

比较法学文库

高 祥◎总主编

REFLECTIONS OF 21st CENTURY CHINA (2012-2016)

二十一世纪中国印象

[美]尤金・克拉克◎著 EUGENE CLARK





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比较法学文库

高 祥◎总主编

見給刀際 不猶歸

总序

高祥*

法治是现代社会文明的标志与基石。良好的法治需要完备的法律制度及其落实的良好氛围。比较法的目的与使命在于通过对不同法域间的法律制度、法律文化和法律体系的比较研究,深化人们对这些法律制度、法律文化和法律体系的认识,了解世界法学发展的动态、法律发展的趋势,进而择善而从,完善已有的法律制度和法律体系,为人类的共同文明与进步服务。

信息化与全球化使得我们所处的世界正在变得越来越小,使得不同法域间的 人们的交往越来越频繁、关系越来越密切,彼此间需要了解对方的法律制度和法 律文化的要求越来越迫切、内容越来越详细,从而使得比较法在现代法治建设与 人类文明进步中的功能越来越明显,作用越来越大,任务越来越重。

在中国法制现代化的过程中,比较法发挥了非常重要的作用。通过研究和认知域外法律制度、法律体系与法律文化,使得中国法学界能够迅速和充分地了解这些制度,使得中国的法律体系能够在学习和借鉴域外相关法律制度的基础上很快建立起来。虽然中国的法制建设已经取得很大成就,但离现代法治的要求仍有很大距离。在中国法制建设的进程中,比较法仍然具有无限的发挥空间。

中国政法大学比较法学研究院是在整合原中国政法大学比较法研究所、中德法学院和中美法学院三个教学科研院所的基础上成立的,是目前中国高校和科研机构中惟一以比较法学为中心的专门的教学科研机构,聚集了一批优秀的比较法人才。其成立的目的是为了适应信息化与全球化以及中国法制国际化与现代化的需要,构建以比较和研究中外法律制度为目的的比较法学研究的平台,力争巩固其在国内比较法学研究领先地位的基础上达到世界先进水平,从而更好地为中国的法制建设和社会进步贡献自己的力量。

为了完成其光荣使命,中国政法大学比较法学研究院开展了丰富的教学科研活动。这些活动中形成的各种学术成果均蕴藏着比较法教学与科研的最新成果与

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思想财富,颇具学术价值,非常值得整理出版。这些成果若以单本出版发行,难见系统,编为文库出版,方能相得益彰,蔚为壮观,既便于研读查考,又利于文化积累。

《比较法学文库》能够顺利出版,需要感谢的人很多。但特别需要感谢的是山西联盛能源集团及其董事局主席邢利斌先生,是其慷慨解囊使得中国政法大学比较法学研究院能够设立联盛比较法基金,并对本文库的出版给予资助。

Preface

Professor Eugene Clark was China University of Political Science and Law's first appointment of the Thousand Talents Programe Launched by the chinese government. During his time with the College of Comparative Law, Professor Clark has made many valuable contributions to the college, the university generally and to the wider community.

For the College of Comparative Law Prof. Clark has developed innovative postgraduate and undergraduate courses as exemplified by his Chinese Cyber Law in a Comparative Law Context. He has presented seminars to faculty on how to improve research performance. Above all, he has led by example by his publication of several books and articles for international journals dealing with Cyber Law, Commercial and Economic Law and Legal Education. Professor Clark has also assisted our International Office in meetings with foreign universities, especially from North America and Australia.

Using his experience as a senior university leader, Professor Clark has also assisted Dean Gao with the International Conference on Comparative Law and served on the organizing committee of the Asia Academy of Comparative Law. He has been invited to present numerous lectures to other universities.

Reflecting his leadership in legal education, he has been appointed and served as a member of the Australian Law Council's Legal Education Committee, a national group offering advice to the national body representing the legal profession in Australia.

This collection of essays exemplifies Prof. Clark's engagement with the wider Chinese and international communities. As an opinion columnist for China. org, Professor Clark has been an effective intellectual force through his reflections on legal reform, Chinese culture, the economy and community. Through his commentaries he has contributed to public debate, informed the world about developments in China, and in turn, introduced China to many useful ideas from the Western World.

IV

President Xi has mentioned that China must remain open to the world and that we need foreign experts, such as Professor Clark, to help us continue on our path to developing world class universities. Professor Clark has been an exemplary appointment who has set a high standard for future foreign experts to come.

Huang Jin (黄进)
President
China University of Political Science and Law

Foreword

Professor Eugene Clark is the first Distinguished Professor appointed in China University of Political Science and Law under the national "Thousand Talents Programe" scheme. He works in the College of Comparative Law.

During his stay here, he has been actively engaged in teaching, research and vast varieties of activities within and beyond the college and the university. He is always engaging, friendly, helpful and loved by everybody who knows him.

This collection of his essays as an opinion columnist for China org reflects his active engagement with the wider communities and his broad knowledge and views over the Chinese legal system, culture, economy and everyday life of the Chinese people.

I am very pleased to see the collection published. It can inform the outside world about the life and development within China, which can contribute to make the world a better place when people know and understand more among each other.

Gao Xiang (高祥)
Dean, College of Comparative Law
China University of Political Science and Law

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Chinese Culture, Society, Life

1. Time Zones and Languages

I first came to China in 1995 as part of a China-Linkages grant awarded to the University of Canberra Law School to support a partnership with China University of Political Science and Law. In the course of the last 17 years it has been exciting to see the great progress made by CUPL, Beijing and China generally. I am now honored to have the opportunity of deeper involvement with CUPL and China as part of China's Thousand Talents Program.

One of those points of progress in recent years has been the rapid growth of e-commerce and e-government. In e-commerce, witness the record volume of online shopping that occurred on November 11. In terms of e-government, note the rapid growth of government microblogs that facilitate not only transparency but greater interaction between government and citizens. I will address both of these developments in later articles.

E-commerce and e-government, however, do not occur in a vacuum. For this reason, I start this series of articles by making two comments on recent speeches made by General Secretary Xi Jinping who has emphasized the need for China to remain open and engaged with the world. He has also stressed the importance of the rule of law and need to foster a learning society.

I label these two comments: Time Zones and Languages.

Time Zones. Every country must live simultaneously in three time zones—past, present and future. As General Secretary Xi has noted, China must remember, renew and build upon its 5000 – year rich historical and cultural heritage. This is important not only to China, but the world which will also benefit from this rich tradition of literature, culture, medicines, architecture, music, and other areas of learning that have been part of China's development.

However, a society is not static, it must continue to grow and improve and this

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