



Studying the Factors Influencing the Legal Development in Ancient China

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Abstract

The legal development of ancient China has undergone a very brilliant period and so far it still has attracted a number of Chinese and foreign scholars. What is the reason why the Ancient Chinese law can develop? This text indicates that the agriculture-based civilization, autocratic centralization, patriarchal society and other factors are the vital factors that lead to the ancient Chinese legal development with features of its own.

Keywords: Ancient times, Agriculture-based civilization, Autocracy, Patriarch

The special humanistic and geographical environment of ancient China has conceived a distinctive and unique legal culture. And the nature of cultural heritage makes the legal culture produce an inestimable impact by now on people's mind, cognition, value, belief and behavior. The following are the factors that have played important role in the legal development of ancient China.

1. Agriculture-based civilization affected the legal developments in ancient China.

Montesquieu once said that laws have a very close relationship with ways of life of all ethnic groups. A nation engaged in the commercial and navigation needs more codes and more scope than that content with cultivating the land (Montesquieu, 2003, p.325) Dynasties of ancient China are typical in agriculture and agriculture is the basis to govern the country. Moreover, self-sufficient small-scale peasant economy is the most basic economic form in ancient China. This situation is bound to have a profound impact on the legal development in ancient China.

The first thing that agricultural countries are primarily concerned with is the development of agriculture, which is put in a prominent position. As the old saying goes, "the saints know what the country needs most. Laws and decrees require the people center around the farming. If people cling to farming, the folk customs would be simple and easy to be led on the right way". "Only when a saint rules a country, he can be dedicated to agriculture". (Works of Shangrang) It can be seen that the ancients do not only realize that the most important thing to govern a country is to deal with farming but also know the importance of agriculture. However, in an ancient society of China when the agricultural productivity is under developed, the agricultural efficiency can not be raised through technology but blesses of Heaven. Thus such thoughts as harmony of man and nature, King Heaven and Heaven as law, have come into being. It is true that there is a factor of thought of divine law. But long-term experience and inference of agriculture can not be ignored either. Such an ideology has affected the establishment of legal institution. For example, in Yueling of Book of Rites, there is a good combination of agricultural activities of seasonal regulations, taboos and advocacies with state governance. It provides that the ceremony of cultivating should be held and at the same time no warlike operations should be undertaken at the beginning of the spring season. In the middle of the spring season when "the young buds are kept and those more advanced is stopped from being disturbed", "Orders are given to the officers to examine the prisons; to remove fetters and handcuffs; that there shall be no unregulated infliction of the bastinado; and that efforts shall be made to stop criminal actions and litigations". In the first month of summer season when "delicate herbs die and it is the harvest time of the wheat", "cases are decided for those that the punishments are light; those of small crimes are made to do short work, and those who are in prison for slight offences are liberated". In the mid-summer season when days are hot, "leniency should be shown to prisoners charged even with great crimes, and their allowance of food be increased". That means prisoners' living conditions should be improved. In the autumn season when wind becomes cold and strong and crops are gathered in, "orders are given to the proper officers to revise with strict accuracy the laws about the various punishments. Beheading and the other capital executions must be according to the crimes without excess or defect".

When winter comes, “officials at every level hurry on the decision and punishment of criminal cases, wishing not to leave them any longer undealt with”. Dong Zhongshu, a great Confucian scholar of Han dynasty, has an extreme explanation of the idea. He said that “a ruler has four important periods of governance, which is similar to the four seasons in a year. That is to say, what nature has is what human beings possess. Celebration can be held in spring, reward in summer, punishment in fall and execution in winter”. Dong Zhongshu’s viewpoint of harmonious nature and man is not only accepted by the rulers at that time but also acknowledged by the later generations. And even in Qing dynasty there is a system of execution of death penalty in autumn and winter. It is rare to find in other countries that policies and decrees are arranged according to seasons, as reflects the influence that agricultural civilization gives to ancient legal system in China.

In addition, agriculture-based civilization determines the national character of farming peoples, for instance, loving one’s native land and hating to move, the customs of emphasizing experience, tradition and stability, which also affects the legal growth of ancient China.

As far as legal forms are concerned, although different dynasties in ancient China have other forms, the most important and principal one is the written code, which is inherited from dynasty to dynasty. For example, Nine Chapters Law of Han Dynasty mainly copies the Statue Book. Criminal Law of Song Dynasty is from the Criminal Law of Tang Dynasty and Law of Qing Dynasty is from Law of Ming Dynasty.

As for style of law, there are 6 chapters, 9 chapters, 18 chapters, 20 chapters, or 12 chapters, different from one another. But the Code Table, which is similar to the General Principals of modern criminal law, has been put as the end one in the back of the code since the Statue Book of Warring States period and not until Criminal Law of Wei Dynasty, is it renamed Name of Punishment and placed in the first chapter. The small reform of the layout should have cost more than 600 years. And the feature of legal system in ancient China that tradition can not be easily changed can be distinctly seen. Owing to this, legal reform also becomes extremely difficult and advocates of legal reform of ancient dynasties are often under enormous pressure, and face death at every turn, Deng Xi, Shang Yang, Li Si, and Chao Cuo are the good cases in point.

As to the legal content, the typical farming nation obviously calls for much less the laws than the European countries where the commercial economy is more developed. Long-term emphasis on farming and suppression of commerce lead to the weak growth of ancient Chinese civil and commercial Law because in ancient China where commercial economy is not developed, the use of criminal law is sufficient to solve the vast majority of disputes in society.

For a long time of expectation and dependence on agriculture, the ancient regimes are more concerned about the flood and drought, which give a direct impact on agricultural production and at the same time affect the prosperity and stability of the society and country. So every dynasty take the task of managing flood and drought as the major mission and put it as the law, which becomes one of the features of the ancient legal development. In ancient China, legal provisions relating to flood control, water conservancy construction are numerous. Early in the Qin Dynasty there are such legal documents as Works Law, Corvee Law and Law of Minister closely related with the water conservancy project. There is Xing Law in Nine Chapters Law of the Han Dynasty, specialized in water conservancy. In Ming and Qing dynasties, Construction and River Defense are specially set in Works Law. In addition, there are a lot of separate regulations related to water conservancy projects in every dynasty, such as Water Decree in Han Dynasty, and Regulations of the Ministry of Works in Qing Dynasty, etc.

2. Autocratic centralization affected the legal development in ancient China.

As we all know, ancient China is an autocratic country with highly centralization. The political system has profound social background. In Chinese history, West Zhou Dynasty has a brilliant period of system of enfeoffment, which leads the dynasty to the peak of slavery. However, system of enfeoffment resulted in the chaos of the ducal states in the Spring and Autumn Period and the Warring States Period. It is the First Qin Emperor that unites the world by means of centralization. Centralization prevails over the enfeoffment in the first round of bout. The second round happens in the early years of West Han Dynasty. The kings belonging to royal family or not who were infeudated in the early Han Dynasty had eventually become centrifugal force in the course of its development. And it is Emperor Wu that won the kings and maintained the unity of the country with power centralization, thus creating a glorious Han. Centralization defeats enfeoffment in the second round of contest. Since then, the concept of centralization of power has been identified and accepted by people. Furthermore, the typical agricultural civilization is in the pursuit of stability, unity and harmony, which calls urgently for a strong core and powerful leadership. Therefore, a strong centralized government headed by the emperor has become an inevitable choice in history, as have had a very far-reaching influence on the legal development in ancient China.

First of all, in an autocratic centralized government, the central question that legal development concerns is how to maintain imperial power and the centralized rule. For this purpose, the establishment and reform of administrative institution had been strengthened. If administrative legal bodies are examined of the different dynasties in history in a

systematic way, it can be found that the organization system, powers and functions of the administrative bodies, particularly the central ones would be adjusted to meet the need of the rulers in order to better safeguard the imperial rule. Indeed, the huge state machinery needs effective work of government officials at all levels to obtain the efficient operation. In order to ensure their effective work, how to govern officials has become a feature of ancient Chinese administrative law. Institution of Governing officials is so strong and advanced that the ancient Chinese law is narrowly referred to as the Official Act. Economically, great efforts are made to promote emphasizing farming, restraining commerce, prohibiting smuggling, franchising and restricting foreign trade to preserve the basic natural economy that feudal autocratic rule depends on. A good case in point is the policy of suppressing commerce in Han, Ming and Qing Dynasties. On the aspects of criminal law, many crimes of offending the royal power and the interests of emperors are provided such as lese majesty, and crime of breaking into the palace door, etc. In the judicature, it is not uncommon that emperors interfere with the judicial in different dynasties and many system of joint trial are created such as prison-checking system, autumn assizes, grand instance, hot-trial, court inquisition, joint inquisition of three or nine ministers, etc.

Secondly, the centralization of absolutism affected the establishment of the concept of “supremacy of law”. In legislation and administration, although in the ancient society, the judicial system of organizations at different dynasties, especially the central judicial organization are comparatively sound, the administrative officials have judicial power at the same time, which is a typical feature of the legal development in ancient China. Besides, there are emperors and the royal power that are beyond the law. Emperors and royal power can not only determine the establishment or the abolition of the law, but also greatly affect the law enforcement. In many dynasties, there exist cases that emperors invalidate laws with their words instead. For instance, Liu Bang, the emperor of Han, made the Vows on A White Horse, establishing such a rule that dynasties not belonging to Liu family should be overthrown. There is the activity of “Compiling Orders of Emperors” and “using Orders of Emperors instead of laws” in Song Dynasty. And Zhu Yuangzhang, the first emperor of Ming Dynasty, compiled the great imperial mandate in person. There are two ways by which the imperial power may affect the enforcement of laws. One is to interfere with the judiciary with various activities of joint trials. The other is to give a direct influence through the direct appeals. Such a social reality does not make “the supremacy of law” generally recognized by people at all. Thus the “unified law” was maintained stably and chronically.

Thirdly, centralization of absolutism leads the ancient legal thoughts to the framework of the Confucian idea. There is a period of freedom of thoughts in the history of China, namely, hundreds of schools of thoughts in the Spring and Autumn period. However, the situation does not last for quite a while. It ends with the unification of Qin and Han Dynasties because political unification requires ideological infirmity. “Taking law as religion and officials as examples to learn from”, raised in Qing Dynasty, is a hard blow on the free research on laws in the Spring and Autumn Period. Later, Han dynasty adopts Dong Zhongshu’s thought of “proscribing all non-Confucian schools of thought and espousing Confucianism as the orthodox state ideology”, which ensures the guiding position of Confucian thought to the legal development. The jurists of the later Jin, Tang, Song and Ming Dynasties are all on the orbit of taking Confucianism as a guide. Especially since Song Dynasty, with the increasing strengthening of autocracy, the scope of the legal research has become narrower and narrower and is confined in the framework of Confucian thought. Such situation lasted till the end of Qing Dynasty.

3. The patriarchal society affected the legal development in ancient China.

Since the West Zhou Dynasty in China, a set of complete and strict patriarchal system had been established. In fact, ancient Chinese society is also the strict hierarchical patriarchal society, which had produced profound influences on ancient Chinese legal development. Its manifestations are as follows:

First of all, the patriarchal society affects the equal application of ancient laws and makes the ancient legal system bear the characteristics of different hierarchy. A scholar once said, “patriarchal society is hierarchical, which emphasizes the difference of identity and treatment. Thus the society as a whole shows grades and order like a pyramid. Their existence is bound to result in the inequality in law enforcement, which can be seen everywhere in the ancient Chinese legal system. It can be demonstrated primarily as the systems that different classes have different chances to participate in politics and the same crimes receive the different punishment.

The ancient Chinese society is primarily divided into the upper and lower classes. And more opportunities are given to the upper class to participate in social activities. In ancient China where the social activities are relatively few, the most important way to take part them is to take official career. System of Ancient Chinese official career is conducive to the upper class. For instance, inheritable position of Qing official and nine-rank system of selecting officials make the lower class participate in social activities impossible. Imperial examination system from Sui Dynasty to Qing Dynasty seems to provide equal opportunities for all the people. However, the ancient educational system is not so popular and educational resources are scarce that only the people from upper class can receive a good education. The provision of different penalty for the same crime is demonstrated by such systems as Bayi system, Guandang system, and systems as

apology, extenuation, impunity and atonement. These systems provide an umbrella for the upper class and they show that the upper class enjoys the social privileges.

Secondly, the patriarchal society gives great impact on the universal application of the ancient legal system, because in a patriarchal society, the clan family rules and regulations and moral principles occupy the field that should be adjusted by law. To a certain extent, they work as laws. Furthermore, their adjustment to social contradictions helps to form the idea of “never resorting to law” in the folk world of ancient China.

In a patriarchal society, such customs and values as nostalgic provincialism, living with the whole clan, and neighborhood conservation have been retained for a long time. Therefore, as to the disputes of land, marriage and debts in the folk world, the government officials can achieve the purpose of quelling disputes through the mediation of neighbors and relatives. In a long ruling practice, the rulers find that such a method of mediation is not only effective but also helpful to reduce the number of suitcases between the government and the common people. So they make use of the power of government to further strengthen the legal status of the patriarchal family regulations. For instance, rulers of Song Dynasty once ordered some bigger families to compile their patriarchal clan and regulations. The conduct of the government has intensified the status that the patriarchal regulations are supplementary law. The long-term accumulation of the custom makes the thought of “never resorting to law”, prevailing in ancient Chinese society. Even in Qing Dynasty, some minor civil cases and criminal cases tried in district and county government are still adopted the way of mediation by neighbors, the community surveillance and kin by law and by the family clan and regulations. Such a tradition has become the source of the mediation system in Chinese litigation, which is rare in other part of the world.

Exploring the factors that affect the legal development is conducive to correctly understand the traditional legal culture and its influence, reconstruct and disseminate the modern legal culture. The above is my preliminary analyses about the factors that affect ancient Chinese legal development with what I have accumulated during teaching. As a matter of fact, factors influencing the legal development are more than what I have said and influences of various factors are not isolated. I really want to say more the size of the whole text does not allowing me doing that.

References

Chun Qiu Fan Lu

Li, YuJie. (1999). *Research on early Chinese state nature, the ancient Chinese kingship and despotism*. Zhengzhou: Henan University Press.

Montesquieu. (2003). *The spirit of law*. Xi'an: Shanxi People's Publishing House.

Works of Shangrang

Xu, Yangjie. (1992). *History of Chinese family system*. Beijing: the People's Press.

Ye, Xiaoxin. (2006). *Chinese legal history*. Shanghai: Fudan University Press.