

Vol. 2, No. 3

September 2009

On the Objective Orientation of Young Students' Legal Idea Cultivation

-----Reflection on Legal Education for Chinese Young Students

Yuelin Zhao

Hangzhou Radio & TV University, Hangzhou 310012, China Tel: 86-571-8893-5028 E-mail: zhaoyuelin@zj.com

This paper is phase fruit of project "Research on Objectives of Cultivating Young Students' Legal Idea" (No.XKT-07G09) sponsored by Zhejiang Radio & TV University in 2007.

Abstract

Legal idea, as a kind of rational cognitive state, is the spiritual core of national laws. Traditional article- remembering legal education is either necessary or meaningful in practice. The cultivation of young students' scientific legal idea is vital for the success of national law modernization. In practice, to cultivate young students' scientific legal ideas, we should strengthen the recognition to the citizen nature of laws and the social functions, pay attention to people's desire, and emphasize on citizen rights' actualization and protection, especially the actualization of citizens' private rights.

Keywords: Young students, Legal idea, Objective orientation

Considering the problem of neglecting the cultivation of young students' legal ideas in the socialization of laws in China, this paper advances the important orientation for cultivating young students' legal ideas, with the hope of improving young students' legal competence, and offering guidance and helps for excluding all barriers concerning ideas and institutions in the process of legal evolvement.

1. Understanding to legal ideas

The meaning of idea is extremely wide. There is not an acceptable definition up to now. According to the Encyclopedia of China (Philosophy), "idea" is a philosophical concept. It is "an ideal, eternal, and spiritual common paradigm".

In European philosophy, Immanuel Kant thinks that the idea is the concept originated from rationality, and the dream that is supposed to be pursued by rationality but never be realized (Immanuel Kant, 2004, p285). Hegel is the first man who integrates law and idea together. He thinks that "the idea of law refers to the concept of law and the actualization". "The idea of law is freedom (Hegel, 1961, p1-2)." English jurist Dennis Lloyd extremely emphasizes on the effects of legal idea. He points out that "it is undeniable that legal idea has contributed a lot to human being." "Considering the world tight situations, if civilization wants to live on, the dependence on this fundamental idea is stronger. (Dennis Lloyd, 2005, p278)"

In China, Taiwan jurist Mr. Shangkuan Shi has described the legal idea early. He thinks that "the supreme principle of laws' constitution and application is the idea of law. (Shangkuan Shi, 1984, p259-260)" "The idea of law is the directive principle of legal aims and methods. (Immanuel Kant, 2004, p285)" China mainland scholar Mr. Zuoxiang Liu agrees that "the idea of law is the actualization of legal objective orientation."

In this paper, legal idea means rational thinking and general recognition to laws' common issues and the nature. It is the substance of thoughts behind legal phenomenon, legal principles, legal system and mode, legal institutions and practices, and legal culture. It is the internal spirit of laws. Legal idea discards people's bias to laws, improving people's understandings to legal phenomenon and the nature from senses or experiences up to rational recognitions. Legal idea is extremely important for the construction of legal society, which directly impacts the foundation of modern legal system and the optimization of operation. In a sense, the legal modernization without the guidance of legal idea is blind. It will be impossible to actualize a real modernization.

2. Practical meanings for cultivating young students' legal idea

Public law education for China citizens starts from the citizen law popularization movement in 80s at 20th century. The law socialization movement means to help citizens learn, understand, and master general legal knowledge. The government agrees that the law socialization movement basically realizes the popularization of legal knowledge, which makes the whole society respect and believe in laws. However, what people see and sense are far different from the fact. Many illegal activities happen sometimes. The great gap between the ideal and the fact makes it necessary to rationally

re-examine on China's legal education and popularization movement.

Young students are the main body of the future. Their thoughts and legal competence directly influence social development and state future. Young students are the group with vitality and easy to be shaped. They can accept new things easily. However, they are incapable of rethinking new things unlike the senior who has rich social experiences. How to educate them and teach them what will directly affect the effects of law socialization. As a matter of fact, what the education received by the young students is?

For a long period, all legal materials, readings, and books define the law as the sum of regulations on people's behaviors, which is made and accepted by the state based on ruling class' interests and wills, and is carried out by national forces. Apparently, laws are nothing but rules. In other words, they are legal articles. However, as people create laws, they create not only a set of complete systematic system and civilization, but more important develop unique spiritual culture, including legal values, legal spirits, and relevant ideas. Therefore, law is a kind system for social rules on one hand. On the other hand, it is a system for values, rights, and justice, offering a set of moral evaluation standard for social practice and social orders. Without any aspect, laws are imperfect. Especially as we merely take laws as a set of legal regulations, we may step into the risk that lays more stresses on law articles. Nazi Germany brings about tremendous disasters for the world in the name of "laws", which has been remembered by human being forever. So, it is easy to understand that, similar to a man with soul, law, firstly as a spirit, reflects a kind of values. Secondly, the law becomes a just, objective, and common effective standard. It is a kind of rule. However, the law popularization education starts from the second aspect. Logically, it is converse. It is time-consuming and gets less fruit.

The practice of legal socialization is not smooth, which is caused by mistakes of theoretical guidance. That is, we merely regard laws as specific legal articles and relevant legal regulations. As a result, law popularization is simplified as communicating and memorizing legal articles, neglecting to shape citizens' legal spirits and legal ideas.

Legal idea is the soul of laws. Legal rules are finally determined and restricted by legal ideas. In China, it is the government that constitutes laws. The basic frame and many details are introduced from western ideas and legal mode. These imported legal articles are not close to Chinese. In practice, Chinese do not want accept them but try every means to escape from them. The settlement of disputes depends on traditional interpersonal relationships and powers instead of laws. The escape from laws shows people's rationality of activities in real life. Therefore, in China the legal modernization can not be realized merely based on a set of specific legal articles and a group of strict juristic system. In addition, the values, ideas, psychology, and behaviors of Chinese are necessary factors. And the socialization of law in China is not only the popularization of legal articles, but concern the popularization and dissemination of culture, values, and ideas behind the articles, integrating these factors into people's personalities. The legal modernization starts from the socialization of legal ideas.

The starting point of constitutionality is to establish legal idea firstly. Contemporary and modern constitutionality is derived from the enlightenment movement of bourgeois thinkers. In a sense, without the great enlightenment movement, there is no fundamental and thorough legal reform. China ignores the cultivation of legal idea and tries to realize the socialization by popularizing legal knowledge. As a result, people may neglect the valuable judgments on social practice.

Therefore, rethinking present legal education on young students in practice, we will find that it is unnecessary and meaningless. What young students receive is nothing but cool legal rules and articles. What they learn is only to make judgments on cases according to legal articles. Surely, the socialization of legal articles is necessary in a sense. But it is only a kind of externalization of socialization of legal idea.

3. The objective orientation of cultivating young students' legal idea

Legal idea, as a rational recognition state, is the spiritual core of national law. It reflects the general values of legal system. Advanced legal idea can help to delete outdated legal culture, improve citizens' legal competence, exclude all kinds of barriers concerning ideas and institutions in the process of legal evolvement, and form a modern legal environment benefiting social economic development. People, as the main body of legal system production and operation, is the most key and active factor. Young students, with their vitality and hope, are the backbone of the future. To improve young students' legal idea turns to be the key and the hope for China's legal modernization. If without the modernization of young students' thoughts and ideas, even there are developed economy, rich materials, and specific legal articles, it is impossible for the emergence of real legal modernization.

3.1 To strengthen the recognition to laws' citizen nature and general social functions is the primary objective orientation of cultivating young students' legal idea.

In socialist country, the base for proletarian dictatorship is the class struggle and confrontation, which is regarded as the motive for social progress. Accordingly, it tries to drive the progress of laws by strengthening the confrontation among people. However, as laws are merely taken as products of class struggle and confrontation, laws' relative independence and independent development law have been hided. Laws are used as tools for dictatorship. Usually, people emphasize

more on laws' effects on controlling the society and people, and neglect laws' relative independent nature and dignity. At this moment, laws are combined together with politics, being tools used by governors, without considering the attribute of guaranteeing people's rights and regulating people's behaviors. Laws' effects and values in social public functions are completely ignored.

Laws are supposed to serve all citizens. They are effective guaranties for established rights. Laws are not wills of certain class. They are not supposed to used for only protecting certain class, party, or individual's interests. Laws are the Bible of citizen freedom (Marx. & Engels, 1964, p71). Under the condition of Chinese socialist market economy, young students should firstly get rid of outdated theories that take laws as tools for dictatorship and class conflict. If we still regard laws as wills of ruling class and tools of government, it is disputable theoretically, logically and practically.

The first lesson for young students is about the citizenship and sociality, concerning how to cultivate young students to build scientific legal idea. Laws reflect social economic relationship objectively. Any person, class, party, and organization must operate in the legal scope. If laws only embody the ruling class' wills instead of the common welfare, citizens would not like to promote and maintain laws. Even laws are constituted in detail, it will not work. Presently, as China is developing socialist economy, young students should completely accept the citizenship and sociality of laws in thoughts, which is the primary objective orientation for cultivating young students' legal idea.

3.2 To be people-oriented is the core objective orientation of cultivating young students' legal idea. Laws should respect people's dignity, rights, and freedom. With this basis, we can re-position the legal role of people.

As cultivating young students' legal idea, many arguments concern people's personality and integrity, class and super-class, uniqueness and commonness. The theme of these arguments is about how to treat people's status and the relationship between individual and society. At present in China, the ultimate aim of laws is to make individuals come back to individuals, and to people. The core issue of laws is the problem of people in laws. Modern legal system develops around "people". The full affirmation to humanism and the deep cares for human desire serve as the start of legal modernization. From the legislation and economic development history since the foundation of China, we know that economic and social development associate closely with human liberation.

To cultivate young students' legal idea, we should break the politics-supremacy view in practice and build a people-oriented view. In a politics-supremacy country, all citizens are regarded as political animals at the first place. National power is supreme and unlimited, and citizen right can not be protected. Therefore, all evaluations or positions on people are based on political standards. In this country, nobody has the chief status. A person is either governed by others or a tool for government. Only when in a society where the citizenship develops well and realize an effective balance between citizenship and politics, people can recover their dominating position, achieving the integration of subjectivity, sociality, and politics. The view that neglects or hides people's desire and interests in purpose, and fails to guarantee people's values and dignities is illegal in nature. A people-oriented society should emphasize on people's free development, aiming at actualizing people's values completely, ensuring interests of groups and individuals legally, and respecting individual personality and dignity fully. Everyone takes part in social development and get benefits from social development fairly. To be people-oriented is to take people's thoughts, desires, and needs as the base. The pursuit for interests is the motives for social development and progress. Individuals are the best judgers for their welfare, which should be affirmed completely. Respect people's rationality in making choices, including political choices. In a sense, without re-positioning the status of people, without complete affirmation and respect for individual status, there is not right legal idea or modern legislation.

3.3 The transformation from power-oriented to right-oriented is an important objective orientation for cultivating young students' legal idea. In fact, it is to deepen the core objective orientation for cultivating young students' legal idea.

Citizen rights are the roots of state power. All democratic constitutional countries agree this fact ----- state power is from citizens. The ultimate aim of state power is to protect and actualize citizen right, which has already been accepted widely by all constitutional countries.

Presently the key for China's legal construction is to establish the right-oriented idea. In tradition, China lacks of this idea. For a long period, in China the power occupies the dominating position. It emphasizes that citizens should fulfill all kinds of responsibilities for the state and the government. Common people have no rights in a country represented by an empire, not mention to protect rights by laws. After the foundation of socialist China, at the planned economic time, personal interests are integrated with common interest together, which completely excludes people's personal rights. Laws are used by the government for serving the economy. In a sense, laws completely become tools for actualizing administrative powers.

Along with the construction of China's socialist market economy, the protection for personal properties turns into more direct and stronger base for people's independence. Individuals live for themselves instead of others as tools. Only when make up clear and affirmed guaranties for personal rights, will people have motives for production and economic organizations will be more active. If make a reverse on the internal logic that rights are the base for power, it will cause

an invasion and repression of power on rights.

Although young students live in the market economic environment, Chinese traditional obligation- oriented, power-oriented, and order-oriented ideas affect them deeply. These outdated ideas still exert their effects on social practice in China. Especially in governments' legal practice, they always take laws as tools for maintaining social orders purposely or not. Therefore, the original idea for legislation is how to actualize state power and how to achieve effective management, instead of offering better services. As for the relationship of public rights and private rights, the state usually gets the dominating position based on their monopoly over resources. All these social practices turn into significant barriers and difficulties for cultivating young students' legal ideas. We know that the function of market economy is to respect rights. People can do anything that is not forbidden by laws. The state and the government can not stop them as will. The government can not do the thing that is not approved by laws. As for this point, along with the final establishment of socialist market economy and the process of legislation, young students will pay attention to it more and more in practice. If an economic development overlooks the dominating position of citizen rights, it will lose vitality soon. An economic development without emphasizing rights lacks of necessary social base. Young students should remember that they are the subjects of laws, which is necessary for cultivating their legal idea.

3.4 To build an idea of emphasizing citizen private right should serve as the specific orientation of cultivating young students' legal idea, which is necessary for transforming from the power-oriented to the right-oriented.

As amending the Constitution in 2004, the Constitution of China clearly establishes the protection to citizens' private properties and sets regulations on the expropriation, requisition, and compensation for citizens' private properties. The state and the society pay more and more attention to the protection to citizens' private interests. However, concerning the relationship between public interests and private interests, China is under the influences of traditional legal culture for a long period. The protection to citizens' private interests is still weak.

As the west is stepping into the modernization, the spirits of private law autonomy and the ideas of private law priority occupy a more and more important position. In China, due to the ancient tradition of "combination of civil law and criminal law" and "more stresses on criminal law instead of private law", private law does not obtain a desirable position. After the foundation of new China, the attitude to the private right in civil laws is almost negative. There is not a proper environment for the growth and development of fair and independent rights. In addition, due to China's undeveloped market economy, using public legal methods to adjust private legal relationships, private laws lose the economic base.

Modern social market economy needs a set of private law system that takes civil laws and commercial laws as the base to protect market subjects, private property right, and personal right. Only when there is a private law system that focuses on civil laws and commercial laws, a free, open, independent, and effective society will be more developed, and stable, and the modernization of people will be realized really. An English jurist Henry Maine has said that to judge a country's civilization degree, we can examine the proportion of civil laws and criminal laws in the country. A semi-civilized country has less civil law but more criminal laws. A civilized country has more civil laws but less criminal law (Henry Maine, 1959). In the process of China legal modernization, it is necessary to constitute a private law system that takes civil laws and commercial laws as the core and is right for socialist market economy, in order to guarantee saint properties, free contracts, sincerity and credit, achieving the harmonious interpersonal relationship and social progresses.

Surely, as we emphasize the private law system that focuses on civil laws and commercial laws, we do not deny the public laws and their effects. We argue that the private laws should obtain the necessary position based on reforming present public law system. As young students participate in social life and face sorts of complex legal phenomenon, they should purposely study and analyze the growth mechanism of private laws, based on recognizing the division of public laws and private laws, protecting the private law system that takes civil laws and commercial laws as the core, getting rid of outdated legal ideas, and establishing the private law priority idea.

4. Postscripts

Based on studying the cultivation of young students' legal idea, this paper advances four objective orientations for cultivating young students' legal idea at present. But it does not mean that there is only the four orientations. On the contrary, according to the present condition of cultivating young students' legal idea in China, we should firstly establish the four orientations as we educate young students with socialization, such as popularizing laws among young students.

References

Dennis Lloyd. Translated by Zhang, Maobai. (2005). The Idea of Law. Beijing: New Star Press. Nov. p278.

Hegel. Translated by Fan, Yang & Zhang, Qitai. (1961). *Elements of the philosophy of right*. Beijing: The Commercial Press. p1-2.

Henry Maine. Translated by Shen, Jingyi. (1959). Ancient Law. Beijing: The Commercial Press.

Immanuel Kant. Translated by Li, Qiuling. (2004). *Critique of Pure Reason*. Beijing: China Renmin University Press. p285.

Marx. & Engels. (1964). Collected Works of K. Marx and F. Engels (I). Beijing: People's Publishing House. p71.

Shi, Shangkuan. (1984). The integration of law idea and empiricism law. *Collectives of Chinese and Western Law Ideas*. Taibei: Hanlin Press. p259-260.