

The rhyme of history : a transition of legal culture in China crowned by the criminal procedure law 2012

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Abstrak

This article explains how recent changes in China's legal culture are being influenced by the two philosophies of good governance currently emphasised by the country's leadership; that is, the rule of law and social harmony. Focusing specifically on criminal procedure, the article uncovers the essence of China's current legal culture – that is, the juxtaposition of the rule of law and social harmony, and analogises it with the alloy of Confucianism and Legalism in dynastic China. This article posits that the effort to amend the Criminal Procedure Law ('CPL') (2012) completes the transition of China's legal culture because it accomplishes a substantive mixture of the rule of law and social harmony. The article then scrutinises the CPL amendments by classifying them into two groups in the light of their main functions – that is, to consolidate the rule of law and to legalise social harmony – and discusses how the rule of law and social harmony are further promoted in the criminal justice system through the first-year implementation of the CPL. A preliminary examination of the questions arising from the juxtaposition of the rule of law and social harmony under the CPL – which touches upon the basis of the criminal justice system and even the entire legal regime – precedes the conclusion of the article.