
Title: Historical Developments of Judicial Proof and the Reform in China

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Proposal

Judicial proof can come in two types, "free proof" and "regulated proof." "Free proof" means that the proof is in no way limited by the law; fact finders in legal proceedings may collect and apply evidence as they see fit. Regulated proof, on the other hand, are regulated according to law; these must be followed by fact finders as they collect and apply evidence. In recent years, some Chinese scholars of criminal evidence have been enthusiastic supporters of free proof in its classic form, the 'proof with intimate conviction.' But they have criticized and even denounced the regulated proof in their classic form, the system of legal proof. This has influenced awareness of the two types of judicial proof among the larger public. There are in fact advantages and disadvantages to both free and regulated proof, and now in most countries, judicial officers apply some of both, with mere differences of degree.

Over the long term, the developments of judicial proof exhibit a pattern of reversing the system last applied, passing from the free proof to the regulated proof, and back again, in an upward-moving spiral. On the surface, each "reversal" appears to be a return to an earlier stage, but in actual substance, each reversal takes us to a higher level of the spiral, with something new for every so-called "return." The situation is clearer in some countries than it is in others. It is worth noting that, were the range of evidence types to be increased to include physical evidence and circumstantial evidence, then supplying specific regulations regarding the strength of each type of evidence would have been extremely difficult.

In recent years, reform of the system of judicial proof in China has been a major concern for the legal profession, as well as a pressing concern for law enforcement practice. To institute the reform, we first need a direction for such reforms, otherwise it will turn into a blind search for novelty that risks causing disorder in judicial activities. And when it comes to a clear direction for reform, one of the basic issues is the selection of free proof or regulated proof. In answering this question, we must study the lessons of the experience of foreign countries, and the trends in world development. We must also analyze the Chinese historical tradition and the practical needs of China today.
