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At the crossroads of civilizations: A comparative analysis of the development of legal thought in ancient China and the West

Abstract. The relevance of this article is due to the fact that the current scientific literature does not provide a comprehensive assessment of comparative legal studies of ancient Chinese and Western legal thought, which is important given the polarisation of global politics. The purpose of this review was to comprehensively study and analyse the historical scientific literature on this issue. This goal was achieved through a thematic analysis of the accumulated scientific material. The article deals with issues related to the philosophical trends that prevailed in the period of Ancient China, Greece and Rome. The historiographical basis of the work was the works of Chinese and Western researchers in this field. The research resulted in an analysis of theoretical and practical scientific literature on this topic, as well as a critique of the positions of some contemporary authors on the concept of law and legal relations between the people and the state. The main conclusion of this work was that the main differences between Chinese and Western legal doctrines were formed within the complex interplay of the initial conditions of statehood development in East Asia and the Mediterranean. Whereas the problematisation of law in ancient China was based on the understanding of family relations, where the family was headed by the father-ruler, ancient legal thought focused on social contradictions, rights and obligations of different classes. These different problematisations of the law have created the basis for further differences. This study can be used in diplomatic work to improve communication between representatives of different legal doctrines and families in general

Keywords: philosophy; Confucianism; legalism; sophistry; Roman private law

Introduction

The relevance of the subject under study is conditioned upon the fact that currently in the scientific literature the study of the development of legal thought of Ancient China and the West occurs isolated from historical periodisation and various prerequisites for the development of society such as external conditions, economic, political, and social factors. To investigate the development of the opinions of various Chinese and ancient thinkers, different approaches were used to develop the distinctive features of the East and West.

In the scientific literature, issues of the development of legal thought are frequently investigated in the context of a single consideration of a particular state without analysing causalities and without comparing individual legal systems with each other. In particular, Chinese experts, including Z. Deng *et al.* (2022), C. Xiaoming (2023), L. Yixin (2023), tend to analyse Chinese law through the prism of its historic development. Oftentimes, this analysis involves comparison of legal systems across dynasties, as it is found in the works of M.O. Nedelea (2023), J. Qi (2022), H. Xia (2021), and others. Similar approach is adopted

in Western philosophical thought whose representatives seek to research modern law in terms of historical events preconditioning its emergence and development (De Wilde, 2021; Ciutacu, 2023; Eberle, 2024). An evident advantage of the described approach is that it helps to understand the logic behind contemporary legal system. For example, J. Hallebeek (2020) and P. Du Plessis *et al.* (2022) assert that teaching Roman law in modern institutions is only possible after an in-depth investigation of its evolution. Similar idea is proposed by Chinese experts, including J. Qi (2022), Z. Wenhao (2023), and G. Zhenzhen (2022), who seek to bridge the gap between the past and the present in the legal thought domain. While such approach might seem reasonable, it fails to acknowledge the fact that China, ancient Greece, and ancient Rome did not develop in isolation but were rather engaged into political, socio-economic, cultural, and other types of relationships, which preconditioned transferring of legal ideas across national contexts. From this viewpoint, it is advisable to compare the emergence and development of the legal thought in the East and West.

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Noteworthy, attempts to conduct such comparative analysis were undertaken by several experts, including L. May (2021) and E. Toti (2023). The former expert compared the evolution of the legal thought in ancient Greece and China, an approach that acknowledged a repertoire of possible interactions between the countries (May, 2021). In turn, E. Toti (2023) took an in-depth look into the legal thought in ancient Rome and China to analyse any potential impact of the Roman law on the development of Chinese civil law. In his turn, M. Staiano (2023) emphasised the importance of such comparative studies for creating a common legal future for humanity. Thus, it can be argued that attempts to compare ancient Chinese, ancient Greek and ancient Roman legal thought were made by individual specialists, but it is nevertheless obvious that such attempts are few and far between, which, nevertheless, requires systematisation of the achievements of such studies.

Considering the detected deficiency, this article reviews resources published in the period between 2020 and 2024 to compare the rise and development of the ancient Chinese, ancient Greece, and ancient Roman legal thought. This comparison seeks to accomplish several relevant tasks. The comparison will help to detect differences across the legal thoughts that might hinder creating a shared political, economic, and socio-cultural space for the mankind. Lastly, the comparison might generate insights into cooperation between the selected countries in the legal domain.

Researches of the development of the legal thought of Ancient China

For a comprehensive understanding of the mechanism of development of legal thought in ancient China, it is essential to identify and consider aspects of the socio-political and public life of the state at that time. Clearly, the study of law comes from the needs and development of society in the period under study. Therefore, it is necessary to mention historical data on the processes taking place in ancient China. The first reliable information about China dates to the II millennium BC, when a large association of tribes formed in the Yellow River basin (Xia, 2021). In the 6th–5th centuries BC, political differentiation of Chinese society took place due to constant strife between dynasties. As explained by X.Y. Wang (2023) and G. Zhenzhen (2022), such political confrontation leads to the creation of various directions and schools that will develop legal and political thought. In the period of the V–III centuries BC, the development of legislative activity began, it was connected, among other things, with the need to use the law to stabilise the political situation in the conditions of the incessant struggle of the Chinese principalities among themselves (Wahyudi *et al.*, 2022). The first norms of law of that period were the norms of customary law, consolidated in court decisions. The most notable trends in the development of legal thought in ancient China were Legalism, Confucianism, Mohism, and Taoism.

The beginning of the development of Chinese legal thought should be considered from such a philosophical school as Taoism founded by Lao Tzu. His views are set forth in the work “Tao Te Ching” (“The Book of Tao and Te”) (Xu, 2023). Lao Tzu describes Tao as a natural course of things independent of the heavenly lord, a natural

regularity that does not allow any interference (Xao, 2023). L. Yixin (2023) stresses that the essence of the concept of Tao was to define all socio-political phenomena through the lens of the divine principle. Considering Tao in such a context, any social inequality, people’s distress can be justified by the lack of understanding of the true Tao. The ideal state, according to the ideologists of Taoism, exists “imperceptibly” for its subjects, and the ideal ruler in the Taoist tradition should rule through “non-action” (Xu, 2023). Z. Wenhao (2023) notes that Tao “leaves everything to himself”, but thereby becomes a true, albeit secret, ruler of the world: he acquires an irresistible power of influence. Thus, Tao acts as a natural law that acts directly and comprehensively without active interference in any state affairs. These aspects and principles of Taoism as a direction of legal thought did not pay attention to social differences and conflicts, justifying the actions of state structures (Nedelea, 2023; Wenhao, 2023). Even though Taoism was a widespread philosophical trend of many schools, it opposed itself to the more popular direction of public thought – Confucianism. This confrontation of the teachings is explained by the fact that in Tao the fundamental principle was non-interference in internal processes, while Confucianism promoted service to the state (Tan, 2020). However, apart from Confucianism, the school of Legalism also had a profound influence on public and political life. As explained by Ch. Tan (2020), Confucius sharply opposed the norms of morality, virtue, on the one hand, and the norms of legislation, on the other hand, clearly preferring the former, and the legists, on the contrary, attaching foremost importance to legal norms, attempted to extend their effect to all occasions. The common feature of these two ancient Chinese teachings was their political orientation, the desire to organise the life of Chinese society on rational, fair principles, although understood differently. This, in turn, led to the confrontation of two ideologies, which gave a new impetus to the development of conventional features and institutions of ancient Chinese law, dates back to the second half of the III century BC, when legalism in its extreme form was recognised as the official ideology of the first Chinese empire of Qin (Xiaoming, 2023). As for the difference between the two most ambitious political and philosophical doctrines, it is necessary to analyse each of them separately.

As stated by Ch. Tan (2020), Confucianism was based on the patriarchal-paternalistic concept of the state, where the power of the emperor (the “son of heaven”) is likened to the power of the father, and the relations of rulers and subjects are family relations, where the younger depend on the older. Thus, the state acted as a family, where each person had their role and their set of rights and obligations to each other. In the philosophy of Confucius, a hierarchical system is clearly traced, built on the principle of vertical and inequality, giving power to the aristocracy. However, Confucianism did not leave a place in its concept of political injustice, as it advocated the state ideal in the form of the rule of aristocrats. Therefore, Z. Deng *et al.* (2022) argue that Confucius’ political ethics was generally aimed at achieving inner peace between the upper and lower levels of society and stabilising the government. The regulation of political relations

through the norms of virtue in the teachings of Confucius is sharply opposed to law-based governance: “If”, he stressed, “one leads the people through laws and maintain order through punishments, the people will seek to evade (punishments) and will not feel shame” (Tan, 2020). L. May (2020) attributes Confucius’ negative attitude towards positive laws (Fa) to their traditionally punitive meaning, their connection (in practice and in theoretical concepts, in legal consciousness) with cruel punishments. Therewith, Confucius did not completely reject the significance of legislation, assigning it a supporting role. Notably, rituals served as a regulatory framework in Confucianism. This was because public life still had to be regulated, and it was possible to do this thanks to moral norms, traditions, rituals. Thus, Confucianism was firmly entrenched in political and social life, so it soon became the state religion.

As noted above, the competing trend in relation to Confucianism was the school of Legalists. Thinkers of this school of thought were engaged in the development of concepts and management methods that were supposed to legally consolidate the absolute power of the ruler, sometimes going beyond morality (Toti, 2023). As asserted by E. Toti (2023), main ideas of the school of legalism were based on positive laws and punishments. This understanding is connected with the internal relations between the population and the state authorities. Believing that human nature is bad and egoistic instincts command people, the legalists considered rewards and punishments to be the best method of influencing the people, and they assigned the leading role to punishments (May, 2020). The legalists paid attention to the fact that the laws were brought to attention of all subjects and were stated in a simple, understandable language for everyone (Dongwang, 2024). Thus, in the legalists’ school of legal thought, the law acted as a form that could be filled with any content. In addition, the legalists advocated for the collective responsibility, as a result of which centralised power was strengthened and laid the foundation for further governance of the state. Thus, the main feature of the legalist doctrine was the consolidation of strict laws as a means of controlling citizens.

Of particular interest is another philosophical and legal school of thought in Ancient China, namely the school of the Mohists, which existed until the end of the III century BC. Mo-tzu and his followers belonged to the stratum of “servants” (shi), close to the free labour lower classes of Chinese society—farmers, artisans, merchants (Tang, 2023). The Mohists, as well as the legalists, were against the views of Confucius, but for a different reason. This school of thought justified the idea of the natural equality of all people. Therefore, the state was formed according to the agreement between all citizens. This position is based on the idea that people are the source of power. The specific feature of this school of thought was that a balance was stricken between understanding the thoughts of the people and punishment. In summary, this school of law used a social approach to the consideration of legal and political phenomena, without using harsh methods of violence and oppression.

Thus, the author of this study states that the development of legal thought in Ancient China was of an

applied nature and mainly governed the issues of public administration of the social life of society (Tang, 2023). The schools of thought discussed above (Legalism, Taoism, Confucianism, Mohism) describe ancient China as a rationalistic society that puts the consideration of man as the basis of its philosophical reasoning. The very becoming of ancient China underwent a stable development without class clashes, unlike European development. This was largely explained by the fact that although these schools were at enmity with each other, they were similar in one thing, namely that they viewed the state from the standpoint of a family, where each person had their role. This is proved, for example, by the school of Taoism, where law was a self-regulating sphere of governing relations, without consideration of the position of the people (Xu, 2023). Alternatively, Confucianism a school of thought where citizens were directly placed in a dependent position, and the law implied the justice of punishment by senior aristocrats (Tan, 2020). Legalism, in turn, interpreted the law as a means of managing the population, while punishment was one of the ways to achieve this purpose. Mohism saw the value of legality only regarding a balance of the people’s thought and public administration.

Current state of the research of the political and legal doctrine in Ancient Greece

While conducting a comparative analysis of Ancient China and the West, it should be noted that the states that made the key contribution to the legal science of that period are Ancient Greece and Rome. These states were chosen as a criterion for comparison with Ancient China because they had an active political life, which formed many theoretical and philosophical schools of thought. As stated by D.L. Dusenbury (2021), Greece was the birthplace of philosophy as a special form of worldview, which included theology, natural philosophy, law, ethics, etc. For a comprehensive study of this phenomenon, it is necessary to consider the development of the Ancient Greek legal direction within the framework of periodisation. G. Papanikos (2022) distinguishes between the following milestones in the development of Greek philosophy:

1. The early period (9th–6th century BC) associated with the time of the emergence of ancient Greek civilisation;
2. The classical period (5th – the first half of the 4th century BC): the heyday of philosophy and teachings about the state and law;
3. The period of Hellenism (the second half of the 4th – 2nd century BC) is the period when the decline of Ancient Greek statehood took place, and Greece fell under the rule of Macedonia, and then Rome.

Thus, the early period of ancient Greek legal science is described by the emergence of the first written laws that began to govern all parts of society, both property and moral norms. Attempts were made to rationalise the ideas about the moral and legal order of social relations, which are developing in the works of the “seven wise men”, with whom Plato associated the “rudiments of Hellenic wisdom” (Petratos, 2022). Most frequently they include Thales (he is called the “father of philosophy”), Pittacus, Periander, Biant, Solon, Cleobulus, Chilo. At this stage of development, the first sources of law are being developed and consolidated. Greeks formulated general moral and

religious principles in the form of the Commandments of Chiron, humanistic principles are formed and opposed to chaos (Stuart-Buttle, 2019). The sources of law for that period were legal customs in oral form, religion, customs.

The classical period in Ancient Greece is described by the flourishing of the polis system and slave-owning democracy. In this period, the philosophical thought of Socrates, Protagoras, Aristophanes, Hippocrates, Democritus, Plato, and Aristotle is developing (Petratos, 2022). The most striking trend of legal thought at that time was sophistry. Sophists not only created the foundations of the adversarial judicial system, the evidence base, but also taught rhetoric and the art of arguing. However, under the influence of ideological opponents, primarily Plato and Aristotle, the term “sophistry” acquired the meaning of an imaginary, superficial philosophy and eventually became a household name for reasoning based on deliberate violation of the laws of logic (Lehoux, 2020). This period of philosophy and science is also called the heyday because customs were fixed in writing, which in turn led to the creation of legal norms. According to G. Papanikos (2022), Solon’s reforms triggered the emergence of principles, which are currently used in everyday life:

- 1) the primacy of law (before the primacy of the authority of the interpreter);
- 2) the right to a public action;
- 3) the right to appeal decisions of the executive power (archons), the courts of the Philae and ancestral courts, in the People’s Court (Heliiaia);
- 4) isonomy (equality before the law);
- 5) isogory (equal right to speak);
- 6) isangelia (rights to defend democracy).

In addition, it is necessary to note the development of the state-legal conflict concerning *nomos* – the decision of the People’s Assembly, which became a state law, and *sephism* – court decisions that concern any individuals (Gomperz, 2017; Ramachandran, 2024). The development of law in Athens led to the understanding that this contradiction can be removed by drafting “nominal laws” (special legislative norms for a group of persons singled out by *psephism*) (Papanikos, 2022). In this period of time, a judicial precedent was also developing.

Thus, developing in the form of independent policies, the formation of philosophical school of thought in Ancient Greece transpired within the framework of the process of social stratification of the population and the struggle of different groups of society for control of power. However, not only the population waged an intra-class war, but also policies for dominance on the world stage. These socio-political factors also influenced the development of philosophical schools and approaches. If the early period was described by the rationalisation of the state and law, the period of Hellenism was marked by the fall of statehood and the influence of Roman law. Proceeding from these objective factors, it can be stated that the specific feature of the legal phenomenon is the active growth of various schools with different views. They did not consider the state from the standpoint of social roles. The tough struggle of policies forced the development of the fundamentals of the judicial process, the principles of judicial proceedings, and the consolidation of contractual relations in the competitive struggle.

Modern view of the political and legal teachings of Ancient Rome

The political and legal thought of Ancient Rome was influenced by Ancient Greek philosophy and was largely based on the achievements of Greek thinkers. Based on their works, questions of law, morality, statehood, and politics were studied. These theoretical writings became an integral part of the Code of Justinian, which later became the basis for legislative activity. The main political and legal ideas of Ancient Rome were formed from the works of Roman philosophers. P. Du Plessis (2022) suggests the following periodisation of the development of Roman law:

- 1) the initial, royal period (754-510 BC);
- 2) republican (509-28 BC);
- 3) imperial (27 BC-476 AD).

During the tsarist period, legal and political views developed in the context of an acute struggle between the poor—plebeians, and the rich and noble – patricians (Van den Berge, 2024). As a result of the reforms of the VI Roman king Servius Tullius, the plebeians were included in the “Roman people”, received the right to take part in the people’s assembly and to a share of public property, but they were not fully equal in rights with the patricians and continued to fight for their rights for a long time. In the middle of the 5th century BC, they demanded the drafting of written legislation. As a result, the “Laws of the XII Tables” were compiled, which reflected the specifics of ancient Roman property, estate, and family relations, toughened the nature of slavery, and consolidated the institution of debt slavery (Van den Berge, 2024).

P. Burns *et al.* (2021) stress the Republican period was distinguished by the specific feature of the development of legal thought within the framework of the philosophy of the ancient Greece. In their reasoning, the Roman schools of law proceeded from the idea of justice, forms of government. They developed an extensive complex of political and legal issues in the field of the general theory of state and law (concepts of power, officials, and their powers, citizenship); civil law (norms of legal relations of commodity producers: buyer and seller, creditor, debtor, contract, obligation, property, legal capacity), and essentially, created legal science. These schools also provided an in-depth elaboration of the issue of slavery within the empire. Unlike the Greek philosophers, the Roman authors reflected on such concepts as “private property”, “persons”, “citizenship” (Allen & Henderson, 2022; Ciutacu, 2023). The schools attempted to regulate different spheres of society. During the republican period, there is a transition to the imperial form of government, which is described by the decline of cities-polises, a change in ideology, state power from a mixed type to sole rule and the flourishing of the slave system (Eberle, 2024).

The most prominent figure of philosophical and political science of that period was M.T. Cicero (2014). Author political and legal views are set forth in his works “On the State”, “On Laws”, “On Duties”, as well as numerous political and legal speeches. Cicero’s ideas were based on the fact that state power comes from the people. The people represented not only a group of individuals with different socio-political status, but a set of personalities who can reach an understanding on important issues by coordinating the will of the parties. Thus, Cicero’s view of society

and the state was similar to the ancient Greek thinkers, but still the state was a legal entity, not just a people. In the question of understanding statehood, M.T. Cicero (2014) believed that natural law arises first, and only then the state and written law emerge. This implies the requirement that human institutions (political institutions, written laws) correspond to justice and law, because the latter do not depend on the opinion and discretion of people. According to M.T. Cicero's (2014) legal reflections, it can be stated that the criterion of justice in society is the ratio of the norms of law to natural law. There is also an opposite position on these issues, which was expressed by the Stoics. One of the representatives of this school was L.A. Seneca. The philosophical trend of the Stoics argued that the omnipresent element of the surrounding reality is fate, so a person needs to submit to it and bear all the difficulties of life. Slavery in the Stoic view was a normal and natural phenomenon. Further, the philosophical and legal view of reality served as the basis for the Christian trend.

Thus, the development of scientific ideas and concepts on politics, the right of society in the period of Ancient Rome took place within the framework of the formation of Caesarism, where the power of the emperor was arbitrary and unlimited, which constantly required legal justification and regulation. After the collapse of the Roman Empire, a vast array of legislative framework was created, which is currently used in modern-day society. Thus, the basic principles of civil and family law were laid down, instruments of contract law were created, the rights and duties of officials were regulated, such institutions as the institute of citizenship, individuals and legal entities and others appeared.

Implications of Comparing Legal Systems

For a comparative analysis of the legal phenomena of the period of ancient China, Greece, and Rome, it is necessary to introduce certain correlation criteria. Such criteria will be immediately branches of law and legal mechanisms that existed at that time (Assael *et al.*, 2022; Duan *et al.*, 2023). K. Vlassopoulos (2023) notes that historically, creation and regulation of public life takes place during the slave-owning system. This fact is confirmed by both Rome during the imperial period and China during the slave-owning era. In this state, norms on property appear, family relations are regulated, and a branch of criminal law arises (Liang, 2020; Gordley, 2023). The right of ownership is a fundamental element of any legal system, since land is a resource that almost all segments of the population want to possess legally. Therefore, such property rights as the right of ownership, possession, and disposal appear in Chinese law. Land in China began to be sold and bought, divided into small plots or concentrated into large allotments, but a private or collective owner could only dispose of the right to own it, never transcending into full private ownership (Gordley, 2023). Furthermore, contract law was actively developing in China. One of the first to emerge were the contracts of exchange, purchase and sale, donation, lease. Contracts for hiring people and loans, the terms and conditions of which were governed by customary law, were widespread (Gimenez, 2020; Qi, 2022). Along with the right of ownership, family law is fundamental. As explained M. Staiano (2023), by family

law in China consisted, taking the tradition of the East, of a patriarchal way of life. Within the framework of this concept, men were the bearer of power, whom all family members obeyed. The legal status of women was humiliating, as they were deprived of the right to inheritance, personal property, and socio-political rights. However, with the development of the philosophical school of legalists and the development of private property, family relations became less categorical. Although intersubstantial marriages were still banned, for which criminal liability was prescribed. The specific feature of Chinese family law, in contrast to the European one, was that the divorce was not of a negative social nature. Confucian views on marriage and family relations considered the family as the primary and main unit of society, created within the framework of natural law (Li *et al.*, 2022).

The criminal law of ancient China consolidated the following types of crimes: crimes of a state nature (rebellion, conspiracy), religious crimes (shamanism, throwing ashes into the street), crimes against the person (murder, bodily injury), crimes against property (theft, robbery, slaughter of other people's cattle), military crimes (failure to appear before the established the deadline for the place of gathering, not the manifestation of courage by a warrior) (Shang, 2022). In criminal law, the concept of crime was prescribed, which was interpreted as an act related to the manifestation of the criminal will of a person (Hallebeek, 2020). The measure of guilt and the severity of the punishment had to correspond not so much to the nature of the offence itself as to the nature of the criminal's spiritual state, not so much the severity of the criminal act as the intensity of the criminal will (Li *et al.*, 2022). Thanks to Confucianism, the subjective side of the crime, namely intent, has taken root in criminal law. In addition, from Confucian approaches in criminal science, the principle of consideration of mitigating and aggravating circumstances has been developed. The final approval of the traditional system of punishments in the 5th-4th centuries BC was associated with its philosophical interpretation based on the use of the number "five", which was sacred for the ancient Chinese (Tang, 2023). The scale of punishments, reflected in the Code of Mu-wan, included five main types of punishments: mosin (ink mark on the face) and isin (cutting off the nose), applied for 1,000 different kinds of provinces each, fasin (cutting off the legs), assigned for 500 provinces, alien (castration for men and transformation into female recluse slaves) – for 300 provinces and danisin (beheading) – for 200 provinces (Shang, 2022).

The system of law in Ancient Greece and Rome was mainly based on the principle of the rule of law. The norms of law were developed in the ancient world over a long period of time. Greek law influenced the establishment and development of the law of another polis. The teachings of Demosthenes, Aristotle, Plato and other philosophers largely predetermined the becoming of the system of Roman law, and thereby modern legal culture (Li *et al.*, 2022). The extremely specific feature of the state structure, namely the system of policies, led to written customs, gradually moving away from religious canons. The rule of law led to the codification of custom: the codification carried out by Zalevk in Locri (South of the Apennine Peninsula), and the codification of Charond

(Catana, Sicily) (Liang, 2020). In Rome, traditional legal customs were processed and recorded in the Laws of the XII Tables. These laws also made provision for a rule according to which the decision of the People's Assembly was considered law (Hallebeek, 2020). The specific feature of the legal system in Ancient Greece was that custom, mononorms were considered the main source of law for a long time; later, theory and practice started recognising the priority of laws, resolutions of the People's Assembly over customs (Liang, 2020; Gordley, 2023). The right of ownership, as well as in China, was the basis of state regulation, it was divided into private and state. The right of possession and ownership was recognised, although theoretical science did not develop a legal definition of the concept. Binding relations in Ancient Greece emerged from contractual and delicate legal relations. There were also such forms of securing the obligation as a deposit, pledge, surety. Contract law knew such types of agreements as purchase and sale, hiring, contract, loan. Marriage and family relations in Ancient Greece were developed within the framework of monogamy with a patriarchal regime. Marriage was a duty of citizens to society. Therefore, for the absence of a family, there was not only censure from the citizens of society, but also punishment. Women in family relationships, as well as in Ancient China, were practically disenfranchised before their husband and the state. The only power they received was the solution of domestic family issues. Ancient Greek law also prescribed the institution of inheritance, which was divided into a will and legal grounds. The crimes were classified. The criminal law of Ancient Greece consolidated state crimes, crimes against family, personality, property (Li *et al.*, 2022). Treason, deceit of the people, insulting the gods, theft of temple property, and premeditated murder were punished with the greatest severity (Schofield, 2020). This understanding of legal institutions provided a solid foundation for the subsequent process and development of Roman law. The legal view of society and the state also determined the sources of Roman law that emerged. However, as noted earlier, Roman philosophers often turned to Greek philosophy, in particular Cicero, who turned to the earlier Greek tradition to show natural law and normative law (Lehoux, 2020).

Economic circumstances, migration processes, and the multinational nature of the state contributed to the development of Roman law. It is impossible not to note, finally, the attention paid to law and the honour that surrounded the work of lawyers, especially outstanding ones, such as Guy, Ulpian, Modestinus, Papinian, Pavel, etc. (Rebenich, 2022). For a comprehensive study of the comparative characteristics of the legal system of Ancient Rome, it is necessary to talk about the periods of its development. In the tsarist period, as in other states, customs were the main sources of law. At that time, Roman law could only govern relations between Roman citizens – Quirites. The key regulatory document in civil law was a set of laws governing contractual, family, criminal, and other legal relations. This document was called The Laws of the Twelve Tables. Civil law, rigidly bound by traditions, from the 4th–3rd centuries BC, began to be amended by a new source of law – praetorian edicts, reflecting new relations generated by the transition from ancient forms of purchase and sale, loans and mortgages to more complex legal relations

caused by the growth of commodity production, commodity exchange, banking operations, etc. (Turner, 2021). As previously noted, the comparative analysis takes place according to several criteria, and therefore, both in Ancient China and Greece, and in Rome, the main issue was the consolidation of the institution of private property. The category of property in civil law was interpreted as the full and absolute right to use and dispose of things with restrictions that are established by contract or law (De Wilde, 2021). Such a restriction of private property was an easement. The easement allowed another person to use the right to someone else's thing. This is a unique development of Roman theoretical science. A critical area of private law is the law of obligations. It is thanks to Roman private law that civil law codes are used in the states of the Romano-Germanic family in an almost unchanged form since the time of the Roman Empire. In Roman law, there was a construction of consolidating the agreed will of the parties in an agreement. Fundamental principles such as compliance with the law, the exclusion of violence or deception when agreeing on the will of the parties were also considered. At present, thanks to the construction of Roman lawyers, all agreements are divided into verbal, literal, real, consensual contracts. A verbal contract was the oldest type of agreement, a verbal obligation, based on which, at the time of the Laws of the Twelve Tables, transactions of several types were made, such as purchase and sale, exchange, loan, etc. (Rebenich, 2022). Literal contracts were interpreted as a written obligation of the parties. Real and consensual contracts described the moment of performance of the obligation.

Marriage and family relations in ancient Rome were described by a formality of approach. There were as many as three ways of marriage: a sacred oath, the purchase of a bride, a marriage without the power of a husband. Notably, there is similarity of the approach to family relations compared with China. As in Ancient China, family relations were built within the patriarchal system, where the main form of marriage was the establishment of family relations without the authority of the husband. The specific feature of this form was that the establishment of marital relations had to be accompanied by the consent of the husband and wife. Divorce, unlike the legal norms of Ancient China, was a free choice of every person and was not censured by society. The right of ownership gradually penetrated family relations. This was expressed thanks to the institution of the division of jointly acquired property between spouses. Although Roman society was patriarchal, the rights of the wife were not as severely restricted as in ancient Greece and China. Criminal law in ancient Rome comprised many laws, including the Laws of the Twelve Tables, from the resolutions of the people's assemblies and the Senate, as well as laws issued on the initiative of dictators and emperors (Allen & Henderson, 2022). Since Roman thinkers and philosophers devoted their studies to statehood, governance, politics, and the institution of citizenship, many state crimes penetrated into criminal legal relations. Such crimes included: crimes directly affecting the interests of the Roman state, embezzlement of state property and embezzlement of public funds, bribery, forgery, counterfeiting, participation in prohibited gatherings and associations (Rebenich, 2022). The death penalty was also used as a punishment. Execution by poisoning

was prohibited by Roman law, but many factors suggest the opposite. Thus, Roman law forms the basis of many legal systems currently operating in continental Europe, Latin America, East Asia, and other parts of the world. The evolution of Roman law from the earliest period of Roman history to the codification of Justinian inclusive in the 6th century AD, allows considering the change in the legislative framework of Ancient Rome.

Conclusions

In the article was analysed the studies of the origin and evolution of legal thought in ancient China, Greece and Rome. The collected evidence suggests that most researchers tend to focus on the chronological development of the legal thought in each particular country, while paying little to no attention to a repertoire of external factors that could precondition the evolution of the legal philosophy in China, Greece, and Rome. Studies aimed to examine the development of legal thought in its political, socio-economic, or cultural context are few in number. The existing approach to the study of the legal philosophy in the selected countries has some limitations; in particular, it does not acknowledge interactions between the countries across major milestones and does not provide considerations for creating shared philosophical space for the present-day community.

This article sought to address the detected discrepancy by conducting a comparative analysis of the rise and development of legal thought in ancient China, ancient Greece, and ancient Rome. The comparative analysis revealed the main difference between the legal system of China and that adopted in Greece and Rome was in the

approach to political leadership as a source of legal power: While ancient Chinese society was viewed as a family, with a father ruler, ancient society of the West was formed and developed within the framework of class struggle. The detected difference might be attributed to the philosophical thought shaping the development of eastern and western countries at different stages of their statehood.

The detected difference, however, does not negate the fact that the legal thought in ancient China, Greece, and Rome developed in a single track. The comparative analysis revealed considerable similarities in the legal thought across a repertoire of domains, including marriage, private property, trade, and election. These similarities can be attributed to political, socio-economic, cultural, and other interactions between the countries as a result of geographic discoveries. The 20th century globalization has made these similarities further more profound, which gives reason to believe in the possibility of creating a shared philosophical space for the mankind.

Further research could focus on analysing external factors, such as intercultural exchanges, geographical discoveries and political contacts, that influenced the formation and evolution of legal thought in China, Greece and Rome. In particular, attention should be paid to how common challenges (economic, political or social) stimulated similarities in legal systems.

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Conflict of Interest

None.

References

- [1] Allen, K.R., & Henderson, A.C. (2022). Family theorizing for social justice: A critical praxis. *Journal of Family Theory & Review*, 14(3), 364-383. doi: [doi: 10.1111/jftr.12450](https://doi.org/10.1111/jftr.12450).
- [2] Assael, Y., Sommerschild, T., Shillingford, B., Bordbar, M., Pavlopoulos, J., Chatzipanagiotou, M., Androutsopoulos, I., Prag, J., & de Freitas, N. (2022) Restoring and attributing ancient texts using deep neural networks. *Nature*, 603(7900), 280-283. doi: [doi: 10.1038/s41586-022-04448-z](https://doi.org/10.1038/s41586-022-04448-z).
- [3] Burns, P.J, Brofos J.A., Li, K., Chaudhuri, P., & Dexter, J.P. (2021). [Profiling of intertextuality in Latin literature using word embeddings](#). In *Proceedings of the 2021 conference of the North American chapter of the Association for Computational Linguistics: Human language technologies* (pp. 4900-4907). Bangkok: Association for Computational Linguistics.
- [4] Cicero, M.T. (2014). *On the republic and on the laws*. Ithaca: Cornell University Press.
- [5] Ciutacu, L. (2023). The evolution of the legal institution of marriage in Roman law. *Scientia Moralitas Conference Proceedings*, 63-67. doi: [doi: 10.5281/zenodo.7756315](https://doi.org/10.5281/zenodo.7756315).
- [6] De Wilde, M. (2021). Roman dictatorship in the French revolution. *History of European Ideas*, 47(1), 140-157. doi: [doi: 10.1080/01916599.2020.1790023](https://doi.org/10.1080/01916599.2020.1790023).
- [7] Deng, Z., Yang, H., & Wang, J. (2022) [A comparative study of Shiji and Hanshu from the perspective of digital humanities](#). In *Proceedings of the 21st Chinese national conference on computational linguistics* (pp. 656-670). Nanchang: Chinese Information Processing Society of China.
- [8] Dongwang, L. (2024). Differences and integration of political thought between ancient Chinese Confucianism and legalism. *TRANS/Form/AÇÃO: Revista de Filosofia*, 47(4). doi: [doi: 10.1590/0101-3173.2024.v47.n4.e0240042](https://doi.org/10.1590/0101-3173.2024.v47.n4.e0240042).
- [9] Du Plessis, P.J. (2022). Thinking like a lawyer: The case for Roman law. *Acta Universitatis Lodzianensis. Folia Iuridica*, 99, 165-172. doi: [doi: 10.18778/0208-6069.99.12](https://doi.org/10.18778/0208-6069.99.12).
- [10] Duan, S., Wang, J., & Su, Q. (2023). Disentangling the cultural evolution of ancient China: A digital humanities perspective. *Humanities and Social Sciences Communication*, 10(310). doi: [doi: 10.1057/s41599-023-01811-x](https://doi.org/10.1057/s41599-023-01811-x).
- [11] Dusenbury, D.L., (2021). *Platonic legislations. An essay on legal critique in Ancient Greece*. Cham: Springer International Publishing, "Springer Briefs in Philosophy".
- [12] Eberle, L.P. (2024). The edicts of the praetors: Law, time, and revolution in ancient Rome. *Law and History Review*, 42, 237-261. doi: [doi: 10.1017/S0738248023000500](https://doi.org/10.1017/S0738248023000500).
- [13] Gimenez, C. (2020). [Humanity remembers: On Jung, mythological criticism and archetypes](#). *Bridging Cultures*, 5, 58-70.
- [14] Gomperz, T. (2017). *Greek thinkers: A history of Ancient philosophy*. Norderstedt: Hansebooks GmbH.

- [15] Gordley, J. (2023). [The rule of law in traditional China](#). In H. Jiang & P. Sirena (Eds.), *The making of the Chinese Civil Code* (pp. 235-248). Cambridge: Cambridge University Press.
- [16] Hallebeek, J. (2020). Teaching Roman law in the 21st century: A note on legal-historical education in the Netherlands. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 137(1), 194-227. [doi: 10.1515/zrgr-2020-0006](#).
- [17] Lehoux, D. (2020). Saved by the phenomena: Law and nature in Cicero and the (Pseudo?) Platonic epinomis. *Studies in History and Philosophy of Science Part A*, 81, 55-61. [doi: 10.1016/j.shpsa.2019.03.001](#).
- [18] Li, W., Shao, Y., & Bi, M. (2022). [Data construction and matching method for the task of ancient classics reference detection](#). In *Proceedings of the 21st Chinese national conference on computational linguistics* (pp. 600-610). Nanchang: Chinese Information Processing Society of China.
- [19] Liang, Z. (2020). [Discrimination of law](#). Guilin: Guangxi Normal University Press.
- [20] May, L. (2020). Ancient Greece and China. In *Ancient legal thought: Equity, justice, and humaneness from Hammurabi and the pharaohs to Justinian and the Talmud* (pp. 219-394). Cambridge: Cambridge University Press. [doi: 10.1017/9781108670012](#).
- [21] Nedelea, M.O. (2023). The role of legalism in the development of Chinese law. In *The 3rd International conference "Development through research and innovation"* (pp. 67-76). Chisinau: ASEM. [doi: 10.53486/dri2022.06](#).
- [22] Papanikos, G. T. (2022). The five ancient criteria of democracy: The apotheosis of equality. *Athens Journal of Humanities & Arts*, 19(2), 105-120. [doi: 10.30958/ajha.9-2-1](#).
- [23] Petratos, P. (2022). [Some remarks on the five criteria of democracy](#). *Athens Journal of Humanities & Art*, 9(3), 261-274.
- [24] Qi, J. (2022). [The crime of "Weibushan" in the bamboo slips of Qin: Study on the law and ethical order of the Qin Dynasty](#). *Monthly Journal of Historical Science*, 495(1), 19-30.
- [25] Ramachandran, M. (2024). Tracing the roots of modern human rights in ancient Greek thought. *Morgan Journal of Interdisciplinary Research Studies*, 1(1), 25-31. [doi: 10.3126/mjirs.v1i1.63313](#).
- [26] Rebenich, S. (2022). [Theodor Mommsen's history of Rome and its political and intellectual context](#). In V. Arena, J. Prag & A. Stiles (Eds.), *A companion to the political culture of the Roman Republic* (pp. 81-92). Hoboken: Wiley.
- [27] Schofield, M. (2020). [Cicero: Political philosophy](#). Oxford: Oxford University Press.
- [28] Shang, Y. (2022). [The book of Lord Shang](#). Beijing: Zhonghua Book Company.
- [29] Staiano, M.F. (2023). [Chinese law and its international projection. Building a community with a shared future for mankind](#). Buenos Aires, Brazil: Springer.
- [30] Stuart-Buttle, T. (2019). [From moral theology to moral philosophy: Cicero and visions of humanity from Locke to Hume](#). Oxford: Oxford University Press.
- [31] Tan, Ch. (2020). Confucianism. In M.A. Runco & S.R. Pritzker (Eds.), *Encyclopedia of creativity* (pp. 195-198). Academic Press. [doi: 10.1016/B978-0-12-809324-5.23740-1](#).
- [32] Tang, H. (2023). [A comparative study of Chinese and Western power supervision systems from the perspective of traditional political culture](#). *Open Journal on Political Science*, 13, 18-32.
- [33] Toti, E. (2023). [The connections between Roman law and Chinese civil law](#). In H. Jiang & P. Sirena (Eds.), *The making of the Chinese Civil Code* (pp. 308-324). Cambridge University Press.
- [34] Turner, S. (2021). [The naked State: What the breakdown of normality reveals](#). In G. Delanty (Ed.), *Pandemics, politics, and society: Critical perspectives on the Covid-19 crisis* (pp. 43-58). Berlin: Walter de Gruyter.
- [35] Van den Berge, L. (2024). Aims and methods of legal history – The case of the Roman dictatorship. *Law and Method*. [doi: 10.5553/REM.000081](#).
- [36] Vlassopoulos, K. (2023). [Slavery in ancient Greece](#). In D.A. Pargas & J Schiel (Eds.), *The Palgrave handbook of global slavery throughout history* (pp. 67-87). Cham: Palgrave Macmillan.
- [37] Wahyudi, A.A., Nasution, M.A., & Rahmat, P. (2022). The concept of justice in the perspective of Greece philosophy and its relevance to the development of modern political law. *Journal of Law Politic and Humanities*, 2(3), 124-132. [doi: 10.38035/jlph.v2i3](#).
- [38] Wang, X.Y. (2023). The legacy of ancient cultures: Rational concepts in ancient Chinese and ancient Greek methodology and their significance in modern literature. *Eurasian Journal of Applied Linguistics*, 9(1), 110-122. [doi: 10.32601/ejal.901010](#).
- [39] Wenhao, Z. (2023). Beyond morality: Han Fei's unconventional insights into human nature. *Cultural and Religious Studies*, 11(12), 611-615. [doi: 10.17265/2328-2177/2023.12.004](#).
- [40] Xia, H. (2021). [From evil human nature to law, technique, and power: On the main purpose of Han Fei's thought](#). *Confucian Academy*, 8(4), 88-99.
- [41] Xiaoming, C. (2023). [Historical evolution and characteristics analysis of the judicial officer responsibility system in ancient China](#). *SHS Web of Conferences*, 158, article number 02019.
- [42] Xu, J. (2023). A comparison of the Chinese and Western systems of judicial protection of human rights. In *Proceedings of the 2023 2nd International conference on public culture and social services (PCSS 2023)*, (pp. 219-227). Singapore: Springer Nature. [doi: 10.2991/978-2-38476-130-2_27](#).
- [43] Yixin, L. (2023). The similarities and differences between the legal thought of the Qin Dynasty and Machiavelli. In *Proceedings of the 2023 7th International seminar on education, management and social sciences* (pp. 28-41). Singapore: Springer Nature. [doi: 10.2991/978-2-38476-126-5_5](#).
- [44] Zhenzhen, G. (2022). What is "Ancient Chinese logic"? In J.-Y. Béziau, J.-P. Desclés, A. Moktefi & A.C. Pascu (Eds.), *Logic in question: Talks from the annual sorbonne logic workshop* (pp. 3-15). New York: Springer International Publishing. [doi: 10.1007/978-3-030-94452-0_1](#).