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The modern concept of Economic Law in China:  
an independent discipline of law?

**The modern concept of Economic Law in China: an independent discipline of law?**

*Economic Law regulates socio-economic relationships with a public character through market regulation and macro-control.*

*China adopted the open door policy in 1978 and acceded to the World Trade Organization (WTO) in 2001.*

*These two events introduce important changes in the China's political, legal and socio-economic development.*

*In the legal System of the Soviet Union, which influenced China's socialist ideology, economic law was the legal theory and system under which economic relations were a legal discipline independent of criminal law and civil law (Ferdinand Joseph Maria Feldbrugge, Gerard Pieter van de Berg, William B. Simons – 1985 – “Enciclopedia of Soviet Law”).*

*In this scenario, the concept of “economic law” is advocated as a means to implement the state's social and economic management.*

*The modern concept of “economic law” emerged only when economic reform began in 1978.*

*The first stage of economic reform in China, from late 1978 until about 1984, saw the effort to introduce efficiency-enhancing incentives to the rural sector in the form of the household responsibility system in agricultural and to rationalize the state sector so that planning of industry and commerce could work better.*

*Neither of these changes took the form of laws but only the form of a series of Communist Party Central Committee and State Council documents.*

*By contrast, foreign investment was officially sanctioned with the adoption of the law on Sino-Foreign Equity Joint Ventures in 1979.*

*The PRC's first Contract Law (i.e. the Economic Contract Law) enacted in 1981, applied only to contracts between “legal persons” (enterprises and organizations) and excluded individuals from its ambit: the intent of the law was that only enterprises “subject to state control could enter into meaningful economic activity” (Potter, 1992, p. 32).*

*It is clear that Economic Contract Law perpetuated into the reform era the Soviet concept of economic contract.*

*In this kind of scenario, economic law scholars, under the influence of the former Soviet Union, advocated the vertical and horizontal reunification theory which uphold that economic law not only regulates vertical economic management relations but also discipline economic relationships between civil subjects of equal status (horizontal relationships).*

*In this sense, civil commercial law scholars asserted that economic law was not an independent school of law, advocating the **integrated economic law theory** (which embodied civil law, administrative law and labor law) and the **academic economic law theory** (as special norms which regulate specific economic phenomena).*

*The latter theory prevailed after the enactment of GPCL in 1986.*

*The Fourteenth Congress of the Chinese Communist Party in 1992 endorsed the “socialist market economy” as the aim of reform and the Constitution was emended in*

1993 to replace a reference to “economic planning on the basis of socialist public ownership” with a reference to “the socialist market economy”.

In 1992, the State Commission on Reform of the Economic System promulgated a proto-Company Law in the form of two “normative opinions” on joint stock companies and limited liability companies and these vehicles were formalized in the Company Law enacted the following year (Company Law, 1993).

While the business vehicle of the Company Law were largely designed for restructuring SOE’s, they were also intended to be used by private business.

Several laws governing market behavior were also passed: the Law against Unfair Competition in 1993 was followed in 1997 by the Price Law, which established the principle that the great majority of prices should be set by the market while still containing provisions designed to control prices deemed excessively high or excessively low.

China’s full engagement with the world trading system was symbolized by its formal accession to the WTO in December 2001.

The 2000-2010 reform era has seen the passage of legislation regularizing the operation of the legal system itself, again with generally market-friendly results.

In 2003, the Administrative Licensing Law was passed, which established the principle that licensing schemes could be imposed only for reasons of public necessity. The principles set out in this law may not be readily enforceable to the benefit of business operators but they represent a policy orientation and discourse that may be expected to work its way gradually into governmental practice.

As China officially adopted a market economy, new concepts about economic law emerged.

The market economy is based on the belief that the invisible hand is capable of ensuring the orderly operation of the economy under a laissez-faire policy.

Adam Smith, the father of the economy, in *The Wealth of Nations*, described the self regulating of the marketplace with the metaphor of invisible hand of the market (introduced for the first time in *The Theory of Moral Sentiments*).

The individual may have a selfish motive but the use of domestic industry and labor enriches and promotes the interests of society as a whole, even if the ambitious have no benevolent intentions.

However, the essence of ineffectiveness of market regulation lies in the inherent defects of market itself and imbalance of interests among economic persons: monopolies, oligopolies, refusal of supply, market allocations and other exploitative behaviors that prejudice consumers interests or result in the polarization of rich and poor.

In order to overcome the inefficiency of market is necessary the interposition on some relations or mechanism by outside force.

In this scenario, the Economic Law works as a separate discipline of law with the aim to harmonize the operation of the socio-economic system.

So, in order to strengthen its macro-control, the state may offer, for example, tax incentives to encourage investment in a particular field or location to enhance economic development (sometimes in order to overcome the contradictions of the market: for example, economic growth may create jobs, but advances in technology may lead to job cuts); on the other hand, the People’s Bank of China, directly answerable to the State Council, pursues the maintenance of currency stability and it is empowered to make

*decisions concerning interests rate, exchange rate which have the effect to stabilizing prices.*

*Laws such as Individual Income Tax Law, Enterprise Income Tax Law, Tax Collection and Administrative Law, the Law of People's Republic of China, and so on, influence economic policies like fiscal, monetary and financial policies.*

*On the other hand, Economic Law aims to maintain a free and fair environment for competition and protection consumer rights.*

*Competition is the basic operational system of market oriented economy and it becomes especially important to perfect competition law, to sustain effective competition and to improve the economic development.*

*So, Anti-Monopoly Law, Anti-Unfair Competition Law, Consumer Rights Protection Law and Price Law pursue to safeguard market order and create a level playing field for fair competition and consumer protection.*

*In the law, of course, not only Economic Law embodies the intervention of public rights but also civil law and commercial law do, but there are many differences.*

*Private Law is characterized by the principle of "autonomy", "freedom" and "good faith" and the civil subjects only have the rights to determine own their interests and bear all the consequence of their decision.*

*The remedies of civil law are not in a position to prevent harm.*

*Economic Law cannot be substituted by either the Administrative Law and Civil/Commercial Law as a remedy to in effectiveness of market regulation.*

*This is because the Economic Law proves greatly advantageous in that it can directly restrict the private rights of the subject of market, directly alter their interests structure (for example, under Art. 37 of Advertisement Law, the advertising supervision and control organ is empowered to order the advertiser to stop publishing the advertisement if it is false and deceiving; under Art. 18 of Foreign Trade Law the authority shall have the power to restrict or prohibit to import or export of any goods and technologies by establishing a list of restrictions), lays emphasis on public interests (Art. 16 of the Environmental Law in the "PX project" case) and is far-sighted in dealing with such problem.*

*For this reason the Economic Law is indeed, in my personal opinion, an independent discipline of law, which embodies legal norms for regulating, adjust and coordinating economic relations in order to overcome the limitations and problems of market operations.*

*Luigi Pau Jr  
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