

On the Differences between Chinese and Western Legal Ideas in the Process of Chinese Legal Modernization

—Taking the Witness Affidavit as an Example

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Abstract

The basic way of modernizing Chinese law is to transplant foreign laws. Introducing the Western legal system directly into China as an “imported product” and letting the Western legal system play a role in China’s legal system which is a process of localizing a foreign legal system into China. In this process, the collision of two different legal traditions between China and the West will inevitably lead to conflicts of many legal concepts and problems in the operation of the legal system. Among them, the introduction of the witness oath system is an example. This article takes the introduction of the witness oath system in the process of Chinese legal modernization as an entry point to deeply analyze the differences between Chinese and Western legal concepts in the process of legal system transplantation and even the entire legal modernization process. This concrete and realistic difference is ours. How should it be solved?

Keywords

Legal Modernization, Witness Oath, Legal Concept, Legalization of China

1. Modernization of Chinese Law

China’s modernization is also known as China’s early modernization or China’s modernization [1]. A different understanding has been put forward by scholars with different views. But the concepts revealed by the concepts of “modernization” or “modernization” are similar. So what is modernization? American scholar Mr. Rozman believes that modernization is a process of social transformation that has been experienced or experienced by all societies under the in-

fluence of time and again. The gradual experience of modern society tells us that modernization should best be seen as a process involving all levels of society. Some social factors have changed, which may have far-reaching or even direct effects on other factors. Introducing new factors, even seemingly unrelated factors, will change the environment in which historical factors operate. There is no doubt that modernization is the most dramatic, far-reaching and clearly inevitable social change in human history. Whether it is a blessing or a curse, these changes will ultimately affect all nations and nations that are in contact with countries that already have a modern model. The existing social model has been destroyed without exception, and modernization has always been a self-standard, although the determination of modernization of various countries and nations varies. The fruits of modernization or some of its effects have spread all over the world. Perhaps some parts of the world will never reach this irreversible tipping point, and many countries will certainly not be able to do so for a long time. And resources are not enough to support the highly modernized issues of all societies. Many societies, as long as they are societies, will be resisted by traditional forces. However, after the modernization, no country will return to the country that did not meet the modernization [2]. This is a basic view of modernization. This view is of great significance to our understanding of the issue of modernization. China's modernization can also be called China's modernization. In the early or early stage of China's modernization, we experienced a very complicated and difficult process. Among them, the modernization of law is an important performance.

In the process of modernizing Chinese law, the renewal of legal concepts is earlier than the updating of legal systems. The renewal of the legal concept is mainly reflected in the conflict and inversion of the input of Chinese traditional legal culture and Western legal culture. The main features of Chinese traditional legal culture can be summarized as: "the complementarity of ritual and law, comprehensive treatment"; the coordination of heaven, national law and human condition; the value orientation of public rights, light private rights and non-litigation; Dominant law; strict identity level and different legal adjustments; family-based social structure, family law is a supplement to national law; heavy punishment is light, and law is a concentrated representative of law [3]. In addition, the influence of Confucian ethics on Chinese traditional legal culture is profound. For example, in the "Tang Law Discussion", the "Ten evils" rule is a powerful proof of the combination of Confucianism and Chinese traditional law, "A slap in the face of rebellion. The five sorrows are not respectful. The six sorrows are disrespectful. The seven sorrows are not filial. The sorrows are not sorrowful. The nine sins are unjust. The Ten Commandments are in chaos" [4] and Western legal culture is very different from traditional Chinese legal culture. The characteristics of western legal culture are mainly reflected in the two main characteristics of the concept of rights-based and the rule of law. For example, in the Declaration of Independence, "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain un-

alienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. Can be translated as: We think These truths are self-evident: people are born equal, and the creators give them certain inalienable rights, including the right to life, liberty, and the pursuit of happiness” [5]. The two legal cultures are completely different. Professor Zhang Zhongqiu said in his article “Cognition of Chinese and Western Law Culture”: “Confucian ethics makes traditional Chinese law a moral law, law becomes a moral tool, and morality becomes the soul of law. This not only makes Traditional Chinese law has lost its independent character, and it has fundamentally hindered its transformation to modern times” [6]. So the modernization of Chinese law The renewal of ideas is a very difficult, long and complicated process.

In the more than half a century after the Opium War in 1840, we gradually began to innovate from the ideological concept. The modern legal culture of the West deeply influenced the ancient China and also innovated our philosophy. Western legal thoughts are also constantly affecting China, for example, the late Qing government’s study and introduction of Western laws.

2. The Different Provisions of the Witness Oath System in the Chinese and Western Legal System

Taking the witness oath system or the witness guarantee system as an example, we have studied many traditional contradictions and conflicts in the process of establishing the legal system and the modern legal concepts of the West. As an important concept in the evidence system, the witness oath system originated in ancient Greece and Roman times. The oath system has experienced a long-term and complicated process in the development of history and the development of civil law, the major countries of the Anglo-American legal system, and today it has become an important system in the witness system of the rule of law. Under the background of legal globalization, China is constantly introducing and absorbing foreign advanced legal systems while building a socialist rule of law system with Chinese characteristics. At the same time, it has begun to pay attention to the witness swearing system to improve China’s legal system. Judging from the current situation of legal transplantation in China, the evidence system is urgently needed to be improved. However, in this process, we do not know how to transplant evidence system, how to make the foreign legal system take root, blossom and result in our country. How to make the evidence system play its role better and become an integral part of the entire legal system.

1) Witness oath system in the Chinese legal system

On the practical level, one case is used to study the witness oath system under the legal transplant in China. A city court applied for an oath for the first time to improve the witness appearance system. The witness stood on the witness stand of the criminal court of the court and solemnly sworn to the court. Among the contents of the witness’s oath: “I use my personality and conscience to ensure that I will faithfully fulfill the obligations of the law to testify, to ensure the true statement, without any concealment. If you violate the oath, you are willing to

accept moral condemnation and legal punishment. [7] This is also the first time that the court system has implemented a witness affidavit in criminal proceedings. In this case, the judge recommended the use of a witness affidavit and suggested that a witness affidavit be presented during the trial to awaken the witness's legal responsibility and moral conscience. Ensure that witnesses truthfully state the facts of the case, thereby improving the efficiency of the trial. However, this is a case in which a husband drives a car and the wife wants to be accepted. In this case, we can see that this is a trial of the witness system in China, but this is only the shell of the transplant law, without the legal culture, the legal spirit and the transfer of legal concepts, the application effect of the legal system is also imaginable.

In ancient China, there was also a witness oath system. During the Western Zhou Dynasty, the "alliance" that appeared in the "prison lawsuit" was embodied, and special management personnel were also established. The "sworn oath" in the Spring and Autumn Period is also representative. This is mainly reflected in the "Zhou Li, Qiu Guan Si, Si Meng": "If there is a prisoner, it will make it a sin." If the litigant does not provide the facts, the allies will be severely punished by the gods. In "Zuo Zhuan" there is also a record, "Zuo Zhuan" into the Western Yuan Dynasty, uncle obedience: Bad alliance and bullying the country, this will be defeated. The alliance is ominous, bullying the country is not righteous, God does not help, how to win? "A violation of your own vows will certainly be defeated or punished because ominous, unjust, and will not be helped by the gods." It can be seen that "Xiang" and "Yi" are the core and pillar of the superstitious concept and moral concept in the ancient vows, and also the psychological basis for the society to abide by the alliance [8]. However, in the long-term development process of our society, the litigation concept of "individualism is not divided" and "emphasis on substantive procedures" has perfected our country's torture system. If judicial judges want to obtain confessions, there are many effective methods, and no witnesses are used. The necessity of the oath system, coupled with external factors, the witness oath system has gradually declined in our proceedings.

In the process of legal transplantation in China, modern society has continuously borrowed and absorbed foreign advanced litigation techniques and procedures, and introduced the litigation concept in the Western legal system, which has made China's litigation system constantly improved. The criminal procedure legislation adopts a similar system—the witness guarantee system [9]. The only place in China's criminal procedure legislation that clearly stipulates the guarantee system is the guarantee of the appraiser specified in Article 144. System, but its provisions are more general. There is no legal liability for perjury and no specific affidavit. The guarantee in this sense is only a confirmation function and does not guarantee the authenticity of the testimony. This makes China's witness oath system completely different from that of Western countries. In the previous case, we can also see that our country tried to try the same form as the Western witness swearing system in the judicial reform, but in the process, it

has not been transplanted into a legal culture that is compatible with it.

Some scholars believe that the oath as a system, which originates from religious beliefs, is based on human loyalty to the gods. In modern society, the consciousness of theocracy in thought is becoming weaker and weaker, and it is replaced by sanctions that violate the law. Even in the United States, which worships Christ, there are special ways in which the infidels take the oath [10]. The oath system is a kind of courtesy and testimony responsibility to strengthen witnesses by virtue of the solemn atmosphere created by the religious beliefs or oaths of witnesses and the power of rituals. In short, China's guarantee system is consistent with the original intention of the witness system of the Anglo-American legal system. However, combining different situations and moving towards different development directions, the two systems are still very different. Different systems living on different soils are related to their own legal culture and legal concepts.

In the early days of the development of human society, it was always subject to productivity constraints. At that time, people's productivity levels were low and there was no scientific explanation for many natural or social phenomena. Therefore, the phenomenon of change has a great mystery in people's minds. People's interpretation of mysterious phenomena is unscientific. In the early understanding of natural phenomena and social phenomena, it is a universal and prominent feature to associate various natural phenomena and social phenomena with God or Heaven. They believe that if humans offend the heavens or gods, they will be punished. Thus, offending the heavens and the actions of God became the most serious crimes in ancient times. This is under such historical conditions, because people are awed by heaven and God, and thus Tianhe has played a special role in the evolution of human society [11]. Hobbel, a famous American anthropology professor, once said that in every truth of primitive society, the theorems of God and supernatural exist without exception. People attribute human wisdom to the existence of God and believe that the gods will agree or disagree with the special behavior of people and respond. They believe that human life must conform to the will and command of the gods. This type of inference is very common and often has far-reaching implications in the legal arena [12]. It can be seen that the emergence of the oath system is related to human cognition. It is not yet possible to propose a scientific evidence investigation method on human cognition ability at the time. Therefore, there is a great dependence on witness testimony, and in order to ensure the authenticity of witness testimony, it begins to rely on the power of heaven or God. But at that time it was different from the religious beliefs.

2) Witness oath system in American law, its manifestation in court and its ideological origins

Rule 603 in the United States Federal Rules of Evidence (2004). Oath or Affirmation: Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with

the duty to do so .Before the testimony, each witness shall be required to declare that the witness who has faithfully testified will pass the oath or calculate the affirmation of the form management of the witness's conscience and the heart of the witness [13]. The swearing-in of the court in the United States court is: "I swear to tell the truth, the whole truth, and nothing but the truth, so help me god" or the court has a full-time staff who will say this paragraph "Please raise Your right hand and swear to tell truth, only truth, nothing but truth", witnesses just put their hands on the Bible and say "I swear".

The ideological origin of the witness oath system in American law is closely related to religious belief. In the traditional Anglo-American evidence law theory, the witnesses in the broad sense include the parties, while the witnesses in the modern sense only refer to the witnesses. The vows of the jury members were sworn up from the parties in the referee of the gods, and finally formed a witness oath in the modern sense. Religion is always a very important factor in this system. The witness oath system has been continuously improved. The evidence law in the Anglo-American legal system, which many countries have promoted and borrowed, has made great contributions to the protection of human rights and has gradually become a representative of science and rationality.

3) Witness oath system in other civil law countries

The European legal system after the Middle Ages has undergone great changes. In the civil law countries, the changes in the litigation system and the evidence system are particularly obvious. The revival of the investigation system and the trial system in Roman law began to develop. The mature period of this litigation mode was adopted in the 16th century, and the case of the interrogation litigation mode was widely adopted by the civil law countries. This makes the civil law system and the common law countries form a completely different evidence system, so the witness oath system is also very different from it. In civil law countries, judges proactively prove the facts of the case and pay more attention to the role of witnesses. However, this kind of trial mode does not have a strict and comprehensive system for evidence review, so the authenticity of these evidence is not easy to distinguish. At this time, the witness oath system that guarantees the authenticity of the witness testimony becomes very necessary.

For example, the provisions of the witness affidavit in the German procedural law. The German criminal procedure law stipulates the witness oath system. It divides the form of witness oath into three forms: a religious oath, a no religious oath, and a similar oath. Witnesses have the right to choose, choose to implement, and be informed of the meaning of the oath and the consequences of perjury. At the same time, it is stipulated that the subject who can refuse to take the oath when the witness is giving evidence is in Article 60. [14] In Article 61 It stipulates that a judge can be excused by exercising discretion. For example, if the respondent has reached the age of 16 and under the age of 18, the court believes that even if the oath may not receive substantial testimony, and the respondent who was sentenced to a penalty for perjury. In addition, they can voluntarily give up the oath. The Act also provides for situations in which they

have the right to refuse an oath and to refuse to take an oath. At the same time, the German Civil Procedure Law also provides detailed provisions on the oath system. The German witness swearing system is specifically stipulated in the procedural code. The structure is rigorous, the content is meticulous, and it is operational and normative. It was later transplanted by many countries.

3. The Essence of the Witness's Oath System—The Belief in Legal Concepts

The basic principles of the civil law system and the Anglo-American legal system are to study the essence of the witness oath system. The scope of the witness affidavit is not exactly the same in the civil law system and the common law countries. Therefore, the rules for witnesses' oaths are also very different. However, no matter how it changes, the witness oath system is closely related to religious beliefs and beliefs about its legal ideas. However, the witness oath system has not been eliminated as a procedural system to guarantee the authenticity of witnesses' testimony, but has been passed down.

Judging from the historical development of the oath system. First of all, the oath is closely related to the faith. The oath is based on the belief in the belief in its legal philosophy and the existence of religious beliefs. The core spirit of the oath system is to follow the beliefs in the heart and use the form of oath as a carrier to play its role in the legal system. Secondly, on the contrary, there is also a tendency to strengthen the punishment for false oaths and perjury. The punishment of Heaven and God in the pure sense only exists in the origin stage of the witness oath system. The Middle Ages began to develop from the simple punishment of heaven and God to the dual nature of the law. It is not easy to lie when giving evidence. The manifestation of heavy punishment for perjury, and people who dare not lie because of fear are awe of the punishment of God, while the Christian doctrine of prospering life makes true believers who are true to the world do not want to lie.

Convincing a certain theory, thought, and doctrine is called faith, and faith exists as a guide to our actions. The correct understanding of the laws of nature and the development of human society is a scientific belief. The belief in Western legal concepts is a scientific belief. Faith became an issue stemming from ancient Greece. For example, the ancient Greek philosopher Socrates once said that unexamined life is not worth living. Faith is faithful and reasonable. I believe that the true truth of all things in the universe is true truth, and look up to the laws of the laws of the universe. We call it the reason. Faith is a kind of subjective grasp of the ultimate meaning and purpose of the world based on social experience and emotional experience. Because of the extreme trust, dependence and respect of the object of faith, it is spiritual peace and satisfaction. At the same time, I would like to dedicate myself to it. People with faith are used as role models or guides for their actions, but whether they are religious or non-religious, they all have the same characteristic, that is, to guide and educate people to be honest and good. For example, most of the teachings of religion must have good morals,

do good deeds, and do not do bad things. To tell the truth, don't make false claims is one of the requirements. "The Ten Commandments of Moses" is the norm that Christianity, Judaism, and Catholicism abide by. The ninth command is "no false witness to frame others." Religion has always attached importance to the promotion of the emphasis on human relations and morality. It has always been the pursuit of religion. Islam also believes that the essence of humanity is morality and good deeds, that is, the meaning of human nature and the value of human beings. Religious believers are "channels and good people." In Buddhism, Sakyamuni once warned his disciples to say, "All evils are done, and all good deeds. Self-purification is Buddhism" ("French sentence") [15]. The introduction of the 1993 World Ethics Declaration also mentioned that the common core values exist in the doctrines of various religions, which is the basis of world ethics. Praise for self-denial, duty, responsibility, and sharing, and praise for virtues such as humility, compassion, and justice ... These have been affirmed and supported by any religion, and non-believers agree. Incompetence is whether believers or non-believers are more or less influenced psychologically and even by behavior. Non-religious beliefs that do not use supernatural objects as objects of worship have similar essences to beliefs and exert influence on those who have faith.

If the standards and requirements of the true, the good, and the beautiful that people pursue are moral beliefs, thus the promotion of people's personality. Then, people's conscious actions to promote righteousness and uphold justice are beliefs about the law. American jurist Harold J. Berman proposed in his book *Law and Religion* that "the law must be believed, otherwise it will be in vain" [16]. Therefore, as long as the believer is a devout oath, these ideas will inevitably be implemented in the testimony. Therefore, the spiritual core of the witness oath system is faith. It is precisely because of the belief in their legal ideas that the witness system of the legal system has been effectively operated.

4. Differences in Legal Concepts, Legal System Conflicts, and the Sinicization of the Witness Oath System in China's Legal Modernization

As an authoritative law of existence, it was destined to be far from the door of faith since its birth. The current Chinese society is in an important period of transition and a period of progressive legal modernization. During this period, Marxism, as the guiding ideology of our country, its economic, political and cultural thoughts are deeply rooted in the hearts of the people. During the transition from Chinese traditional society to modern society, the change of value and the change of moral standards can all be It comes down to the growth of people's desire for a better life. The history of the development of human civilization has taught us that every time people in need of a better life will intensify, they will put forward higher demands on the law; pinning their hopes on faith is the inevitable choice when people are confused about the meaning of life. Harold J. Berman, in his book *Law and Religion*, proposes the law of faith and combines

law with religion. Now, the religious situation has changed a lot. Laws and religions in Western societies have been completely divorced since the independence of law became social norms. However, Berman tried to establish a connection between the two concepts by expanding the concept of religion and the concept of law. The reference to the close relationship between law and religion and their interaction requires that the definition of law and the definition of religion be relatively broad. If the doctrines and practices associated with issues such as supernatural are considered religious, then it will not include issues such as law, but other aspects of life. But if we look at the common perceptions and beliefs of meaning, which are related to the purpose of life, we define religion from the common feelings of creation and redemption, transcendental value, human nature and destiny. Then it is difficult to exclude legal ideas and legal values from their scope. But if you include issues such as the concept of secular society into the faith, these will be useless. But people always hope that the door of faith can be opened to the law and incorporate the law into the history of human law. But the result is not only unsuccessful, but it also makes us feel overwhelmed when facing the law, because it will lead us to not know what the law is. Therefore, in the voice of a large number of faith laws, we are only involved in misunderstanding, and will bring problems to China's legal modernization and rule of law.

The Russian writer Dostoevsky once said that if God does not exist, then human behavior will become legal. This is a rumor of Western legal concepts. Because of the existence of God or the gods, people have a unified standard; if there is no unified standard, the pursuit of ideas must be expressed in multiple forms. In traditional Chinese society, there is no God's existence. History tells us that in every social change period, the pursuit of ideas will always change. In the modern and fierce social changes, rational human beings can deeply realize the fierce impact of the diversification of legal ideas on human life. And the problem of the unsatisfactory operation of the legal system in the real society due to the contradictions and conflicts of the legal concept. The legal concept is the core of a national legal tradition. What we can do is to change the place in the transplant legal system that is not suitable for our legal concept in the process of Chinese legal modernization, making it a part of the Chinese legal system. Therefore, in the introduction of the witness oath system, China's law has made a flexible provision, and the Chinese legal system of the witness system of the Western legal system has been simplified, that is, the witness guarantee system.

Conflicts between legal concepts and legal systems arising from the transplantation of legal systems. In this regard, we will refer to the absorption and reference of the legal system of other countries in the same period as legal transplantation. The basic meaning expressed by it is to introduce, absorb, adopt, ingest and assimilate foreign laws on the basis of identification, identification, adaptation and integration. For example, legal concepts, legal techniques, legal norms, legal principles, legal systems, and legal concepts. These are introduced to make them part of the national legal system and applicable in the country. The process

of legal migration represents the process of human legal civilization. The inheritance and transplantation of the law is a different name for the legal transplant phenomenon in the legal profession. It is widely used in the European and French academic circles and the English and American academic circles. The “legal transplant” became the mainstream discourse describing the phenomenon of legal migration. It began with the book “Transportation of Law: The Method of Comparative Law” from the British comparative jurist Watson, and later it was widely used in the world [17].

In the field of jurisprudence in the West, the idea is the goal and pursuit that comes from the rationality of people [18]. The idea of law is the reality of law at the conceptual level, [19]. The core meaning is freedom and justice [20]. In modern society, the legal concept is that humans use meticulous thinking, analyze the concept of law, and achieve perfection and perfection [21]. Under the guidance of this legal concept, in the modern times, Western society has established a complete legal system.

In contrast, China, as the center of Eastern civilization, has established a traditional Chinese legal system of its own nation in the long history of thousands of years. The legal concept of its guiding ideology is “the law of heaven and the country.” The three-person concept of Dafa, including consciousness, rules and habits, is a reasonable or justified order and norm system. Its philosophy is the life philosophy of heaven, earth and people, that is, the organic world view [22]. Under the guidance of this complete set of traditional legal concepts, the Chinese legal system has been gradually established, and there are many representative codes. For example, it is known as the model of the ancient Chinese code, and the Tang Dynasty Law of the World Medieval Code. However, due to the opium war, the fierce defeat of the Qing government, and the advanced Western countries’ crushing of the Qing government in economic, military, political, and legal aspects, Chinese society began the process of modernization. However, the loss of judicial sovereignty, the fiasco in the Sino-Japanese War of the Sino-Japanese War and the invasion of China by the Eight-Power Allied Forces made the late Qing government aware of the need to reform the law, and Chinese law began the road to modernization.

The product of modern modern law in the West is individualism, and the tradition of Chinese law is formed in the ancient society of communitarianism, and thus has a distinctive collectivism. “The traditional Chinese group standard law is essentially a bloody identity obligation law, which is precisely an identity-based moral responsibility law; relatively speaking, the Western personal standard law is a non-identity blood rights law. The law is generally expressed as the contractualization of social relations, and it is the axis of rights, which constitutes the so-called rights standard in jurisprudence. Looking back on the twists and turns of the Western legal standard, we can easily find that it has experienced three times from group to individual. The change, and each time with the deepening of individualism as the end” [23]. Therefore, the conflict between

the two is obvious. In essence, this contradiction is the struggle between individual rights and family interests in social transformation. In the beginning of modernization, this legal contradiction is reflected in the dispute between the Chinese and Western in the Senate and the ruling council, constitutionalism, and the process of reforming the rituals of the Eastern rituals and the Western Methodology. In the field of private law, during the Republic of China, the Dali Court decided to consider the mutual accommodation between China and the West, as well as the combination of official legislation and civil and commercial law habits [24]. The Dali Palace declared that “the judgment of civil cases should be preceded by the law, and there is no law in the law, saying that the Dali Institute of Peace and Politics” “the two courts, Cao Cao, especially in the case of the civil code is not prepared, according to customary law; no customary law The rules of judgment in each case reflect the difference between Chinese and Western legal concepts.

The beginning of Western modern law is the denial of the laws of the ancient feudal era by scholars of various countries. On the theoretical level, the social contract theory and the humanitarian formulation of the law; on the political and legal system level, the Western countries will successively be democratic and free. Institutionalization of equality and human rights. In China in the East, the modernization of law began in the late Qing Dynasty, and the conflict between Chinese and Western legal concepts became very prominent at this time. As the Minister of the Qing Dynasty, Shen Jiaben once played the Qing government on the modernization of Chinese law. The first step was to abolish China’s cruel corporal punishment, such as Ling Chi, Dagger, and Zombie., tattoos, etc. [25]. In the period of the Qing Dynasty, during the drafting of the Qing Dynasty, the conflict between Western individualism and Oriental ethics was particularly prominent. For example, the name of the criminal, the retention of relatives, the relatives’ traitors, relatives’ thieves, relatives’ sins, and relatives’ murder The descendants, the husband and wife, and the children and grandchildren violated the decree. These are the manifestations of the traditional Chinese legal concepts at the institutional level. These behaviors fundamentally represent the traditional Chinese respect and order and good customs. In the course of the debate between the ministers of the law in the late Qing Dynasty, Shen Jiaben and Wu Tingfang, and Zhang Zhidong and Lao Nai Xuan, they mainly focused on this issue [26]. He Shanxin “China’s new criminal law”, Yang Du “On the difference between nationalism and familyism”, Shen Jiaben “Shen Chanchen discretionary approach to tell the post”, Liu Tingshen “playing the new criminal law is not in accordance with the ethical teachings, please seriously delete the fold”, Chen Baoshen “Reading Lautite and Shen Dachen on the draft of the criminal law”, Lao Nai Xuan “initiative to amend the new criminal law case.” Although the Qing Dynasty did not save the Qing Dynasty’s final demise, in the construction of the law, China began the modernization of the law [27].

Unlike the fierce conflicts of legal concepts at the public law level, conflicts

and contradictions in specific systems at the private law level also occur from time to time. For example, “details”, as a civil habit, have existed for a long time in civil interactions, but they have never been prescribed in official laws. In order to resolve the contradiction between the Chinese and Western legal concepts, during the trial of the Dali Court during the Republic of China, the civil provisions on property protection, contract freedom, and commercial rules such as companies and partnerships were basically not in violation of Chinese folk customs. Under the premise of habit, it is handled in accordance with Western modern legal and legal systems [28]. The “civil effective part” in the “Current Criminal Law of the Qing Dynasty” that does not contradict the Republic has become an important source of judicial law for resolving civil disputes. It can be said that it is the “substantial civil law” of the Dali period in the early Republic of China.”] But in marriage and family In terms of law, it is difficult to fully realize the full introduction of Western laws in reality. For example, the monogamy system in ancient China and the monogamy system in Western modern law. It was not until the establishment of the People’s Republic of China in 1949 that no new diverticulum appeared in mainland China. In law, the diverticulum before this still enjoyed a similar status to the wife.

However, under the current social reality, although China has introduced the modern legal concepts and legal systems in the West through the method of legal transplantation, in the process of localization of the law, the traditional Chinese legal concepts and the modern legal concepts of the West are still There are conflicts and contradictions.

5. Conclusion

The introduction of the witness oath system is a solution to the dilemma of witnesses in our legal system. However, for China without Western-style religious beliefs, the transfer of religion to China will undoubtedly lead to acclimatization. Through the research on folklore and religion, we show that we have the beliefs of our own people. This kind of national belief in the East is different from the beliefs in the West. The legal philosophy we believe in is a legal concept that is compatible with the development of China’s society by combining traditional Chinese legal concepts with Western modern legal concepts. In the process of our legal modernization, we only introduced the shell of the witness oath system, but did not introduce the essence of the witness oath system or the different essence of its thoughts and our legal concept. It can be seen that the legal concept, the religious foundation, and the belief play an important role in the witness oath system. If the essence of the witness oath system is not introduced, and the system is not reformed to suit China’s legal concept, it is just a simple introduction of the form of the system, and how can the system play its due role? The result can only produce the results of the above case. Therefore, in the process of legal modernization, we can not only pay attention to the transplantation of the system, but also consider whether this system can take root in our laws, whether

it conforms to the Chinese legal concept, whether it can achieve better legal effects and Social effects, can we achieve social fairness and justice to a greater extent.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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