

The formation of Modern Legal System and Conceptions of Criminal Procedure — Judgments on Criminal Procedure of Ta-Li- Yuan in the early Republic of China

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Abstract

In traditional China, although different dynasties have different evolution of trial system, they still have some common points such as the mix of justice and administration、the emperor having the highest power of trial、privileges according to different identities、the combination of civil and criminal process、secret trial、torture and no counsels. The traditional trial system didn't change for thousands of years until the period of the late Qing Dynasty. In that time, western culture became popular, and people started to think about human rights and obligations. So the trial system come to a critical crisis which was never shown in history before.

After the Xinhai Revolution in 1911, The republic of China was established, but the new system of law was not. So the law in Qing Dynasty was still used in that period. This article, first of all, will introduce the background of law making and its content. Secondly, basing on the cases of Ta-Li-Yuan between 1912 and 1914, it will discuss the criminal procedure law, analyzing the practice of the rule in criminal process. Finally, it will analyze how the modern western legal concepts of criminal trial be introduced to ancient China, and used in legal practice.

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