

On Humanity in Legislation

Jingbo Zhao

School of Law, Changchun University of Science and Technology

Changchun 130022, Jilin, China

E-mail: zhaojingbo@gmail.com

Abstract

The development history of law and human society clearly tells the importance of good law. But what is good law? What is its criterion? People orientation is the logical starting point and objective of legislation. By analyzing the humanity in the existing legislation, this paper proposes that legislation should be people-oriented and take meeting the basic needs of people as the starting point and legislation should reflect the concept of humanity.

Keywords: Legislation, People orientation, Humanity, Benefit

1. People orientation is the logical starting point and objective of legislation

“Therefore, roads are wide, the sky is vast, the ground is large and man is great. Man is one of the four in the universe.” (Daode Ching. Chapter 25). Man is the subject and the fundamental driving force to promote the constant progress of human society. An indisputable fact is that law is made by human beings whether it is the conclusion of experience in the course of social and historical development or the rational design needed in the actual development. Law, by different means, determines the relationship among people, allocates rights and obligations, adjusts conflicts and contradictions and maintains the harmony of different people in the real world. People create law and become the enforcers and the ultimate protectors of the law. Man’s dominant position and his relationship with the law determine that the logical starting point of law is the consideration of man and his life in reality. The ultimate aim is to meet people’s basic needs and protect human rights to the utmost degrees. Aristotle once said, “law is the best ruler.” But the development history of law and human society clearly tells us the importance of rule by good law. Only the law of excellent quality can become the best ruler. What is a good law? What is the criterion of a good law?

Development experience of history tells us that law is not the tool of implementing governance but a defender of rights. Legislation should be people-oriented and take meeting the basic needs of people as the starting point and it should embody the humanity of concept in designation. When the relations of people and the legislature were mentioned, the starting point was emphasized more on the instrumental value, its purpose was stressed more on management, its value was stressed more on efficiency and the basis of it was stressed more on economic, political, and cultural angles while human-based concern was ignored. As Hume said, “all sciences have something more or less with human nature and any subject, no matter how far it seems away from the human nature, it always by this or that way comes back to humanity.” “Any significant solutions to the problems involve the sciences about people. Before we do know the subject, any problem can not be actually solved. Therefore, in attempt to explain the principles of human nature, we actually propose building a completely new disciplinary system, which is the only solid foundation for all sciences.” (Hume, 1980, pp6, 7). “Legislation only on the basis of human nature can show the position of the subject of man in the relations between man and law, display the reasonability of law and realize the scientific nature to achieve the effectiveness of implementing good law. However, there are different opinions about human nature. In the context of Chinese and Western cultures, understandings and analyses are uncompromising.

As far as the scholars’ study of human nature is concerned, although they have different understandings about the relationships of natural and social attributes and their different forms, they still think that human nature contains the natural attributes and social attributes. Dewey, a representative of American pragmatism, explains human nature from the perspective of biology. He thinks of the human instinct, desire and requirement to be constant human nature, which determines a person to be a person. The fundamental attribute, which distinguishes man from animals, is the social attribute, man’s social living conditions and productive labor. That is to say, man’s natural property has been deeply marked by social stigma. So Dewey believes that in practice human nature can be changed. Faith and action constantly change and the basic requirements can be expressed in another way

different from what is adopted now. In other words, he thinks that the change of human nature is just the change of expressions and approaches while the human nature can not change. As a person in society, in different forms of social context, he can not get rid of the influences of society, politics, economics and cultural conditions to keep the nature intact. Marx said, "human nature is not an abstraction inherent in a single individual. In reality, it is the sum of all social relations." The scientific understanding or preposition believes that human nature develops concretely and historically because people's social conditions and social relations are evolving and human nature are always in constant change.

2. The human-based design in the existing law

In 2003, the Standing Committee of the National People's Congress passed a lot of laws. Among them, law of the People's Republic of China on Residential Identity Card, the Administrative Licensing Law, and law of the People's Republic of China on Road Traffic Safety are closely related with the ordinary people's life. In 2004, the most significant legislative initiative is to revise the existing Constitution for the fourth time. Chinese Constitution, for the first time, explicitly declares that "the State respects and protects human rights". Human rights written in the Constitution indicates that Chinese Constitution becomes people-oriented. The amendment to the Constitution meant the protection and human concern for the vulnerable groups. When land expropriation and demolition become more and more fierce, farmers become the direct victims in the process of reform and urbanization. Amendment to the Constitution emphasizes and distinctly provides the compensation when land is expropriated. Thus the vulnerable farmers have the most powerful weapon to maintain their rights. Constitution also declares that "the state sets up and keeps sound social security system in consistent with the economic development", which provide the maximized legal protection for laid-off workers and other poor people.

Demonstration 1 is that the new regulations of the Residential Identity Cards Law (1) expand the scope of the issue of identity. Any Chinese citizen who has reached the age of 16 and who resides within the territory of the People's Republic of China shall, in accordance with the provisions of this Law, apply for the resident identity card and in the case of a citizen under the age of 16, his guardian shall apply for the resident identity card on his behalf. Specifically, restrictions to military personnel, armed police people and prisoners are removed in releasing the cards. (2)When performing his duties in accordance with law under any of the following circumstances, a people's policeman may, after producing his law-enforcement papers, examine the identity cards: when it is necessary to find out the identity of a law-breaker or criminal suspect; when it is necessary to find out the identities of the persons concerned during on-the-spot control exercised in accordance with law; when it is necessary to find out the identities of relevant persons on the spot in an unexpected incident that seriously endangers public security. No organization or individual may seize any resident identity card. However exception shall be made where the public security organ executes the enforcement measure for residential surveillance in accordance with the Criminal Procedure Law of the People's Republic of China. (3)When a citizen goes through the formalities of changing his permanent residence registration, the public security organ shall record the change of the address of the citizen's permanent residence under the relevant computer-read item in the resident identity card inform the citizen himself of the fact. A citizen in urgent need of his resident identity card during the period when he applies for the card, or for changing the card, or for reissue of a card may apply for a temporary resident identity card. (4)Any of the people's police commits one of the following acts shall according to the seriousness of the circumstances, be given administrative sanctions in accordance with law: without justifiable reasons, failing to issue resident identity cards within the statutory time limit, examining or seizing a resident identity card in violation of regulations and thus infringing upon the lawful rights and interests of a citizen.

Demonstration 2 is that the Administrative Licensing Law prescribes that the administrative department shall make known to the general public, and hold hearings on the matters for the granting of administrative permission which, according to the provisions of laws, regulations or rules need hearing, or other matters of vital importance involving public interests for the granting of administrative permission which the administrative department believes hearing is needed.

Demonstration 3 is that Road Traffic Safety Law prescribes that (1) where a traffic accident occurs between the driver of a motor vehicle and the driver of a non-motor vehicle or a pedestrian, the driver of the motor vehicle shall bear the liability; but if there is evidence which proves that the driver of the non-motor vehicle or the pedestrian violates the laws and regulations on road traffic safety and the driver of the motor vehicle has taken the necessary measures to cope with the situation, the liability to be borne by the motor vehicle driver shall be lightened. Where the losses in a traffic accident are caused intentionally by the driver of a non-motor vehicle or a pedestrian, the driver of the motor vehicle shall not bear liability. (2) Where a driver violates the provisions governing the parking and temporary parking of motor vehicles, as stipulated in laws or regulations on road

traffic safety, the violation may be pointed out, and the driver shall be given an oral warning and instructed to leave the place immediately. Where the motor vehicle driver is not on the spot or, although on the spot, he refuses to drive away immediately, thus impeding the passage of other vehicles and pedestrians, he shall be fined not less than 20 yuan but not more than 200 yuan, and the vehicle may be towed to a place where it does not impede traffic or to a place designated by the traffic control department of the public security organ. The said department shall charge the party no fees for towing the vehicle and shall, without delay, inform the party of the place where the vehicle parks. Where a motor vehicle is damaged due to an improper way of towing, the liability for compensation shall be borne according to law. (3) Any additional conditions can not be attached to vehicles checkup. (4) Cars with privileges have no right of passage in ordinary days.

In recent years, there is a rumor going that "pedestrians who violate the law will bear the responsibilities for themselves." Road Traffic Safety Law denies the rumor. Pedestrians are in vulnerable position compared to the vehicles. And compared with the rights of the motor vehicles on road, the life right should undoubtedly be put in the first place. The issue of the law highlights the life care from the legislators. Those issues relevant to the vital interests of the people have been protected by law. Respecting man and maintaining man's dignity has become the strong tone of the times and the symbol of social progress. The people-based designation of system will play a guidance function of law.

In addition, the newly-revised Law of the Peoples Republic of China on the Prevention and Treatment of Infections Diseases has set up some systems about the right to information for citizens, relief system against infection diseases and the strict enforcement procedure. The humanity and spirit of humanism of precious life and the supremacy of human rights run through the legislation. A series of human security mechanism is clearly written in the law. Law of Prevention and Treatment of Infections, life- loving and right-respecting and dignity-safeguarding and closely related to the life and health right, is imbued with a human light.

In a country or society rule by law, the human rights of citizens should be respected and protected as widely as possible. The rigidity of law and human nature do not contradict. The degree to which human rights of citizens are respected and protected marks the degree of the progress of social civilization. In recent years, laws and regulations have been made to increase the protection of human rights and the people-oriented concept of legislation in Chinese laws and regulations has become the distinctive characteristics of each law. The once beautiful declaration is filled with humanism and humanity, which makes every citizen truly feel the warmth and concern from the law.

3. The interpretation of legislation from the angle of human nature

As far as the legislative purpose is concerned, from the perspective of social engineering law by Pound, law is compared to a social engineering project. Measuring the work of legislators is like treating an engineering project. That is to say, quality and efficiency of the legislature project in the charge of the legislators are considered to be the standard to evaluate their competence and qualifications. "Social engineering law has paid much attention to adjusting kinds of relations or reconciling and coordinating different claims and demands instead of social engineering law itself" "The more clearly we realize what we are doing and why we are doing it, the more effective social engineering will be." "As a social engineering, the purpose of legislation is to construct social structure as reasonable as possible in order to effectively control inevitable emergence of the social contradictions and conflicts out of the human nature and meet the demands of interest of the social people to the maximized degree with the minimized waste and resistance, as involves the balance and trade-off of interests."(Zhang, 1996, p123)

As what Thomas Jefferson said, "except the force of interests, reason, justice and equality do not have enough power to rule the human beings on Earth". A story that monkeys eat bananas on the network is a permanence proof of benefit. The experiment of the monkey and bananas reflects the historical development of human society. Bananas, standing for interests, let us know that interests are the origin of morality, class, state, and moral decay and a driving force of their reconstruction. Interests are the causes of social contradictions and conflicts. And balancing interests is an effective way to form and adjust social relations. Meanwhile, interests make us aware of the importance of the moral law. Only when Interests are confirmed in the form of legislation and benefits are fairly distributed, can a good social order be established to meet human needs.

With the changes of social forms and the institutional transformation, the meaning of human nature is changing. The legalization of moral principles and its scope of human society have progressed with the development of the human society. And the color of humanity in the legal norms is changing too. Human nature has the natural attributes and social attributes. There is identity and difference at the same time in it. Changes of human nature will cause changes in conception and the individual world also changes with the changes of time and space. In

the history of the development of human society, man never stops the thirst for demand and the pursuit for interests, as is out of the human nature. On the market of economy, the original nature of the pursuit for the interests has got enough proof. In this area, all behaviors aim at self-interest. Altruism does not exist. Economic people, as the behavior subjects, fight for interests in sale between buyers and sellers and market economy allocates resources in such a benefit game. The behaviors of the subjects on the market economy are self-interest rather than altruist. Even if the altruistic purposes exist, its fundamental purpose is self-serving. After snowing, Americans clean the snow in front of their houses and from the public sidewalks around them, which makes us think high of their morality. The fact is not like what we have seen. In the United States, property is private. The places in front of and the sidewalks around their houses are also private. If pedestrians get injured, these residents will bear the liability. Therefore, driven by the interests, Americans have the praised morality. Market economic activities aim at the pursuit of interest, then the starting point of making the rules of market economy is to protect the interests of competitors, as is in line with human nature. Spinoza said, "one person, who exerts more efforts to seek his own interests or neglect his own existence, would get coward." (Spinoza, 1983, p119). As far as the subjects of interests are concerned, "after they are aware of their interests, their pursuit of the interests must gain positive assumption. That is to say, the subjects of interests must realize the conditions to gain the interest after they know the interests of their own mainly by choosing objects and means or the possibility to win the positive assumption. Under such a circumstance, the demand of the subjects can be turned into the pursuit of interests." (Tao, 2004, pp183-192). As a person in community, his demands can be met through society. Legislation, as a means of social order, has coercive power and become the umbrella for interests. Law results from the activities of human reason. Kant said, "reason can be explained to be the capability adopted based on the judgment to principles (or the consideration in practice)." Why do people need to reason? People need reason to adapt themselves to the environment. Since people can not change the environment, what they can do is to agree with it. Although human reason is limited, it changes as environmental conditions change. Marx said, "since, in materialist sense, man is not free, individuals who have committed crimes can not be punished. What should be done is to eliminate the root causes of antisocial crime and make every person have the necessary social venue to show his important vitality. Since environments shape a man's character, they must be fit for humanity." "Human nature is the foundation and source for the development and implementation of good morality." "We evaluate a moral system according to how the system is consistent with human nature." Ethical and legal origin and purpose meet the demands of all human society and interest of community. Their ultimate goal is to meet human needs and each person's interests.

In the historical background of protecting human rights, the starting point of legislation is to protect human rights to the utmost degrees. Legislative reason is in adjustment too. Laws and regulations by the legislators on the basis of reason should be continuously adjusted to approaching humanity to realize the comprehensive development of man. The more deeply the reason is penetrated by morality, the closer the human nature will be to society and nature. Legislation is an effective channel to make laws in line with humanity.

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