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The Historical Origins and Modern Insights of the Chinese Arbitration System

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Abstract

Key Words : Modern Arbitration System, Dispute Resolution, Civil and Commercial Arbitration, Evolution of Arbitration Systems, Mediation and Arbitration

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Ⅰ. Introduction

The legislation and improvement of the arbitration system remain an important issue to be resolved today, drawing lessons from history. The precursor of modern commercial arbitration was the late Qing-era "Chamber of Commerce Arbitration." Before the formation of the Chamber of Commerce Arbitration, there was a tradition of individuals spontaneously seeking respected individuals to resolve various disputes.

In the early 20th century, China was going through a period of transformation and introduced many Western legal systems to align with international standards, including the arbitration system. Due to the success of the French arbitration system, the arbitration system in the Republic of China mainly drew from the French experience. The "Regulations on Commercial Arbitration" of 1912 is considered as China's first specialized provision regarding arbitration. The focus of this article is on the role and impact of the modern commercial arbitration system, which was imported to China as a foreign product, and how it can be integrated with China's own legal culture in the future. There are commonalities between modern arbitration systems and some ancient dispute resolution methods. In recent years, scholars have increasingly focused on the creative transformation of traditional legal cultures, and whether the existing foreign-originated arbitration laws can be integrated with China's traditional legal culture is an issue worth exploring.

Previous academic research on the modern arbitration system has primarily focused on chambers of commerce as the subject of study, discussing the evolution of commercial arbitration systems.[1] There has been insufficient attention to the overall construction of arbitration legal systems, and a comparative analysis with the present has been lacking. Temporally, the focus has often been on the late Qing and early Republican period (1902-1927), with a lack of long-term studies on the Chinese arbitration system. Some scholars believe that arbitration entered China during the late Qing and early Republican era, representing an external system lacking roots in traditional legal culture.[2] Others argue

1) Zhang Song. (2016). *From Public Deliberation to Public Arbitration: A Study of the Commercial Arbitration System in the Late Qing and Early Republican Period.* the Law Press; Zhang Song. (2010). *Change and Continuity: Research on the Construction of Commercial Law and Commercial Practices in the Late Qing and Early Republican Period. the China Social Sciences Press;* Zheng Chenglin. (2005). *Chambers of Commerce and Modern China.* the Central China Normal University Press.

2) Yu Qingsheng. (2017). Institutional Transformation and Changes in Legal Culture: Taking Dispute Resolution

that, while commercial arbitration is generally considered to have originated with European merchant guilds, traces of its development can still be found in ancient Chinese history.[3)]

This article aims to connect the formation of ancient informal arbitration practices to the formal development of the modern arbitration system. It explores the historical origins of the Chinese arbitration system and compares modern commercial arbitration with current arbitration laws, offering insights for the future development of arbitration systems.

Ⅱ. The Current Situation of Arbitration System

The "Arbitration Law of the People's Republic of China," which came into effect in 1995 (referred to as the "Arbitration Law"), is a significant milestone in establishing a modern arbitration system in China. Over the years, this law has undergone two revisions in 2009 and 2017, modifying the article numbering related to civil procedure law and the qualifications for arbitrators. On July 30, 2021, the Ministry of Justice released the "Draft Amendment to the Arbitration Law of the People's Republic of China" (referred to as the "Draft Amendment"), marking the first major revision since the implementation of the Arbitration Law in 1995. As of now, the Ministry of Justice has not yet published the second draft of the "Draft Amendment." The process of amending the Arbitration Law is expected to be a lengthy one.

1. The Formation of the Modern Arbitration System

The modern legal reform of 1978 transplanted a significant number of legal systems from the West into areas such as property, corporations, trade, and investment. Dispute resolution mechanisms also saw rapid development. The "Civil Procedure Law" was implemented in 1991, the "Arbitration Law" in 1995, and the "People's Mediation Law" in

Mechanisms as an Example. *Journal of Henan Normal University (Philosophy and Social Sciences Edition)*, 1, 57-62.

In recent years, there has been limited research on ancient dispute resolution in China. Therefore, the articles referenced in this paper were mostly published before 2017. It is hoped that this article can provide some reference for future researchers in this field.

3) Zhan Hui. (2022). The Commercial Arbitration Gene in the Tradition of Chinese Ancient History. *Beijing Arbitration*, 2, 151-157.

2011, thereby establishing the legal framework for modern dispute resolution in China. With the enactment of the "Arbitration Law," arbitration[4] became a crucial method of dispute resolution, clearly distinguished from litigation and mediation.

2. Types of Arbitration

In accordance with the national context, China's "Arbitration Law" follows a "dual-track system," which treats international arbitration and domestic arbitration as separate systems. Currently, arbitration in China is primarily divided into domestic arbitration and international arbitration, depending on whether factors like the parties involved, the legal relationships underpinning the dispute, and other elements have international aspects. Domestic arbitration refers to the arbitration of purely domestic civil and commercial disputes without any international elements, conducted by domestic arbitration institutions. According to Chinese legal provisions, foreign-invested enterprises established in accordance with Chinese law are considered as Chinese legal persons or entities. Therefore, when legal persons or entities of foreign-invested enterprises have disputes with domestic entities in the context of domestic economic activities, these disputes are subject to domestic arbitration. International arbitration, on the other hand, involves civil and commercial disputes related to foreign countries or foreign legal jurisdictions. It also encompasses arbitration cases related to Hong Kong, Macau, and Taiwan, where provisions for international arbitration are applied.[5]

One notable difference between domestic and international arbitration in China is the use of interim arbitration. China's domestic arbitration does not employ interim arbitration

4) Arbitration, as a fundamental legal concept, refers to a dispute resolution system and method where the parties in dispute voluntarily submit their disagreements to a neutral third party for adjudication, based on an agreement reached either before or after the dispute arises. Arbitration is a non-judicial dispute resolution method that carries legal binding force. In terms of the nature of disputes, China primarily recognizes various arbitration types, including civil and commercial arbitration, labor dispute arbitration, personnel dispute arbitration, and agricultural contract arbitration, with civil and commercial arbitration being the most common unless otherwise specified. Civil and commercial arbitration is a mechanism where parties in dispute voluntarily submit their private conflicts to a private third party for adjudication, with an obligation to enforce the arbitral award. As per Article 2 of the "Arbitration Law," arbitration institutions can arbitrate contract disputes and other property rights disputes between equal parties, including citizens, legal persons, and other organizations. According to Article 3 of the "Arbitration Law", disputes related to marriage, adoption, guardianship, maintenance, inheritance, and administrative disputes that should be handled by administrative authorities cannot be subject to arbitration. Therefore, only civil and commercial arbitration falls under the purview of the "Arbitration Law". References: Jiang Wei and Xiao Jianguo (Eds.). (2023). *Arbitration Law.* China Renmin University Press, 1-12.

5) Jiang Wei and Xiao Jianguo (Editors). (2023). *Arbitration Law.* Renmin University of China Press, 20-21.

proceedings, whereas interim arbitration is applied primarily in the context of international arbitration cases.

3. Arbitration-Related Data Analysis

In the past decade, China's arbitration system has witnessed rapid development. With economic growth, the variety of arbitration cases has increased, and among the newly added arbitration cases, internet-related arbitration cases have the highest share.

Taking the number of commercial arbitration cases as an example,[6] in terms of case acceptance, in 2013, the number of cases accepted by Chinese arbitration institutions surpassed 100,000 for the first time. In 2018, the number of cases received exceeded 500,000, reaching a historic high. From 2013 to 2018, the total amount in dispute grew from over 160 billion CNY to more than 695 billion CNY. In 2018, the annual number of cases and the disputed amounts in dispute handled by arbitration institutions across the country were roughly equivalent to the total for the first 15 years before the implementation of the "Arbitration Law."

Table 1: Total Number of Cases Received and the Amount in Dispute by National Arbitration Institutions from 2013 to 2020

	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total Number of Cases Received	104257	113660	136924	208545	239360	544536	486955	400711	415889
Total Amount in Dispute for Cases Received	1,646 Billion CNY	2,656 Billion CNY	4,112 Billion CNY	4,695 Billion CNY	5,338 Billion CNY	6,950 Billion CNY	7,598 Billion CNY	7,187 Billion CNY	8,593 Billion CNY

Source of Information: The Supreme People's Court, "Annual Report on Judicial Review of Commercial Arbitration (2019)," 17-20. China International Economic and Trade Arbitration Commission, "Annual Report on International Commercial Arbitration in China (2021-2022)," 1-8.

6) This article focuses on data analysis of commercial arbitration for two main reasons: first, commercial arbitration is currently the most mainstream and highly observed arbitration type in China, making it representative of the field. Second, the available statistics on arbitration data predominantly pertain to commercial arbitration, making it the most comprehensive dataset to work with.

Since 2016, with the promotion and support of online arbitration by the government, the number of online arbitration cases has seen a rapid increase, becoming a major source of arbitration cases in China. In 2018, a total of 357,008 online arbitration cases were accepted by 22 arbitration institutions, accounting for 66% of all arbitration cases nationwide. In 2019, the number of online arbitration cases significantly decreased due to stricter regulations in the online finance industry. In February 2018, the People's Court Mediation Platform was officially launched and received strong support from the government, leading to a year-by-year increase in the number of cases it handled. This may be another reason why the total number of cases accepted by national arbitration institutions in 2018 decreased after reaching its peak.

Looking at the arbitration award revocation rate, in both 2019 and 2020, the revocation rate was 0.03%, but it decreased to 0.01% in 2021.[7] The extremely low revocation rate reflects the judiciary's supportive stance towards arbitration and underscores the significant role of arbitration as a non-litigation dispute resolution method.

Table 2: Number of Related Cases Accepted by National Arbitration Institutions and Courts from 2018 to 2021

	2018	2019	2020	2021
National Courts Concluding First Instance Civil Cases	9,017,000	9,393,000	13,306,000	15,746,000
National Courts Concluding First Instance Commercial Cases	3,418,000	4,537,000		
Cases Accepted by National Arbitration Institutions	544,000	487,000	400,000	416,000

Source: "Report of the Supreme People's Court."[8]

7) China International Economic and Trade Arbitration Commission Editor. (2022). *China International Commercial Arbitration Annual Report (2021-2022).* Law Press China, 7.

8) Please refer to the "Work Reports of the Supreme People's Court" delivered by the former President of the Supreme People's Court, Zhou Qiang, on March 12, 2019, during the Second Session of the Thirteenth National People's Congress, on May 25, 2020, during the Third Session of the Thirteenth National People's Congress, on March 8, 2021, during the Fourth Session of the Thirteenth National People's Congress, and on March 8, 2022, during the Fifth Session of the Thirteenth National People's Congress.

Although the number of arbitration cases is on the rise, there is still significant room for growth when compared to the number of civil and commercial cases handled by the courts. This disparity is due to the much narrower scope of cases that fall under commercial arbitration compared to civil litigation. In the future, to improve the diversion of cases to arbitration, it will be necessary to strengthen various aspects of arbitration legislation.

4. Comparison with Other Dispute Resolution Methods

China's primary dispute resolution methods currently include litigation, mediation, and arbitration. Arbitration in China primarily focuses on commercial arbitration and is mainly used to resolve disputes involving economic interests between equal parties. It cannot be used for disputes involving unequal parties or disputes related to personal rights. This significantly limits the scope of arbitration compared to litigation and mediation. Arbitration entities consist of arbitration institutions and participants. China's permanent arbitration institutions are limited to arbitration committees, and temporary arbitration institutions consist of arbitration panels established by permanent arbitration institutions on a case-by-case basis.

The process of commercial arbitration involves the two parties reaching an agreement to arbitrate, which is then submitted to the arbitration committee. The arbitration committee forms an arbitration panel according to the regulations, conducts arbitration hearings, and finally issues an arbitration award. Arbitration follows a "one award, final" system, and the arbitration award has legal validity.

1) The Differences Between Arbitration and Litigation

The differences between arbitration and civil litigation are mainly manifested in the following four aspects.

Firstly, arbitration and civil litigation differ in their nature. Arbitration is a system where the parties involved in a dispute voluntarily submit their dispute to an arbitration institution for resolution based on an arbitration agreement. It has a mixed nature of both private and judicial processes. Civil litigation is a crucial component of the judicial system and is a dispute resolution method with a judicial nature. Additionally, in arbitration, the arbitrators act as neutral third parties when resolving disputes, whereas in civil litigation,

disputes are adjudicated by courts representing the state through judicial proceedings.

Secondly, the nature of arbitration institutions and courts is also different. In China, arbitration institutions are represented by arbitration committees, which are private organizations. Under the institutional arbitration system, arbitration tribunals are formed by these arbitration committees and serve as private dispute resolution bodies. On the other hand, courts are the judicial adjudication institutions of the state, and judges are appointed by state authorities.

Thirdly, the basis for jurisdiction in arbitration and civil litigation is different. Arbitration institutions derive their jurisdiction from the authorization of the parties involved, established on the foundation of an arbitration agreement reached between the parties. In contrast, courts have jurisdiction granted by the law, and parties can file lawsuits directly with a court that has jurisdiction without the need for an agreement between them.

Fourthly, arbitration and civil litigation differ in their specific procedures. In arbitration proceedings, the parties can choose applicable procedural rules and make specific procedural agreements, offering a relatively simple and expedited process. Arbitration proceedings are generally conducted in private, and the "One Award, Final" system is followed. In contrast, civil litigation procedures are not subject to the parties' choices but must strictly adhere to the provisions of the Civil Procedure Law. Civil litigation proceedings are generally conducted publicly, and parties dissatisfied with a first-instance judgment can file an appeal.

The differences in these four aspects often lead to arbitration being more cost-effective and expedient than litigation. With fewer procedural complexities, arbitration can save a significant amount of time and expenses.

2) The Differences Between Arbitration and Mediation

From the perspective of institutional goals and functions, both arbitration and mediation were initially designed to reduce litigation and address real-life issues for the people. Article 51 of the Arbitration Law states: "Before making an award, an arbitration tribunal may mediate first. If the parties voluntarily mediate, the arbitration tribunal shall mediate." While there are commonalities and connections between commercial arbitration and commercial mediation, there are significant differences in their fundamental concepts, approaches, methods, procedural rules, as well as the roles and responsibilities of

arbitrators and mediators, and parties involved in the dispute resolution process. Unlike arbitrators, who must have expertise, the quality of mediators can vary significantly, with many lacking relevant professional knowledge when mediating disputes. This variability can affect the authority of the mediation process. Additionally, the legal enforceability of mediation outcomes is lower compared to arbitration.

Ⅲ. The Historical Evolution of China's Arbitration System

It is generally believed that China's arbitration system was established in the early 20th century, with the 1912 promulgation of the "Provisions on Commercial Arbitration" by the Nationalist Government considered the first specialized regulation on arbitration in China. While there are differing opinions in academia, some arguing that the Provisions on Commercial Arbitration had characteristics of both old and new systems and cannot be exclusively defined as "mediation" or "arbitration,"[9] from a legal development perspective, it indeed served as a reference template for later arbitration systems and can be seen as the precursor to arbitration institutions. This chapter is divided into three parts based on chronological order: ancient times, ranging from the Qin and Han dynasties to the Qing dynasty; modern times, referring to the Republican era; and the contemporary period, which covers the time after the founding of the People's Republic of China in 1949.

1. The Emergence of Ancient Arbitration Systems

Although modern commercial arbitration is considered to have originated from the merchant guilds in Europe, traces of commercial arbitration can also be found in certain ancient Chinese dynasties with relatively developed commodity economies. Arbitration, as a legal system, began in medieval Europe and later spread to China. However, as a dispute resolution method, arbitration had already been in use worldwide long before that, and its scope of application was broader than in modern times.

9) Zhang Song. (2010). An Analysis of the Commercial Arbitration Offices in the Early Republic of China: With a Focus on the Beijing Commercial Arbitration Office. *Political Science Forum*, 3, 31-40.

1) The Emergence of the Arbitration System

Taking the Western example, as early as in the time of ancient Rome, there were records related to arbitration in the "Corpus Juris Civilis," which stated: "Just as disputes can be resolved through litigation, they can also be resolved through arbitration." During that time, not only civil disputes were subject to arbitration, but also matters related to national territories were arbitrated. Paul, one of the five great Roman jurists, regarded arbitration and litigation as two parallel methods of dispute resolution. It wasn't until the late 17th century that the British Parliament enacted the first arbitration act, formally recognizing the arbitration system. "Arbitration may be one of the oldest peaceful and amicable dispute resolution methods in human history. It existed long before the promulgation of written laws, the establishment of courts, or the interpretation of laws by judges."[10] Arbitration, in its earliest form, may have lacked legal support, possibly due to the level of legal development at the time. Therefore, the history of ancient Chinese arbitration systems can also be traced back to even earlier periods.

In ancient China, there was a lack of clear boundaries between arbitration and mediation. If we use "a third-party neutral who makes a binding decision" as the basis of distinction, then the emergence of ancient Chinese arbitration systems can be traced back to the Qin and Han dynasties. Starting from the Qin and Han dynasties, a tradition developed in which disputes within families were resolved by clan leaders. Disputes outside the family relied mainly on the lowest-level officials at the village level for coordination and resolution. These local officials often had the power to mediate disputes but lacked the authority to adjudicate cases. The decisions made when mediation failed were enforced based on the mutual recognition of their authority by various clans. From the Song Dynasty onward, with the development of commerce, there emerged self-governing organizations among merchants, such as merchant guilds, trade associations, and guildhalls. When disputes arose within these organizations, the leaders of these associations would convene members for "collective deliberation and punishment" (公同议罚). They often based their decisions on the prevailing laws, guild rules, and commercial customs at the time. These guild rules were the primary regulations applied by the associations. Although different guilds had different rules, they all needed government recognition. This resolution method shared many similarities with arbitration. For instance,

10) Francis Keller. (2017). American Arbitration: Its History, Functions and Achievements. New York, Harper & Brothers, 1948. Quoted in Fan Kun, *Arbitration in China: A Legal and Cultural Analysis*, translated by Fan Kun and others, Law Press China, 1.

a guild rule specified, "When there is an issue, it must be reported to the superintendent and the presiding member of the year first. They should decide whether to make an agreement. If an agreement is required, the litigants must first submit 800 wen (文) [11] to the chief. The chief should make a fair and impartial judgment and should not show bias."[12] This record reflects the early use of arbitrators, arbitration rules, and the process of paying arbitration fees. The spontaneously formed "collective deliberation" in ancient times laid the foundation for the later development of "public arbitration" advocated by the government.

2) The Main Role

The primary function of the ancient Chinese arbitration system was to resolve various disputes among individuals within society. Due to the incomplete legal framework and the influence of traditional Confucian values emphasizing harmony, most civil disputes were not brought to official government courts for litigation. Instead, they were typically resolved through "tiaochu" (调处) by family heads. The term "tiao" (调) refers to mediation, and "chu" (处) implies a judgment or decision. In cases involving individuals from outside the family, respected elders within the community were often invited to arbitrate disputes. This approach not only resolved issues but also maintained social harmony.

Table 3: The Ancient Arbitration Mechanism in China

Dispute Resolution Institution	Participants	Arbitrator	Scope of Arbitration	Confidentiality
Family	Family Members	Respected Members of the Family	Civil Disputes, Economic Disputes, Criminal Disputes	Public
Guild	Guild Members	Respected Members of the Guild	Economic Disputes	Public

Source of information: Compiled by the author.

11) Wen (文) is a kind of ancient Chinese currency.

12) Edited by Peng Zeyi. (1995). *Collection of Historical Materials on Chinese Chambers of Commerce.* Zhonghua Book Company, 349.

In terms of enforceability, decisions made within a family often have mandatory enforcement, whereas guild rulings are sometimes unenforceable.

3) Dispute Resolution Systems of Ancient Chinese Minority Groups

In the dispute resolution methods of ancient Chinese minority groups, you can also see the germination of arbitration. In the history of the Yi people in Liangshan, both civil and criminal cases were resolved by specialized "Degu" (德古) according to customary law. There is a saying in Yi society, "In the Yi region, there are the Degu; in the Han region, there are official government offices,"[13] meaning that the results of cases handled by the Degu in the Yi region must be obeyed by everyone. In addition to this, there are other systems like the Yao elders' system, the Jingpo mountain officials' system, and the elder system of the Jino people.

Overall, arbitration was initially applied to resolve economic disputes in the private sector. These disputes were mediated by respected individuals within the local community, and the resolution process was conducted openly through arbitration. In areas where customary law governed social governance, such as some ethnic minority regions, this mechanism often had the function of enforceability.

2. The Establishment of the Arbitration System in the Late Qing Dynasty

1) Legislative Overview

In 1904, the Qing government issued the "Simplified Regulations for Chambers of Commerce" (商会简明章程), which stipulated that "Chinese merchants encountering disputes can report to the head of the chamber of commerce, who will regularly convene the directors to discuss and reach a collective decision."[14] This marked the formal recognition by the Qing government of the chambers of commerce's authority to adjudicate commercial disputes. To facilitate dispute resolution, some chambers of commerce established specialized commercial arbitration institutions such as case review offices and deliberation offices, appointing reputable and impartial members as arbitrators. In 1909, the Chengdu Chamber of Commerce established the "Commercial Arbitration Office," laying

13) Bai Zhi·Ergu Aha. (1989). Customary Law of the Yi People in Liangshan. *Yi Culture*, Annual Issue, 121.
14) "Simplified Regulations of the Chambers of Commerce" , Dong Fang Magazine (东方杂志), Volume 1, Issue 1.

the foundation for future commercial arbitration bodies. However, the "Simplified Regulations for Chambers of Commerce" had limited specificity due to the relatively low level of legislation at the time, resulting in weak practical applicability. As a result, commercial arbitration was generally conducted based on customary practices within individual chambers of commerce.

2) The role of the "Simplified Regulations of the Chambers of Commerce"

The "Simplified Regulations of the Chambers of Commerce" reflected the Qing government's supportive attitude toward the development of chambers of commerce. It formally recognized the chambers of commerce's jurisdiction in handling commercial disputes, laying the foundation for the establishment of the Chinese arbitration system. Moreover, in the early days when legislation was incomplete, the chambers of commerce's role in resolving commercial disputes served as a significant complement to judicial dispute resolution. It effectively alleviated the pressure on the courts by providing a new and effective means for resolving economic disputes, thus fulfilling a certain role in social governance.

3. Arbitration System in the Republican Era

1) Legislative Overview

In 1913, the Beijing Government's Departments of Justice and Agriculture and Commerce issued the "Provisions on Commercial Arbitration" (商事公断处章程), which provided detailed regulations on the purpose, organization, appointment and term of office of personnel, and the arbitration procedures of the commercial arbitration offices. It explicitly stated that "the commercial arbitration offices are in an arbitration position for disputes among merchants, with the main purpose of settling litigation and achieving reconciliation",[15] thus establishing the arbitration authority of these offices for commercial disputes. At the same time, this regulation placed relatively clear limits on the authority of the chambers of commerce to handle commercial disputes. Although the "Provisions on Commercial Arbitration" underwent several revisions later, its main content remained unchanged.

15) The second historical archives of China. (1991). *Compilation of Historical Archives of the Republic of China's Commers*. Volume 1, China Commerce Press, 134.

In 1927, when the Nationalist Government in Nanjing came into power, there were political considerations to abolish the chambers of commerce in favor of the Chamber of Commerce and Industry due to political reasons. However, this idea was later abandoned as the need for chambers of commerce became apparent. During the period between 1927 and 1929 before the Chambers of Commerce Law was promulgated, the organization plan of chambers of commerce and their commercial dispute settlement mechanism was temporarily continued based on the model during the Beijing government era. On August 15, 1929, the Nationalist Government in Nanjing published a new ″Chambers of Commerce Law,″ which did not introduce fundamental changes in terms of the nature and responsibilities of chambers of commerce compared to the regulations governing chambers of commerce during the late Qing Dynasty and the early Republican period. The new law aimed to provide more comprehensive and specific guidelines. After the promulgation of the 1929 Chambers of Commerce Law, there was supposed to be a new ″Provisions on Commercial Arbitration″. However, in 1930, it was deemed unnecessary to establish new rules, and due to the lack of explicit legal provisions, the legal protection of the Chambers of Commerce's commercial dispute settlement authority was lost, leading to a period of stagnation for the establishment of commercial dispute settlement mechanisms. This situation led to dissatisfaction among the business community, and different regions took various approaches with differing outcomes. It was only in 1933, when the Judicial Yuan recognized in its judicial interpretations that the ″Provisions on Commercial Arbitration″ issued during the Beijing Government period remained valid. The position of these commercial dispute settlement mechanisms was thus restored. In 1936, the Nationalist Government in Nanjing officially promulgated regulations acknowledging the amendments to the ″Provisions on Commercial Arbitration″ issued by the Beijing Government in 1926. In 1937, the Judicial Yuan nationwide promoted ″civil reconciliation,″ which stated, ″In the case of commercial litigation, reconciliation should be attempted by the chambers of commerce initially, to promote the effectiveness of reconciliation and other situations.″ This effectively integrated the commercial dispute settlement mechanisms of the chambers of commerce into the national judicial system.[16] Unfortunately, the favorable situation did not last long. After the outbreak of the July 7th Incident in 1937, the commercial dispute settlement systems of most local chambers of commerce went into stagnation and remained

16) ″The Judicial Yuan instructed that in cases of commercial litigation, it shall be initially handled through mediation by the Chambers of Commerce, and all courts shall follow this unified procedure.″ This excerpt is from the ″Judicial Gazette,″ issue 187, dated April 23, 1937.

so until the victory of the Anti-Japanese War in 1945 when they began to recover. By this time, the capacity of the chambers of commerce for commercial dispute settlement had greatly declined, with only a few exceptions.

2) The Role of Commercial Arbitration

The arbitration system during the Nanjing National Government period in China did not differ significantly from the Beijing Government period. The key difference was the shift in government support, which transitioned from strong to weak, leaving arbitration in an awkward situation and reducing its influence. Overall, the commercial arbitration system during the Republican era made significant contributions to regulating business practices and promoting economic development. In the records of commercial arbitration decisions, phrases like "this office thoroughly reviewed the case and based the judgment on the customary business practices of the relevant trade" were frequently used. These phrases confirmed that the arbitration bodies were allowed, within the scope of existing laws and regulations, to handle disputes based on commercial customs. This approach aligned better with the way businessmen conducted their affairs, making it more humane and enhancing the businessmen's ability to predict dispute resolutions. This flexibility and adherence to customary business practices were among the advantages of the arbitration system.

From 1927 when the Nanjing National Government took power until 1936 when the "Provisions on Commercial Arbitration" were formally recognized as still in effect, there were ten years of varied situations due to the lack of specific details regarding arbitration in the "Commercial Association Law." In regions that continued to follow the "Provisions on Commercial Arbitration," the function of arbitration was consistent with the Beijing government period. The main bodies for arbitration were the Commercial Arbitration Bodies and members of the Commercial Associations. Arbitrators were selected from the association members through a voting process, typically involving older members with a good reputation. The cost of arbitration rulings did not exceed two percent of the value of the disputed property, and arbitration decisions were enforceable. In areas that did not recognize the "Commercial Arbitration Rules," the effectiveness of commercial arbitration was questioned, and arbitration activities became challenging to carry out.

4. The arbitration legislation in the People's Republic of China

1) The laws that Initially Included the Arbitration System

During the period of the Chinese Communist Party in revolutionary base areas and liberated zones, several laws related to arbitration were formulated. In 1933, the "Labor Law of the Chinese Soviet Republic" established a legal system for resolving labor disputes through arbitration. In 1943, the "Regulations on Renting and Farming in the Jin-Cha-Ji Border Region" included provisions regarding "mediation and arbitration." In the same year, the "Instructions on the Work of Arbitration Committees" were issued, comprehensively outlining the nature, tasks, authority, and internal work procedures of arbitration committees.

After the establishment of the People's Republic of China, and to meet the needs of economic development, China gradually developed both international arbitration and domestic arbitration systems. In May 1954, the State Council of the People's Republic of China passed the "Decision of the State Council of the People's Republic of China on Establishing the Foreign Trade Arbitration Commission within the China Council for the Promotion of International Trade." This decision outlined the principles for the organization, tasks, jurisdiction, and procedures of the upcoming Foreign Trade Arbitration Commission. In 1956 and 1959, the Foreign Trade Arbitration Commission and the Maritime Arbitration Commission were established.

During this period, the People's Mediation system was widely used to handle civil disputes, leading to its significant development.[17] In contrast, the influence and development of the arbitration system were limited and progressed slowly.

2) The Evolution of China's Economic Contract Arbitration System

Before the Arbitration Law became standalone legislation, China's domestic arbitration system primarily focused on economic contract arbitration. According to a series of

17) Based on the research on the people's mediation system, after the establishment of the People's Republic of China, the leaders of the Communist Party and the state attached great importance to the work of people's mediation. The people's mediation system was comprehensively established with the backing of national authority and has become one of the important means to resolve civil disputes. (Source: Wang Luhang. (2011). Research on the Modernization of the People's Mediation System from the Perspective of Social Governance. *Social Science Front*, 11, 263-268.)

regulations related to arbitration promulgated by the state after the founding of the People's Republic of China, China's economic contract arbitration went through four developmental stages. In the first stage, economic contract arbitration was under the supervision of various levels of economic commissions, and the courts did not have jurisdiction. This system employed a two-tier arbitration structure, often referred to as "arbitration only." In the second stage, the system continued to utilize a two-tier arbitration structure, but parties dissatisfied with the arbitration decision could file lawsuits in the people's courts. This stage was known as "arbitration first, litigation later," featuring a two-tier arbitration and two-tier litigation system. In the third stage, the arbitration system transitioned into "arbitration first, two-tier litigation," allowing parties to seek two levels of judicial review following arbitration. In the fourth stage, the economic contract arbitration system underwent a fundamental change. It adopted a "one arbitration, final decision" approach. Parties generally cannot initiate lawsuits directly in the people's courts if they are dissatisfied with arbitration, only doing so when arbitration is not possible. This stage is often referred to as "arbitration or litigation." The relevant laws are as follows:

Table 4: Relevant Laws of China's Economic Contract Arbitration System

Stage	Year	Main Laws
Stage 1	1961	"Regulations on the Work of State-Owned Industrial Enterprises (Draft)"
	1962	"Opinions on Arbitration by Various Levels of Economic Committees on Arrears of Debts among State-Owned Industrial Enterprises (Draft)" "Notice on Strict Implementation of Basic Construction Procedures and Strict Implementation of Economic Contracts"
Stage 2	1979	"Joint Notice on Several Issues Concerning the Management of Economic Contracts"
Stage 3	1981	"Contract Law of the People's Republic of China"
	1983	"Regulations on Economic Contract Arbitration"
Stage 4	1993	"Economic Contract Law," Revised Edition of 1993

Source of information: Compiled by the author.

1) Legislation on Arbitration in Other Areas

While economic contract arbitration was developing, starting from the 1980s, arbitration for disputes related to technology contracts, labor disputes, copyright disputes, real estate disputes, and consumer disputes was gradually being established and developed. Relevant laws included but were not limited to the "Technology Contract Law," "Regulations on the

Settlement of Enterprise Labor Disputes," and the "Copyright Law." However, these domestic arbitrations were essentially of an administrative nature, and the arbitration authority was exercised by arbitration bodies located within government administrative departments, which did not align with the nature and characteristics of arbitration.

Ⅳ. The Insights from the Arbitration Experience Throughout History

After the modern arbitration system was established in China, it primarily focused on commercial arbitration. Although experts and scholars have continually proposed suggestions for the development of arbitration systems in other areas, there has been no corresponding legislation. Compared to historical systems with broader arbitration authority, the scope of cases that can be arbitrated under modern arbitration is relatively limited. Currently, there are ongoing revisions to the Arbitration Law. China's unique experience with mediation systems has gained recognition from Western countries, offering the possibility of combining Chinese traditional legal culture with Western practices to create a harmonious approach.

1. Development Path of the Arbitration System

1) In Terms of Institutional Nature

From a legal perspective, China's contemporary arbitration system and the modern arbitration systems have many differences, but the basic principles of arbitration remain generally the same. According to China's current "Arbitration Law," the fundamental principles of arbitration include the principles of voluntariness, fairness, reasonableness, and independence. Among these, the principles of voluntariness and fairness can find corresponding expressions in modern arbitration systems. Furthermore, modern arbitration systems are characterized by their professionalism, flexibility, confidentiality, expeditiousness, and cost-effectiveness, except for the aspect of confidentiality. In general, modern arbitration aligns with these characteristics to a large extent.

A significant difference between the current arbitration system and historical arbitration

systems, such as the "Provisions on Commercial Arbitration," lies in the principles of one arbitration with finality and confidentiality. According to the "Procedures for Adjudication by Public Arbiters," the judgment is, "It must be agreed upon by both parties to take effect; if one party does not agree, it can still be appealed. Moreover, if there is no objection from either party after public arbitration, it should be enforced as a compulsory execution, subject to court approval." The provision that modern arbitration judgments require the consent of both parties to take effect tilts the arbitration process toward mediation and, in some cases, can prolong the dispute resolution process. On the other hand, the modern principle of one arbitration with finality significantly enhances the efficiency of dispute resolution through arbitration. A comparison between the two systems demonstrates that the development of the arbitration system is moving toward greater efficiency.

Table 5: Comparison of the Nature of Commercial Arbitration Systems

Law	Spirit of Judgment	Nature of Arbitration Institution	One Arbitration with Finality	Voluntary of Parties	Confidentiality	Judicial Support
Provisions on Commercial Arbitration	Fair and Reasonable	Private Organization	No	Yes	Public	Yes
Current Arbitration Law	Fair and Reasonable	Private Organization[18)]	Yes	Yes	Confidential	Yes

Source: Compiled by the author

Ancient and modern arbitration was conducted openly, while modern commercial arbitration, as one of its characteristics, emphasizes confidentiality. The lack of confidentiality in modern commercial arbitration is related to the historical context and can be attributed to three main reasons: First, China had historically favored agriculture over commerce, leading to slower commercial development and a lower demand for confidentiality in dispute resolution processes. Second, during that period, there was a relatively vague concept of civil rights, including the right to privacy. Third, the practice of conducting civil dispute resolution openly had been influenced by historical norms.

18) The current "Arbitration Law" only regulates civil and commercial arbitration, and the arbitration institutions for civil and commercial arbitration are limited to arbitration committees. Administrative arbitration, which is primarily conducted by administrative authorities, falls outside the scope of this law.

Therefore, the provisions related to confidentiality in the modern arbitration system can be seen as a sign of progress.

Both modern and recent commercial arbitration systems have the commonality of being operated by private organizations, with arbitrators being neutral third-party individuals not directly involved in the disputes of the parties. Furthermore, both arbitration systems have received legal recognition.

2) The Cooperation of State Authorities

In contrast to the strong government support for the arbitration system today, the modern arbitration system was once suppressed by the government, which viewed it as a threat to its own power. With the increase in government support for arbitration, the development of China's arbitration system has significantly accelerated. In contrast, during the Republican era, due to the government's ambiguous stance, the development of the arbitration system stagnated.

In summary, the level of state support for arbitration directly affects the effectiveness and authority of arbitration. Strengthening and improving the legislation of the arbitration system and increasing government support for arbitration institutions and arbitration awards are essential means to enhance the effectiveness of arbitration.

3) The Qualifications of Arbitrators

The "Arbitration Law" in China sets relatively high requirements for the qualifications of arbitrators. An arbitrator must meet one of the following conditions:

1. Passed the national unified legal professional qualification examination and obtained legal professional qualifications, with a minimum of 8 years of experience in arbitration.
2. Worked as a lawyer for a minimum of 8 years.
3. Served as a judge for a minimum of 8 years.
4. Engaged in legal research and teaching with a high-level title.
5. Possesses legal knowledge, engaged in professional work such as economic and trade, and holds a high-level title or an equivalent professional level.

Furthermore, although the "Arbitration Law" does not expressly prohibit it, a notice issued by the Supreme People's Court in 2004 clearly forbids serving judges from acting as arbitrators.

In practice, the qualifications for arbitrators often exceed the statutory requirements. Permanent arbitration institutions usually set higher standards for arbitrators through their arbitration rules or other means. For instance, the Beijing Arbitration Commission's "Rules of the Beijing Arbitration Commission" Article 19 explicitly requires that parties select arbitrators from the commission's roster of arbitrators. Additionally, their "Measures for the Appointment and Management of Arbitrators" and "Implementation Rules for the Measures for the Appointment and Management of Arbitrators" specify significantly higher requirements for arbitrator qualifications than those provided by law. They consider the completion of an arbitration training course and achieving a passing grade as a prerequisite for arbitrator applicants.

When it comes to resolving commercial disputes, the involvement of more professional individuals in the arbitration process is seen as promoting fairness in the arbitration awards. This is why arbitration is considered a better choice than litigation in many cases due to its professionalism, flexibility, speed, and cost-effectiveness.

In contrast, in the near past, there were very few regulations regarding the qualifications of arbitrators. "Regulations of Commercial Public Arbitration Institutions" only stated in Article 8 that "arbitrators and investigators shall be mutually elected from among the members of the chamber of commerce," and there were no specific requirements for their professionalism or educational background. However, the method of election itself implied recognition of the moral standards of the elected individuals. The "Regulations on the Business of the Chamber of Commerce" required that chamber members be at least 25 years old, implying a certain level of qualification and experience for arbitrators.

Comparing modern and near-modern arbitrator qualification regulations, it is evident that modern legislation is more detailed and stringent in its requirements. Nevertheless, the standards for arbitrators have remained relatively high over time, including moral and ethical requirements, which serve as safeguards for arbitration fairness.

4) The Efficient

In terms of the main procedures, there are many similarities between the arbitration systems of the recent past and the modern era. For instance, both require the consent of

both parties and the submission of an application to the arbitration institution, the composition of the arbitration tribunal with an odd number of members, and a principle of cost-effectiveness in arbitration fees.

However, in terms of details, the current Arbitration Law is much more comprehensive than the relevant rules from the recent past. For example, the "Provisions on Commercial Arbitration" stipulated that an arbitration tribunal should consist of 3 or 5 arbitrators, while the current law allows for a tribunal of 1 or 3 arbitrators. This change significantly enhances the cost-effectiveness of arbitration. Regarding fee standards, the recent past regulations set a fee cap at 2% of the total disputed amount, while modern fee standards divide the disputed amount into different tiers, with a lower percentage for higher dispute amounts. This makes arbitration more appealing for high-value cases.

3. Revision of the "Arbitration Law" and its Main Contents

1) Changes Since its Enactment in 1995

The "Arbitration Law" has undergone amendments in 2009 and 2017. The 2009 amendment primarily involved renumbering certain articles in accordance with the Civil Procedure Law. The 2017 amendment focused on modifying the qualifications for arbitrators. The significant changes include altering the qualification condition in Article 13 from "served as a judge for eight years" to "served as a judge for eight years," and adding a supplementary explanation to the first paragraph of Article 13, specifying that an arbitrator must "hold a legal professional qualification through the national unified legal professional qualification examination and have worked in arbitration for at least eight years." Overall, there have been minimal changes in the "Arbitration Law" since its initial enactment in 1995.

2) Revision of the "Arbitration Law"

Since the publication of the "Consultation Draft" in 2021, there has been extensive discussion and engagement from various sectors of society. In June 2020, relevant departments initiated the "Arbitration Expert Opinion Survey," and in August, a "Survey on Expert Opinions for Arbitration Experts (Public Version)" was distributed to the general public. This demonstrates the importance attached to the revision of the Arbitration Law by the Chinese government.

In June 2020, the Chinese Academy of Social Sciences Institute of International Law, the Legislative Research Association of the Beijing Law Society, and the Chinese Arbitration Law Society jointly launched the first "Arbitration Expert Opinion Survey." The survey used a "snowball sampling" method to select 144 domestic arbitration experts. Then, eight international arbitration experts were selected based on international recognition and their active participation in mainland China's arbitration activities. A total of 102 responses were collected from domestic arbitration experts and six from international arbitration experts. This expert-based survey reflects the general opinions of arbitration experts to a great extent.

According to the survey, there is a significant consensus among experts on major issues related to the revision of the Arbitration Law. These include introducing the concept of the place of arbitration, allowing foreign arbitration institutions to establish branches in mainland China, eliminating special provisions for foreign-related arbitration committees, legislating separately for business arbitration and business mediation, regulating electronic arbitration agreements, establishing the jurisdiction of arbitration, clarifying the recommended nature of the list of arbitrators, determining the system of arbitrator liability, allowing courts to assist in arbitration investigations and evidence collection, and regulating online hearings and electronic service, among others.

There are differences of opinion among experts regarding the establishment of domestic arbitration institutions, the arbitrability of disputes, and the introduction of Ad Hoc Arbitration. The "Consultation Draft" and expert consensus differ on issues such as electronic arbitration agreements, arbitrator qualifications, and arbitrator liability provisions.

3) Main Scope of Revision

The primary areas of revision in the "Arbitration Law" include arbitration organization law, arbitration agreements, arbitration procedures, applications for the annulment of awards, arbitration enforcement, and special provisions for foreign-related arbitration.

Arbitrability is one of the current hot topics in the development of China's domestic arbitration system, including the establishment of sports arbitration, artificial intelligence arbitration, academic arbitration, and medical arbitration systems. International issues in dispute resolution revolve around whether China's arbitration system should eliminate the dual-track system and how to better align with international standards. Some scholars suggest taking the path of reform followed by France as a reference.

The challenges for the future development of the arbitration system include introducing the concept of the place of arbitration, introducing Ad Hoc Arbitration, issues related to arbitrability, interim measures in arbitration, central jurisdiction, recognition and enforcement of arbitral awards, "public interest" in judicial review of arbitration, the appellate mechanism for court decisions annulling or rejecting applications for annulment, and government support measures for arbitration. These issues involve a wide range of considerations, and various parties are engaged in ongoing debates, making legislative changes more challenging. Among these, the introduction of interim arbitration mechanisms is a highly debated issue. Most Western countries have provisions regarding interim arbitration mechanisms in their arbitration laws, yet the mainland China region has consistently not adopted such mechanisms. This difference in arbitration systems between China and Western countries is a clear distinction and poses an obstacle to China's alignment with international practices.

4. Historical Insights of the Arbitration System and Directions for Future Changes

1) Historical Insights of the Arbitration System

In general, the modern arbitration system has gained support from national judicial authorities, ensuring the enforcement of arbitral awards and enhancing the legal status and authority of arbitration. For cases requiring professional expertise to make judgments, arbitration is undoubtedly a better choice than litigation. In civil disputes where both parties need to be satisfied for a resolution that achieves substantive justice, the operational mechanisms of arbitration and the final arbitral award are more likely to gain the consent of both parties compared to mediation. The enforceability of arbitration further guarantees the execution of arbitral awards. Therefore, in the future, the arbitration system can continue to expand its scope in areas requiring specialized knowledge, such as introducing medical arbitration, and further integrate with mediation.

2) Insights into the Arbitrability Issue

The success of the commercial arbitration system is not only due to factors like economic efficiency and confidentiality but also the professionalism of arbitrators. Judges and mediators often have limited professional knowledge in commercial and economic

matters, while arbitrators include experts in relevant fields. Therefore, in complex commercial disputes, arbitration can make more professional judgments, leading to fairer decisions. For fields in civil disputes that require professional expertise to assist in judgment, arbitration should be the most suitable dispute resolution method. According to the "Draft for Amendment," the country's support for expanding the scope of arbitration is evident. The removal of the "equal subjects" reference in the "Arbitration Law" provides a basis for broadening arbitrability. With a significant number of disputes related to medical matters in today's civil cases, existing systems like medical examination alone are insufficient to cover the intricacies of medical disputes. Furthermore, medical disputes often involve a party suffering from an illness, and lengthy litigation processes do not favor timely resolution of the parties' issues. There has been significant public demand for the development of a medical arbitration system in China. Pilot programs for medical dispute arbitration have been introduced in cities like Shenzhen, showing promising results. Therefore, pushing forward with the development of medical arbitration is a good choice to enhance the arbitration system, broaden its scope, and meet public expectations.

3) Further Integration with Mediation

In ancient China, there was no clear boundary between arbitration and mediation, and certain events suitable for arbitration and mediation were not limited to civil disputes but sometimes also extended to criminal disputes. Mediation is considered a Chinese characteristic, reflecting the ancient Confucian spirit. The unique arbitration-mediation dispute resolution method pioneered in China has proven to be very effective and is gradually gaining international recognition. In this context, learning from ancient experiences, enhancing the development of related arbitration-mediation systems, and expanding the scope of arbitrability could be beneficial.[19] It's worth noting that outside the domain, most systems linking commercial arbitration and mediation stipulate that arbitrators and mediators cannot hold both roles simultaneously.[20] However, China's

19) Currently, China's regulations regarding arbitration and mediation dispute resolution are mainly reflected in Article 51 of the Arbitration Law. It states, "Before an arbitral tribunal makes a ruling, it may attempt mediation first. If the parties voluntarily agree to mediate, the arbitral tribunal shall conduct mediation. If mediation fails, a ruling shall be made promptly. If an agreement is reached through mediation, the arbitral tribunal shall prepare a mediation statement or, based on the agreement, issue a ruling. Both the mediation statement and the ruling have equal legal validity." According to this provision, mediation occurs after the formation of the arbitral tribunal but before a ruling is issued, with the arbitrator acting as the mediator.

20) Refer to Zheng Mengting.(2023). Analysis of Legal Issues Regarding the Linkage System Between Commercial Arbitration and Commercial Mediation in China. *Arbitration Study*, 1, 86-89.

distinctive feature in resolving arbitration and mediation disputes lies in allowing arbitrators to also serve as mediators. This provision aligns with the historical tradition where arbitration and mediation did not have distinct boundaries since ancient times.

Arbitration, as a dispute resolution method between mediation and litigation, offers legal support that mediation lacks and flexibility not found in litigation. When dealing with dispute resolution mechanisms for ordinary people, arbitration can use language that is more straightforward and understandable, reducing communication barriers with the parties involved. This makes the arbitration process smoother, improves efficiency, and increases the public's willingness to choose arbitration as a method for resolving disputes. During the late Qing and early Republican period, arbitration was highly regarded because it was considered more cost-effective and fairer than official litigation. Besides the arbitrators being highly respected and recognized in society, an important aspect of its fairness was the flexibility to handle issues based on social customs and practices rather than being confined by legal provisions. This approach undoubtedly aligned more closely with the legal awareness and simple sense of justice of the general population at the time and received high praise. By strengthening arbitrator training and appropriately incorporating traditional virtues, increasing public recognition and satisfaction with arbitration can be achieved, establishing a distinctive Chinese arbitration system.

Ⅴ. Conclusion

With the development of the arbitration system and changes in the social environment, the scope of arbitration is gradually expanding. The modern legal concept of arbitration originated in Europe, primarily focusing on resolving commercial disputes. However, this commercial arbitration model is no longer sufficient to guide the future development of arbitration, as the demand for arbitration has become more diversified. Historical records from ancient China show the emergence of a system similar to arbitration, encompassing not only commercial disputes but also civil matters. China's unique arbitration and mediation methods are gradually gaining international recognition, suggesting that we can seek guidance for the future development of the arbitration system from historical arbitration experiences.

This article examines the development of the arbitration system in China from ancient times to the present. It also explores the directions for revising the current Chinese Arbitration Law, comparing ancient and modern arbitration systems and identifying valuable lessons to be learned. The second part provides a comprehensive overview of China's current arbitration system, while the third part traces the origins of ancient arbitration systems and the development of modern arbitration. In the fourth part, we offer recommendations for the future development of the modern arbitration system based on an analysis of the core principles of arbitration, coupled with insights from ancient practices. The goal is to create an arbitration system with distinctive Chinese characteristics.

The emergence of the arbitration system has, to a certain extent, addressed the previous deficiencies in the legal system, offering an alternative for resolving disputes and often holding a superior status in people's minds compared to official court proceedings. The arbitration system has been developed to assist ordinary citizens in better resolving disputes, and its future direction should continue to prioritize providing convenience for the public. A review of the historical evolution of the arbitration system in Chinese society clearly demonstrates that its appeal to the public lies in its economic efficiency and fairness. While China has made significant progress in its legal system, with the fairness and authority of litigation results widely recognized, the courts have limited human resources, and litigation procedures inevitably consume more time and resources for the parties involved. Therefore, arbitration should strive to attract cases that do not necessitate resolution through litigation. To achieve this, arbitration needs to enhance its appeal to the parties involved. This can be accomplished by integrating cultural backgrounds, expanding the scope of arbitration, and other means that resonate with the public, ultimately increasing society's acceptance and trust in arbitration.

Reference

Bai Zhi·Ergu Aha. (1989). Customary Law of the Yi People in Liangshan. *Yi Culture*, Annual Issue.

China International Economic and Trade Arbitration Commission Editor. (2022). *China International Commercial Arbitration Annual Report (2021-2022)*, Law Press.

Edited by Peng Zeyi. (1995). *Collection of Historical Materials on Chinese Chambers of Commerce*. Volume 1, Zhonghua Book Company.

Francis Keller. (2017). American Arbitration: Its History, Functions and Achievements. New York, Harper & Brothers, 1948. Quoted in Fan Kun, *Arbitration in China: A Legal and Cultural Analysis*, translated by Fan Kun and others, Law Press.

Jiang Wei and Xiao Jianguo (Editors). (2023). *Arbitration Law*, Renmin University of China Press.

The second historical archives of China. (1991). *Compilation of Historical Archives of the Republic of China's Commers*. Volume 1, China Commerce Press.

Wang Luhang. (2011). Research on the Modernization of the People's Mediation System from the Perspective of Social Governance. *Social Science Front*, 11.

Yu Qingsheng. (2017). Institutional Transformation and Changes in Legal Culture: Taking Dispute Resolution Mechanisms as an Example. *Journal of Henan Normal University (Philosophy and Social Sciences Edition)*, 1.

Zhan Hui. (2022). The Commercial Arbitration Gene in the Tradition of Chinese Ancient History. *Beijing Arbitration*, 2.

Zhang Song. (2010). An Analysis of the Commercial Arbitration Offices in the Early Republic of China: With a Focus on the Beijing Commercial Arbitration Office. *Political Science Forum*, 3.

Zhang Song. (2010). *Change and Continuity: Research on the Construction of Commercial Law and Commercial Practices in the Late Qing and Early Republican Period*. China Social Sciences Press.

Zhang Song. (2016). *From Public Deliberation to Public Arbitration: A Study of the Commercial Arbitration System in the Late Qing and Early Republican Period*. the Law Press.

Zheng Chenglin. 2005). *Chambers of Commerce and Modern China*. China Normal University Press.

Zheng Mengting.(2023). Analysis of Legal Issues Regarding the Linkage System Between Commercial Arbitration and Commercial Mediation in China. *Arbitration Study*, 1.

ABSTRACT

중국 중재제도의 역사적 연원과 현대적 시사점

샤오샤오

중재는 공정하고 효율적인 분쟁해결 방법이다. 또 현대사회에서 경제발전으로 인하여 소송제도를 보완하는 매우 중요한 기능을 하고 있다. 중재제도는 고대부터 각국이 분쟁해결을 위해 각자의 전통적인 방식으로 형성되었으며, 법학의 발달과 함께 중세부터 점차적으로 법적 보장이 명확한 제도로 확립되었다.

중국에서 중재제도가 입법화 된 것은 근대 민국시대(民国时期)이지만, 분쟁 해결 방법으로 중재가 등장한 것은 고대 진한시대(秦汉时期)로 거슬러 올라간다. 현대에서 중재와 관련한 입법은 1995년에 공포한 '중재법'이다. 입법 당시 외국의 중재법과 제도 등에 대한 경험을 참고하였다. 하지만, 현재에 있어 중국 '중재법'은 여전히 많은 문제를 안고 있다. 즉, 경제발전으로 인해 다양한 안건이 발생하면서 분쟁도 진화하고 있기 때문이다. 이에 중국의 현행 '중재법'은 개정 중에 있다. 중재법의 개정에 있어 중국의 역사적 경험을 어느 정도 참고할 수 있을 것이다. 중국에서 발생하는 분쟁 안건에 있어 중재가 고대부터 중세 및 근대, 그리고 현재에 이르기까지 경험과 특징을 살핌으로써 개정안에 좋은 시사점을 제공할 것이라 본다. 특히, 현대의 상사중재제도가 외국의 법문화로부터 중국에 도입된 후 그 역할과 효과에 대해 중국 전통의 중재제도를 분석함으로써 더 나은 개선방안을 제시할 것이다.

이에 본 연구에서는 중국의 고대에서 현대에 이르기까지 중재제도의 기능에 대하여 연혁적으로 살펴보고, 현재 개정 중인 '중재법'에 중국 전통 중재제도가 주는 시사점이 무엇인지 검토한다. 이를 통해 장래 중국의 중재제도의 발전은 물론, 그 가치를 확인하는 좋은 연구자료가 될 것이라 본다.

주제어 : 근대 중재제도, 분쟁해결, 민상사중재, 중재제도 연혁, 조해중재

ABSTRACT

The Historical Origins and Modern Insights of the Chinese Arbitration System

Xiao Xiao

Arbitration is a just and efficient method for resolving economic disputes. It adapts to the needs of economic development and is an important institution in today's society. Around the world, a tradition of resolving disputes through arbitration spontaneously developed in ancient times and gradually evolved into a legal system with the development of jurisprudence starting from the Middle Ages. In China, formal legislation on arbitration began in the modern era during the Republic of China period. However, the origins of arbitration as a method for resolving disputes can be traced back to ancient times, during the Qin and Han dynasties. The most significant modern arbitration legislation in China is the "Arbitration Law" enacted in 1995, which drew on the experiences of foreign arbitration laws. Despite this, there are still many areas in arbitration legislation that require improvement based on practical experiences. Currently, revisions to the Arbitration Law are underway, and historical experiences may offer valuable insights, assisting in better integrating the Arbitration Law with Chinese society. This article primarily focuses on the role and impact of the imported modern commercial arbitration system in China and how it can be harmonized with China's legal culture in the future.

Key Words : Modern Arbitration System, Dispute Resolution, Civil and Commercial Arbitration, Evolution of Arbitration Systems, Mediation and Arbitration