hong Kong society to review legislations according to the Basic Law have provided opportunities for such practice. It has also made such practice possible that the Standing Committee of the National People’s Congress has not exercised its power to review legislation of Hong Kong inconsistent with the Basic law timely and effectively. Such practice has confused the nature of the power relationship between the central and local authorities, deviated from the executive-dominated political structure of Hong Kong established by the Basic Law, and distorted the relationship between the Basic Law and the common law.

It will be an ideal arrangement to solve the problem of the power to review legislation according to the Basic Law in politics and law that the Court of Final Appeal of Hong Kong corrects the false precedent by itself and the Standing Committee of the National People's Congress authorizes the Court of Final Appeal of Hong Kong such power by interpreting Article 17 of the Basic Law.

Key Words: the Basic Law of the Hong Kong Special Administrative Region, power to review legislation of Hong Kong inconsistent with the Basic law, power of constitutionality review

Abstract: The principle of self-responsibility in criminal law means that the perpetrator is not responsible for the damage of the victim when the latter, despite being aware of risks, goes into danger voluntarily. However, this does not indicate that the rescuer, with full consciousness of the related risks, is always responsible for his actions when he tries to save the interests of others and causes damage to himself. There are three situations in which the rescuer should not be responsible for the occurrence of damage.

First of all, if the rescuer has legal obligations of rescue, then the perpetrator is responsible for the damage of the rescuer. In this case, the rescuer is forced by the lawmaker to save the interests of others which would be harmed by the perpetrator. He has no other choice but to take the action to protect others. In this sense, the rescuer does not accept the risk of rescue voluntarily and the principle of self-responsibility can therefore not be applied to him. The range of legal obligations should be ex ante determined through an "interests-risk balance" in concrete cases based on the sort of obligations and the theory of probability of anticipation. Secondly, the principle of self-responsibility is not applicable to the rescuer either, if the rescue takes place with the intention to protect the interests of others which are more valuable than the loss of the rescuer. This is a conclusion from the comparison with the defense of necessity. Lastly, the rescuer should also not be responsible for the occurrence of damage if he tries to defend his family members from death, heavy injury or deprivation of freedom. Because in this situation the rescuer is, as a result of lacking free will, not responsible for his decision.

In other cases, the principle of self-responsibility should be applied. That means the rescuer accepts the risks of rescue voluntarily and is therefore responsible for his damage. On the other side, the perpetrator, who commits an illegal act and thereby puts the interests of others in danger, is no longer liable for the damage of the rescuer. According to the conclusion above, the principle of self-responsibility is applicable to the firefighter in the CCTV fire case who gave under extremely dangerous situation his respirator to the person entrapped in the fire and therefore died from gas poisoning.

Key Words: self-responsibility, duty of act, probability of anticipation, defense of necessity

Abstract: The existing confusion on the understanding of the concepts of previous conviction and criminal record among experts from criminal theory, criminology and criminal procedure areas leads to seriously directional deviation in relevant research. They take the two different terms as the same concept or as an alternate one, and further confuse the normalized evaluation and the non-normalized one of criminal record and their legal consequences.

Since the research of the above experts on the system of previous conviction abolition, based on such theoretical error, deviates from the right path at the starting point, their conclusion can not but be wrong. It can be said that such misunderstanding has already misguided the institutional design and theoretical research on the previous conviction abolition system. Thus the original research intention has been departed from, and the purpose of facilitating the criminal back to the society could not be really realized.

According to this article, the relationship between criminal record and previous conviction is just as the relationship between premise and result, that is, previous conviction is the evaluative result of criminal record. Criminal record is the objective record of the criminal fact and its judgment, and such record is not allowed to be and can not be abolished. Previous conviction is the normalized evaluation of the existing criminal record.

Criminal record does not contribute to the “Label Effect” or the second offense of the criminal. The voluntary non-normalized evaluation of the social public is the real reason which prevents the criminal from back to the society. The purpose of the normalized evaluation from

State authority is to set up a preventive mechanism. The non-normalized evaluation of the social public, based on hostility and precautious consciousness, may only be a man-made block in its objective effect to prevent the criminal from back to the society, and may facilitate the second offense indirectly.

The misunderstanding of the relationship between criminal record and non-normalized evaluation has already led to obvious deviation in research. And the institutional design and legislation improvement suggestions based on such misunderstanding are also improper.

Key Words: criminal record, previous conviction, normalized evaluation, non-normalized evaluation

Abstract: There does not exist a debate between classical school and new school in Chinese criminal jurisprudence. However, there is a debate between the formal and substantive interpretation of criminal law, which is different from the formal and substantive interpretation debate in German or Japanese criminal law. The substantive interpretation in China is concerned with all requirements for the constitution of a crime, while it is only concerned with Tatbestand in Germany and Japan. The substantive interpretation advocated by Chinese scholars refers to the interpretation of criminal law, while in Germany and Japan, it refers to the Tatbestand, no more than the punishment regulations. At last, in German and Japanese criminal law, the theory for formal constitution of a crime and formal interpretation comes first, and then the substantive ones, while Chinese criminal law is on the contrary.

Many views of the substantive interpretation are questionable. They believe that formal interpretation group in our criminal law theory holds absolute dominance, but the formal interpretation is still in a weak position. They hold that the formal interpretation ignores the substantive justice, but the essential differences between the two schools lie in the ways to discuss the substantive standard of judgment, such as the constitutive mode of crime, the ranking of formal judgment and value judgment, and the principles of interpretation. They think that the substantive interpretation makes use of the substantive side of the principle of Legally Prescribed Punishment for a Specified Crime to take restrictive explanation, but their interpretation tends to criminalization but not decriminalization. They argue that the basic defect of formal interpretation

is the evitable consequence of “unjust law is still law”, but the formal interpretation is not the resource of the rule by evil law.

The substantive interpretation, intrinsically consistent with the materialism of Chinese traditional culture, is yet the leading school in China. Based on our cultural environment, Chinese scholars can not abandon the material interpretation, but according to the critical function of the social theory and the awareness of school formation, the formal interpretation should be promoted.

Key Words: substantive interpretation, formal interpretation, school, cultural ecology

Abstract: Standard of proof is the core and soul of the evidence system. Studying standard of proof and solving its problems are the key to improve and perfect the evidence system. Western countries have established two criteria, i.e., “preponderance of the evidence” and “beyond reasonable doubt”, both of which are built on the basis of probability. However, probability can not constitute the standard of proof, as probability is merely a kind of possibility, and the case cannot be solved solely on possibility. Therefore, these two criteria are not tenable.

Standard of proof is the template of truth. History witnessed different templates of truth, including the truth revealed by deity, the truth ascertained within law and the truth found by free evaluation. All of those are not what they mean to be. Truth revealed by deity is somewhat a superstition, which tells no difference between truth and falsity. Truth ascertained within law is kind of mechanical truth. This mechanical nature always covers up the real truth or takes falsity as true. Truth found by free evaluation is essentially the subjective truth. Subjective truth is valuable, but it is just the faith in judge’s mind with no external sign and cannot be examined, tested and supervised. Its lethal weakness determines that it is unfit for the standard of proof. Besides the above three, scholars also advocate the objective truth. Objective truth is indeed the utmost of the truth, and is very hard to achieve fully in the judicial practice. Thus again, it can not constitute the standard of proof.

Truth itself has two levels, that is, the existence level and reflection level. On the level of existence are two kinds of truth, i.e., objective truth and substantial truth. Only substantial truth can constitute the standard of proof and it is the higher standard of judicial proof. On the level of reflection are subjective truth and formal truth. Only formal truth can constitute the standard of

proof and it is the lower standard of judicial proof. Substantial truth refers to the nature truth of the fact as well as the truth sought through it. Formal truth refers to the truth purely reflecting formality as well as the truth sought through it. Besides them, judicial proof includes one remedy method, i.e., presumption. Presumption is not a standard of proof. Thus there are only two aforementioned criteria of judicial proof.

Key Words: standard of proof, substantial truth, formal truth, probability, presumption

Abstract: The traditional purpose of a corporation is to pursue maximized profit, and a corporation is only responsible to its shareholders. As corporate operations begin to have widespread influences on the society, corporate social responsibility (CSR) is being increasingly stressed. It is believed that corporations should have two identities as a legal person. They are not only entities in private law, but also true members of the society. Since corporations benefit from the society, they should also contribute to the society, i.e., to bear their social responsibility. As the social aspect of the law looms large, private law (including commercial law) gradually shifts from individualism to socialism and requires people to pay attention to social environment and care for social interests. Therefore, the socialization of private law constitutes the solid legal foundation of CSR.

CSR is one type of obligations a corporation owes to the society. It refers largely to social obligations required by law, moral obligations as well as obligations occurring during operations that are neither explicitly required by law nor of a moral nature. This last type of obligations is a problem that the board of directors needs to solve when it makes and implements business strategies. It is also a problem that requires solutions in both theory and practice.

The beneficiaries of CSR are largely the same as the non-shareholder stakeholders of corporations. As the stakeholder theory poses the issue of CSR as one aspect of corporate governance, it makes it possible to realize CSR. Boards of directors should make necessary arrangements on the social consequences of corporate activities when they make and implement their business strategies. They must have an accurate understanding of the extent of their obligations in this respect and perform such obligations seriously. Directors' duty of care shall include not only to meet the corporations' revenue targets, but also to adjust the relationship

amongst the corporation, its shareholders and other stakeholders and maintain equilibrium amongst various interests. Directors should primarily work for the long-term interests of all shareholders. Furthermore, they should also ascertain and respect other stakeholders and establish a harmonious and mutually beneficial cooperative relationship.

Key Words: corporate social responsibility, other stakeholders, corporate governance, director's duty

7、Psychological Mechanism of Board Structural Bias and Its Accountability Path

Abstract： The director is not merely a rational "economic person". His decision is the mixture of rationality and emotion. It's natural and known that they may practise favoritism in making corporate decisions in case of interest conflict. However, even there is no such interest conflict, they may still fail to stick to the supremacy of corporate interest and stockholders' interest in decisions involving their fellow directors and executives. Instead they may unconsciously follow the trail of acquaintanceship, affection and face, and put their colleagues' interests before the interests of the corporation and stockholders. This is the structural bias of the board, also known as the board "decision disease", which has been ignored by the rationality decision paradigm so far.

In order to expound the anomaly of the "directors' mutual shield", we must overcome the defects of traditional corporation law in its complacency and conservation as well as its ignorance of emotional influence in director decision-making process, and borrow a lessen from such emerging disciplines as behavioral economics and social psychology in absorbing their research outputs and analytic tools so as to open the black box of director's decision flowing from emotion. According to social psychology, directors may unconsciously shield their fellow directors and executives due to situational issues like reciprocity, group favoritism and group thinking. The behavioral economics further reveals that they may do so unconsciously due to intrinsic reaction upon mere exposure effect, framing effect, ticking together and terrified effect, which expounds its formation mechanism from the aspect of brain's working process.

Obviously, such structural bias belongs to improper board behavior which may become more dangerous to some degree due to its concealment and fraudulency. How to make it

accountable? The problem is that the loyalty path under the rationality paradigm is too harsh, and the care path is too deferential. The intermediate review standards dancing to their tunes are also helpless. The good faith path may meet the institutional demands of the director's accountability under structural bias. The examination of the substantive reasonableness of director's decision may urge them to look before leap, so the accountability gap may be filled up and the effectiveness of accountability in such intermediate areas may be strengthened.

Key Words： structural bias, directors'mutual shield, psychological interpretation, behavioral economical interpretation, duty of good faith

Abstract: The first sentence of §16 of CPL (Chinese Property Law) stipulates the presumptive correctness of real estate register, but not merely endows the register with the qualification of evidence. Firstly, if we would not acknowledge this sentence stipulates the presumption of register, the acquisition of real estate in good faith, which is regulated by § 106 of CPL, would lose its foundation. Secondly, the point of view that thinks this sentence just endows the register with evidence qualification contradicts §17 and the first sentence of § 19 of CPL. Lastly, this sentence stipulates that the register shall be the basis for deciding the rights and their contents on a real estate, but the first sentence of §17 of CPL just regulates that the certificate of rights shall be the evidence of real estate property. The difference means that the lawmaker of CPL acknowledges the presumption of register.

The presumption of register, which makes the real estate property more clear, lays the foundation for the system of acquisition of real estate in good faith. And it is also of great help to effectively maintain the security of transaction as well as improve the efficiency of business. The presumption of register constitutes the presumption of rights as a kind of legal presumption, and it can be rebutted by opposite evidences. The presumption of register can be classified into positive presumption and negative presumption. It can be applied to the rights with registrability, such as right to use construction land, right to the contracted management of land, right to mineral locating, mining right, right to use water, right to use ocean areas, easement of land and mortgage of real estate, and so on. Furthermore, the priority notice can also be presumed to be correct within some limits. However, the presumption of register can not be applied to obligatory right, legal status, legal capacity, etc., even if they are registered.

The first sentence of §16 of CPL is not a substantive rule, but a procedural rule about the burden of proof. In other words, it can not determine the real holders of rights on a real estate finally. When somebody raises an objection to the correctness of the real register, the presumption of register can be rebutted by opposite evidences. And the rules in the substantive laws, such as §17 of Chinese Marriage Law, can also negate the presumptive correctness of the register.

Key Words: real estate register, presumptive correctness of register, Chinese Property Law

Abstract: The party is one of the most important subjects in civil proceedings, and his or her act is closely interrelated to the process of civil proceedings and the outcome of judgment. Self-liability of party is one of the doctrines for constructing a modern civil procedure. The liability here means that a party should take the unfavorable outcome for his or her failing to undertake certain acts or failing to undertake these acts timely when certain acts are necessary to obtain favorable outcome.

Self-liability is generally taken shape by imposing burden of act on the party. Since a party has the freedom to act or not in the litigation, in most cases conducting some litigious acts is only a kind of burden. Self-liability of the party is not only provided in the principles of the civil procedural law, but also materialized in some concrete systems and legal norms constituting these systems. Principle of disposition, principle of debate, system of court mediation, and the open and close of most procedures reflect the doctrine of self-liability.

The practice of self-liability in civil procedure has its profound reasons. The principle of will autonomy in civil substantive law, the character of constructiveness of adjudicative facts, the structure of procedure of adversary and judgment, the rational choice of parties, and the acceptability of judgment provide the theoretical basis for the principle of self-liability.

The possibility of choice made by the party in certain circumstances is the precondition for the party to take self-liability. And the symmetry of the severity of legal consequences and the acts of the party should also be taken into consideration when sets the conditions for imposing self-liability. Emphasis on procedural protection of parties is the era feature of modern civil procedure. Only under the condition of sufficient procedural protection provided by the courts can the party's self-liability has soundness. The procedural protection mainly includes three aspects.

Firstly, the court should provide conditions for the party to conduct the procedural act. Secondly, the court should exhaust its duty of clarification. Lastly, the court should aid the party in evidence collecting when necessary.

Key Words: civil procedure, party, self-liability, procedural protection

Abstract: In the light of pertinent regulations, courts across the strait have recognized and enforced many civil and commercial judgments delivered by the other side. However, Taiwan's Supreme Court issued a judgment in 2007 which held that civil judgments issued by courts in mainland China, even they are recognized by courts in Taiwan, shall only be entitled to enforcement without the effect of Res Judicata. This decision not only calls for some theoretical doubts, but also is a backlash in terms of cross-strait recognition of judgments.

The final and binding civil and commercial judgments include all the rulings of courts issued according to legal procedure and concerning to substantive issues of concerned parties at dispute. However, the judiciaries across the strait disagree on what shall be considered as final and binding. This article contends that mediation documents issued by courts in mainland China should fall within the scope of final and binding civil judgments. However, composition reached only by parties themselves during litigant process in mainland China should not be regarded as judgments and therefore should not be recognized and enforced in Taiwan. Nevertheless, in accordance with § 380 of Taiwanese Civil Procedure, a final composition should be a final and binding judgment, which should be recognized by courts in mainland China. Furthermore, temporary rulings of preliminary enforcement of debts against defendants issued by courts in Taiwan and rulings of preliminary execution issued by courts in mainland China should be recognized and enforced in the future, because they have stronger Rechtskraft des Urteils.

In terms of the recognition procedure, the mainland side has accepted the reality of the judicial powers across the strait and recognized the Res Judicata of Taiwanese judgments. However, on Taiwan's side, a recognition procedure is required to recognize judgments issued by courts in mainland China. This differs from the recognition of foreign judgments, which is an automatic process. Since the separate regulations enacted by each side on cross-strait recognition and enforcement of judgments have resulted in many confusions and disagreements, this article

suggests to sign a cross-strait agreement on mutual recognition and enforcement of civil and commercial judgments to address these problems.

Key Words: interregional judicial assistance, recognition and enforcement of judgment, final and binding judgment, Res Judicata, principal of reciprocity

Abstract： As one pair of the most important concepts in trademark system, registration and use play key roles in trademark right verification. How to deal with the relationship between them and balance their legal effects are always the critical issues that all the countries have to confront with. Primarily, the trademark right originates from the actual use by enterprises in the commerce. This can be verified by the historical evolution of trademark system, and is consistent with the theory of property-labor and the doctrine of semiotics. As most countries in the world have established trademark registration system, the trademark right is essentially acquired through actual use or registration.

However, the two models are not always opposite to each other. Even within the trademark law of the same model, the legal status of registration or use differs more or less from country to country. Whatever approach adopted, it is critical for all the countries to try to make a better balance between registration and use. In the current world, there still exist differences between the two models, but nearly all the countries adopt a trademark right verification system with a compromising character to some extent. As to the use model, while the trademark law still insists that trademark right originates from actual use, registration can play an important role in testifying and strengthening the trademark right. For the registration model, the law still adheres to the registration principle, while admits that trademark use could also result in legal right in order to overcome the by-effect of registration principle.

The current trademark law of China adopts a kind of absolute registration model, and as a result, the un-registered trademark can not be protected by law. As a solution, the legislature of China should revise and improve the trademark law by clearly stipulating that trademark right can also be acquired through actual use while following the traditional registration model. The current draft prepared by the SAIC pays too much attention on legal procedures, and neglects the essential

issue concerning the role of use in trademark right verification, therefore makes no substantive improvement.

Key Words: trademark, right verification, registration, use

Abstract: The research of unlawfulness of administrative nonfeasance and its criterion based on traditional doctrine of liability can not meet the development of State Compensation Law in the background of welfare administration. To make correspondence between administrative duties and public welfare, and to fulfill the executive power's public functions in terms of value level, it is necessary to make an intensive study on failure to fulfill public functions as an independent form of administrative negligence in public duty. Failure to fulfill public functions means that, as the representative of the state, the administrative subject violates its duty of care when exercises its administrative discretion and is slack in its functions, which results in the failure to fulfill public functions expected by law.

In consideration of cost effectiveness or other conveniences, executive officials often choose to perform their statutory duties literally, rather than actively achieve their public functions in terms of value level. Although the Supreme People's Court has tried to remedy the defect of State Compensation Law by judicial interpretation, the executive officials may still evade state compensation responsibility through the defect of criterion of administrative nonfeasance itself. Fortunately, the amended State Compensation Law, which will come into effect in December 1st, 2010, has recognized diversified doctrine of liability instead of traditional unlawfulness only.

As an independent form of administrative negligence, failure to fulfill public functions can be both unlawful administrative action and nonfeasance, so the judgment of negligence should not rigidly adhere to the traditional classification of action and omission, but should adopt an independent criterion. The negligence can be determined by three essential factors, that is, to violate the reasonable duty of care, to be slack in behavior, and failure to achieve the public functions expected by law. Meanwhile, the judgment of damage depends on the recognition of the reasonable anticipative benefit of the counterpart, and the judgment of causation should correspond to reasonability and rationality.

Key Words: failure to fulfill public function, state compensation responsibility, State Compensation Law

Abstract: Since the beginning of 21 century, international relationship has changed greatly and human beings face a lot of new challenges. Firstly, Crises of 21 Century Style rise, such as the Nuclear Issues of North Korea and Iran, the Global Financial Crisis in 2008, and the United Nations Climate Change Conference 2009. Secondly, the global financial crisis has caused deeply change of international power comparison. The economic powers of the U.S., Japan and the member states of EU have decreased, while the comprehensive powers of China, India and Brazil have increased. Thirdly, the tendency of institutionalization of international community is more obvious, the number of international organization increases rapidly and the fields they concerned are enlarged.

In the context of new changes of international community, the development of contemporary international law also embodies new characters. Coexistence phenomenon of globalization and fragmentation of international law is more prominent. The criminalization of international law is also more obvious with some criminal prosecutions against state leaders in recent years. Then the mutual influence between international law and domestic law is highlighted. The main tendency is the effect of international law on domestic law, which reflects the requirement of international organizations for some of state sovereignty to be transferred. Finally, the fields of international law are enlarging, that is, from the regulation of space expeditions to the division of the ocean floor, from the protection of human rights to the management of international financial system. In fact, its involvement has spread to all the aspects of international life.

In the meanwhile, contemporary international law is shouldering more and more expectations and responsibilities. The values of international law, such as development, safety and human rights have been recognized by international community in some extent. International constitutional ideas have become an unavoidable problem of international jurisprudence. The concept of common interests of international community has penetrated into the international law. In this background, the study of international law in China should actively pay attention to and suit to such changes.

Key Words: international law, new development, values of international law

Abstract: The origin of Chinese legal thought is not the same as the west one. Without concept and logic, the early Chinese thinkers achieved understanding of law through observing, imagining and contemplating “water”. It was water that created the primitive image of Chinese legal thought. As the base of concept system, “water” was not a literary analogy, but a metaphor of law.

There is a close relationship between “to rule” pursued by Chinese traditional political and legal thought and “to control water by Great Yu”. To bring water under control was also a trial to provide regulations for human behaviors. Moreover, the significance of criterion to rule people is the same as it to rule water. Chinese ancestors also realized that water itself can be the image of criterion through observing and imagining “still water”. Therefore there is a kind of relationship structure between water and criterion which is an important concept in Chinese culture. Through such imaginary and poetry observation of water, Chinese ancestors have established a special structure between water and law.

Chinese philosophers also established the primitive model of Chinese political and legal relationship directly or indirectly through contemplating the characteristics and attributes of water. The analogy of “water and boat”, that is, water can bear boat, and can also swallow it up, was the earliest model of ruler and his people in Chinese political and legal thought. It admonishes the ruler and his people to confront with such relationship of mutual dependence: the ruler should not disregard the appetites of his people, and the people should also comply with the rule of wise emperor. To pay attention to such relationship is an important mark of the wisdom of the ruler.

The concrete imago of water provided model for the establishment of the concept of law in ancient China, and was internalized in the thought and conceptual system of law in China. Such metaphor is one of the orientations of conceptual schemes in the eyes of philosophers.

Key Words: water, law, metaphor

Abstract: The relatively independent regime of judicial power was set up in late Qing Dynasty based on the constitutional government and the separation of the three powers. The judicial administrative authority was so strong as to hinder the independent execution of the jurisdiction. During the reform course of the allocation of judicial functions and powers, late Qing Dynasty attached procuratorate into the Central Judicial Office. But the procuratorate was administratively led by the Ministry of Justice, and the powers of court and procuratorate were also influenced by the Ministry of Justice. Nevertheless, procuratorate played an important role in replacing inquisitive trial by impeachable trial, distinguishing civil case from criminal case, establishing new trial grades, and legitimizing the judicial procedure.

In late Qing dynasty, judicial administrative authority had an obvious feature of transitional period. Legal talent was very scarce and the state finance was very weak. The legislation did not form a complete set or system either. Totally speaking, the deforms in political structure, legal thoughts, legal talents, legislative skills and financial support, especially the intervention by the imperial power and the conflict between Central Judicial Office and Ministry of Justice, influenced the independent function of new regime of the judicial power seriously in late Qing Dynasty.

Because the destination of the judicial reform was to strengthen the power of the state to resist the foreign invasion, the relatively independent judicial power also served for consolidating the central power. So the judicial reform design of mighty judicial administrative power and relatively weak power of court and procuratorate was a practical and forced choice. The design was concordant with the political tradition of China, the social environment and the actual relationship among political powers at that time. We should know and respect the choice of our ancestors under the special conditions. We need to reasonably think the interactive relationship among the judicial system, historical tradition and the social environment.

Key Words: allocation of judicial functions and powers, revising laws in late Qing Dynasty, judicial reform, conflict between Central Judicial Office and Ministry of Justice