

The Hierarchical Construction of Jurisprudence with "Fali" as the Central Theme and Research Object

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Abstract: The solidification and blurring of the research object and province of jurisprudence leads to the entry of a large number of illegal theories into the research category of jurisprudence and impacts the scientific status of jurisprudence. The western analytical school realizes the turning of natural law to positive law and establishes the status of jurisprudence as an independent discipline. In modern times, the legal provisions and extra-legal principles established in our country have laid the dual stratification of the research object of jurisprudence in our country. To construct the Chinese model of the research object of jurisprudence, we should start from three levels: ontology, sublimation and concretization. To re-examine the significance of Austin's positive law to contemporary China, from the theory of legislation to the theory of interpretation, pay attention to and explore the value of positive law, as the basis of jurisprudence research. It is clear that the thought of the rule of law in the new era of socialism with Chinese characteristics belongs to the research category of jurisprudence, excavates the philosophical implications of jurisprudence in the Chinese context, constructs the value judgment criteria in line with Chinese history and culture, and pays attention to the integration and boundary of jurisprudence with philosophy, political science and natural science. We should fully explore the "Fali" wisdom behind the department law, use it to enhance the interaction between jurisprudence and department laws, and further summarize and refine the "Fali" knowledge contained in the department law rules and classic judgment cases to enrich the treasure of jurisprudence.

1. The formation of the issue.

During the 40 years of jurisprudence development in China, great progress has been made in the concept, principle and system of law, but the object and province of jurisprudence research have not changed basically. We can see the consistent expression from all kinds of jurisprudence textbooks: Jurisprudence is a legal discipline that studies the common problems and the most general laws of legal phenomena. However, the above definition is too abstract and has a vague province. The general theories and common laws of law in the research objects of jurisprudence are worth further clarifying.

Compared with the western jurisprudence, there are many congenital deficiency factors in the development of jurisprudence in our country, its start is late, and even the word jurisprudence is

introduced by the translation of the western "jurisprudence". Based on the class position of Marxism, China's jurisprudence research aims to get rid of the one-sided influence of idealism and metaphysics and overcome the drawbacks of bias, but there are problems of blind worship or reliance on methodology and neglect of research on the object and province of jurisprudence research, resulting in a large number of illegal theoretical content in the field of jurisprudence research, and the scientificity of jurisprudence is affected. Therefore, to realize the construction of the discourse system of socialist jurisprudence with Chinese characteristics, it is urgent to re-examine the research object and province of contemporary Chinese jurisprudence, promote the connection between jurisprudence and department laws, so as to guide the research direction of jurisprudence and enhance the scientific nature of jurisprudence research.

2. Tracing the research object and province of jurisprudence: An investigation based on the etymology of jurisprudence

2.1 A study of the etymology of jurisprudence in the West

The origin history of jurisprudence can be traced back to the philosophy of ancient Greece and Rome, but as a truly independent subject, jurisprudence appeared only in modern times. The English word jurisprudence comes from the Latin "jurisprudentia". In English, the word jurisprudence has two root words, juris, which means law or right, and prudence, which means wisdom, and jurisprudence, which means "knowledge of law" or "technology in law."^[1]In ancient Rome, jurisprudence was the wisdom knowledge about legal practice, which gradually developed into the wisdom of the general theory of law. Bentham, a representative of British utilitarian jurisprudence, first used the concept of jurisprudence in his book *The Limits of Jurisprudence Defined* in 1782, but the term "jurisprudence" was not widely spread and had little influence. In 1832, British jurist John Austin published *The Province of Jurisprudence Determined*. In this book, the expression of "general jurisprudence" separated jurisprudence from vague concepts such as morality, axiom, and justice, and emphasized that law should only study "what law should actually be", that is, law should study positive law, not ideal law or just law.^[2] Through the efforts of Austin and other predecessors of the analytic school, jurisprudence eventually became an independent discipline.^[3]

2.2 A study of the etymology of jurisprudence in China

There has been jurisprudence in our country since ancient times, but there is no jurisprudence in the concept of jurisprudence or in the sense of discipline. As early as the Shang and Zhou Dynasties, the concept of natural law had already emerged in our country, but it did not contribute to the formation and development of jurisprudence in our country. During the period of Spring and Autumn and the Warring States, Confucianism, Taoism, Legalism and Mohism all put forward their own ideas, most of which are political and legal thoughts, which is the origin of "legal theory" in early China. For example, Confucianism advocates "virtue as the principal and punishment as the supplement" to advocate the rule of virtue; The "natural law of Taoism" advocated by Taoism advocates conforming to the heavenly way, which is the early manifestation of the concept of natural law in our country. Later, the term "Fali" appeared in the Han Dynasty, but the jurisprudence proposed on the basis of the development of Confucianism in the Han Dynasty was not the jurisprudence we study today.

Today, China's jurisprudence, as a discipline in the social sciences, which began at the beginning of the last century, has experienced a process of continuous development and change in the following century. The Chinese translation of the word "jurisology" originally came from the

creative translation of the German word "Rechtsphilosophie" by Professor Hozumi Nobushige in Japan, which opened the way for the introduction of Western jurislogy into China.^[4] However, looking at ancient historical documents, the word "jurisprudence" (written by Ban Gu in the Han Shu Xuandi Ji) appeared as early as the Han Dynasty, and Professor Hozumi Nobushige's translation of the English "jurisprudence" is likely to learn from the ancient Chinese "Fali" words, on this basis, adding the word "theory", thus developing into the concept of "jurisprudence".^[5] The earliest to use the concept of "jurisprudence" in our country are Kang Youwei and Liang Qichao. In 1897, Kang Youwei compiled the book "Bibliography of Japan", the sixth volume of "Law" listed "jurisprudence".^[6] In 1899, Liang Qichao wrote "Montesquieu's Theory", introducing Meng's youth, discussing the system code of various countries, and studying "jurisprudence".^[7] In 1904, Liang Qichao put forward in his article on the History of Advanced Jurisprudence in China that the objects of jurisprudence research include two levels: first, the interpretation of legal provisions; Second, jurisprudence outside the law (Beyond the law itself or the theoretical basis behind the law - jurisprudence). In addition, according to the development of Chinese jurisprudence at that time, Liang Qichao pointed out that compared with the interpretation of legal provisions and the "Fali" behind the law, the abstract "Fali" behind the law is more important.

Before the founding of New China, although some law schools of universities had carried out jurisprudence course education and published jurisprudence textbooks, they did not realize the significance of jurisprudence research and did not pay enough attention to it. At the same time, the translation of "Jurisprudence Lecture Notes" (author: Hozumi Shigeto) by Marxist jurist Li Da is the earliest jurisprudence teaching material in China. Li Da became the first person to study jurisprudence with Marxist worldview and methodology, and he put forward that jurisprudence is the application and expansion of specific philosophy in the field of law.^[8] After the founding of New China, university education followed the Soviet discipline model, and law schools opened jurisprudence courses named "Theory of State and Law", and the concept of "jurisprudence" was regarded as bourgeois ideology, resulting in limited development of jurisprudence.^[9] In 1978, China completed the righting of the wrong ideas of the left, and began to explore the construction of jurisprudence, and jurisprudence began to really take root in socialist China. Peking University, Renmin University of China and other colleges and universities began to write jurisprudence textbooks, deleting the content of the theory of the state in the style. Until the 1990s, "Jurisprudence" was established as the course name of basic theory of law in the field of law in China.

3. The Chinese model of the research object and province of jurisprudence: the establishment of the category of hierarchical "jurisprudence"

Jurisprudence is short for the basic theory of law. It studies the general theory of law, especially the basic theory of our socialist law.^[10] The object and province of jurisprudence determine the development direction of jurisprudence. Exploring the reconstruction of the object and province of contemporary Chinese jurisprudence and establishing the boundary of the hierarchical "jurisprudence" category can lay a solid foundation for constructing the discourse system of Chinese jurisprudence and enhancing the connotation and taste of Chinese jurisprudence.

3.1 The ontology of the research object of jurisprudence: the return of Austin's positivism Jurisprudence

From the classical expression of the research object of jurisprudence in the academic circle, whether it is general law, the common problem of legal phenomena, the general theory of law, or the essence and general law of law, or the most general law of law, it emphasizes the common

problem and regularity problem of law.^[11] They are not separated from the province of the legal system itself, that is, to explore the rationale of law based on positive law. From the historical evolution of jurisprudence, the emergence of positive law was much earlier than the rise of analytical law. The reason lies in the transformation of the research object of jurisprudence, that is, from natural law to positive law. Austin believes that it is an important proposition of legal positivism to exclude "law as it ought to be" from the province of jurisprudence. Since people can observe, verify and understand the use of language, and can know the existence of word objects through the use of language, then what is the reason to reject the establishment of positive legal science?^[12] Austin advocates the practice of turning the research object to positive law, which is of great significance to eliminate the differences of natural law standards, establish the scientific status of jurisprudence, and promote the development of jurisprudence and even jurisprudence.

Contemporary Chinese jurisprudence should re-examine the research province of jurisprudence established by Austin, pay attention to and explore the value of positive law, so as to promote the development and perfection of the socialist legal system with Chinese characteristics. After the Third Plenary Session of the eleventh Central Committee of the Communist Party of China established the policy of "establishing socialist legal system", legislation in various fields of our country has sprung up like mushrooms. In 2010, a socialist legal system with Chinese characteristics was established on schedule. Since the 18th CPC National Congress, the CPC Central Committee has attached great importance to the construction of the rule of law, and has raised the overall law-based governance to a high level of modernization of the national governance system and governance capacity. The 16-character policy of governing the country according to law has been transformed from "there are laws to be followed, laws must be followed, law enforcement must be strict, and violations of the law must be prosecuted" to "scientific legislation, strict law enforcement, fair administration of justice, and law-abiding by all." The establishment of legal systems such as the Civil Code of the People's Republic of China, the Criminal Law of the People's Republic of China and its 12 amendments has kept pace with the changes of The Times and responded to social concerns.

Theory and practice have proved that the establishment and development of the above legal system is suitable for China's national conditions and effective. Therefore, under the background of the increasingly complete legal system, our country should shift from the theory of legislation to the theory of interpretation, that is, pay more attention to the interpretation, cohesion and integration of written law. After the establishment of the legal system framework in various fields, jurisprudence should not adopt the research model of legislative theory too much, advocating the overall affirmation or negation of the existing legal system, but should extract the common concepts, principles, principles and institutional systems with Chinese characteristics from the written law norms, so as to provide legal wisdom for improving the existing legal system. Of course, in this process, we should pay attention to learning from the world's excellent legal culture and advanced legal systems, but we should pay more attention to screening and discrimination, especially to pay attention to the connection with China's existing legal system, so that we can create socialist jurisprudence with Chinese characteristics and realize the self-reliance of the discourse system.

3.2 The sublimation of the research object of jurisprudence: the establishment and extension of the jurisprudential category of the rule of law thought in a new era of socialism with Chinese characteristics

Jurisprudence is the rationale of the law. Although we emphasize the ontological status and significance of practical law in the development of socialist rule of law with Chinese characteristics, the evolution history of western jurisprudence research objects cannot be separated from the

discussion of the relationship between law and justice, law and freedom, law and human rights and other core values. It is precisely in this sense that the evil law advocated by the natural law school is illegal. The concept and pursuit of "scientific legislation" and "good laws and good governance" also reflect the concepts of fairness and justice as guidelines for contemporary Chinese legislation, law enforcement and judicial activities. While paying attention to the existing system, contemporary Chinese jurisprudence should also conduct theoretical abstraction and demonstration from the axiology level. In general, the research object of jurisprudence should be sublimated at both vertical and horizontal levels.

The so-called vertical level of sublimation, that is, we should establish the new era of rule of law thought to the guiding position of jurisprudence research, and clearly belong to the research category of jurisprudence. The Thought on the rule of law for a new era is an important part of the Thought on socialism with Chinese Characteristics for a new era. It is a vivid manifestation of the people-centered development concept in the field of the rule of law. It contains a series of jurisprudence thoughts with distinctive Chinese characteristics and originality, such as "adhering to the Party's leadership in comprehensively governing the country according to law", "adhering to the socialist path of rule of law with Chinese characteristics", and "adhering to the rule of law according to the Constitution". Although "law" as a word concept, in our consciousness, after all, is based on the hidden value judgment, interest demand and knowledge "foresight" with different or even opposing nature, it does not mean that fairness, justice and human rights are only abstract value concepts, let alone the elimination and abandonment of the value of natural law. Instead, we should try to get rid of the pattern of the traditional Western discourse system, dig out the philosophical implications of jurisprudence in the Chinese context, and construct a value judgment criterion that conforms to China's national conditions, has Chinese characteristics and highlights Chinese wisdom. The thought of the rule of law in the new era is the latest achievement of the Marxist thought of the rule of law in China, which contains rich jurisprudential concepts, ideas and principles, and can provide direction and guidance for the improvement and development of the socialist rule of law system with Chinese characteristics, and should be included in the research province of jurisprudence. Special attention should be paid to the systematic thinking on the value judgment of law in the new era of the rule of law, such as the profound insight based on Chinese traditional culture, the realistic expectations of the people and the long-term development plan of the Party and the country, so as to expand the research dimension and vision of contemporary Chinese jurisprudence, that is, to profoundly clarify the judgment criteria of the concept of fairness and justice in the Chinese context.

In the practice of advancing China's human rights cause in the new era, we have combined the Marxist concept of human rights with China's specific conditions and with China's fine traditional culture, summing up the successful experience of our Party in uniting and leading the people in respecting and protecting human rights, drawing on the achievements of human civilization, and blazing a path of human rights development that conforms to the trend of The Times and suits our national conditions. A happy life for the people is the greatest human right. It can be seen that the concept of human rights in the thought of rule of law in the new era has a unique, profound and extensive legal connotation, which must be deeply explored. Some scholars have also stressed that the rule of law in China must be able to effectively respond to major routine issues in the daily lives of Chinese citizens, must be basically consistent with the feelings of ordinary Chinese citizens about social justice and good order, and must be able to be practiced in the long term under China's existing resources and financial conditions.^[13]

The so-called horizontal level of sublimation is to clarify the integration and boundaries of jurisprudence and other disciplines such as politics, philosophy and natural science. In today's era, science and technology are developing rapidly, and China is facing profound changes unseen in a

century. Emerging technologies such as the Internet, blockchain, and metaverse have impacted traditional legal rules. The research object of jurisprudence should be extended to the field of emerging science and technology, and the rule operation should be guided by rule governance idea, so as to realize the leading role of jurisprudence in the creation of legal concepts, the formulation of legal rules and the establishment of legal principles. For example, some scholars put forward the ethical rules and autonomous rules of the metaverse in view of the ethical problems brought about by the metaverse, and advocate the construction of external control rules from three levels: the internal visual threshold of the metaverse, the comparison and interaction between the metaverse and the real world, and the interconnection of the metaverse.^[14] Jurisprudence of socialism with Chinese characteristics should also pay attention to the latest research results of humanities and social sciences such as politics and philosophy, and integrate its core concepts and specific system operations that have a role in promoting the development of law into the research province of jurisprudence. At the same time, the disciplinary boundaries should be clearly defined, and the content of illegal studies or the content that may cause great impact on the existing legal system should be excluded from the research province of jurisprudence. Thus, the positive interaction and integration of jurisprudence and related disciplines can be realized.

3.3 The concretization of the research object of jurisprudence: the correspondence between jurisprudence and department laws

Jurisprudence itself contains the theory of department laws or combines with the theory of department laws. Jurisprudence does not form "knowledge redundancy" relative to department laws. It can be said that jurisprudence without department law is empty, and department law without jurisprudence is blind.^[15] The "Fali" behind the department law is an important part of jurisprudence, which is the concrete embodiment of the general legal principles and laws of jurisprudence in the department law. It can be considered that the "Fali" behind the department law is the hub of connecting the jurisprudence with universal regularity and the department law rules. Therefore, the function of jurisprudence is not directly related to the addition, deletion or modification of specific legal provisions, but through guiding and influencing the establishment, development and change of the "Fali" behind the department law, and then promoting the development of the department law in general. For example, the establishment of the principle of good faith and credit in civil law reflects the ontological concept of fairness and justice in jurisprudence, and the creation of the principle of legality in criminal law reflects the play of the function of human rights protection in jurisprudence. However, the problem facing contemporary Chinese jurisprudence is that there is a certain degree of separation between jurisprudence and department laws, that is, the function of jurisprudence guiding department law is suspected to be weakened. Admittedly, the specialization and refinement of the development of jurisprudence and department law objectively result in a certain degree of separation between the two, but the essence of the reason is that the communication and dialogue mechanism between jurisprudence and department law is not smooth, so that the development of jurisprudence is difficult to provide useful guidance for the improvement of department law. How to realize the integration of the two is to establish the important position of the "Fali" behind the department law as the research object of jurisprudence.

On the one hand, the research of "Fali" behind the department law should be based on the development of jurisprudence. For example, Professor Liu Yanhong, from the legal perspective of the overall legal order and the integration and development of public and private law, examines the human characteristics of civil law and the physical characteristics of criminal law under the background of the promulgation and implementation of civil Code and the frequent introduction of criminal law amendments, and summarizes the interactive relationship between the two, that is, the

human civil law helps to strengthen the human color of criminal law, and the physical criminal law helps to reshape the value concept of fairness and justice in civil law.^[16] On the other hand, we should pay attention to the department law rules and classic adjudication cases, excavate the value of the "Fali" behind the department law, and abstract the legal principles accordingly to enrich the research results of jurisprudence. Specifically, it is to extract the concept, rule and principle system of "Fali" behind the department law from the empirical facts, so as to enrich the whole treasure of jurisprudence.

For example, in the first case of disputes over the ownership of frozen embryos between deceased couples in China, four elderly plaintiffs who lost their only child appealed to the hospital to return the frozen embryos. The Court of first instance held that fertilized embryos produced in the process of embryo transfer surgery are special things that have the potential to develop into life and contain the characteristics of future life, and cannot be arbitrarily transferred or inherited like ordinary things, so they cannot be the subject of inheritance. The Court of second instance reversed the original court decision and upheld the appeals of the four appellants for the right to obtain the supervision and disposal of the frozen embryos of their deceased son and daughter-in-law. Although the focus of the dispute in this case is whether the frozen embryo is a thing in the civil law sense, the legal basis behind it lies in the value conflict between the emotional sustenance and spiritual comfort of the elderly and the destruction of the administrative order that may cause surrogacy in the later stage.^[17] The court of second instance's decision has been described online as "the most heartwarming." Professor Yang Lixin also believes that this case is a typical case that marks the victory of human feelings and ethics.^[18]

Another example is the Xiaohuamei incident in Fengxian County, Jiangsu Province, which has aroused wide public attention. Although the incident eventually ended with the investigation and handling notice issued by the investigation team of Jiangsu Provincial Party Committee and provincial government, and many people were taken criminal coercive measures and investigated for relevant legal responsibilities according to law, the academic community has launched a wide discussion on the issue of whether the crime of buying and abducting women and children should be "punished with the same punishment" and the legal punishment for the crime of buying and abducting women and children should be raised. Whether the statutory penalty should be increased is related to the implementation of the principle of the compatibility of criminal crime and punishment. If it is believed that the criminal penalties of buying and trafficking are equivalent, it may be concluded that the two crimes should be punished equally. But rising to the level of jurisprudence, the setting of penalty should not only pay attention to the presence and size of responsibility in the sense of department law, but also pay attention to the realization of the function of law, the operating environment of law and the implementation of law. The law is not omnipotent, and simply increasing the penalty does not necessarily prevent the occurrence of crimes. The problem of buying and trafficking women and children should pay more attention to the improvement of people's educational and cultural level and social cognition level, rather than resorting to harsh laws. As a result, specific cases trigger the reflection on the "Fali" behind the department law, and then rise to the jurisprudence issues of universal significance such as the function, value and operation of law, making the study of jurisprudence more lively.

4. Conclusions

The hierarchical framing of the research object and province of jurisprudence is the basis and premise of the construction and development of socialist jurisprudence with Chinese characteristics. Based on the historical investigation and realistic basis of the research object of jurisprudence, we should strive to break the traditional model of ambiguity of the research object of jurisprudence, and

exclude the content unrelated to the research and development of jurisprudence, so as to ensure the purity and scientificity of jurisprudence research. The research of jurisprudence should focus on the construction of the Chinese model of the object and province of jurisprudence research, and distinguish the three levels of ontology, sublimation and concretization of the object of jurisprudence research. In the first place, the ontology of the research object of jurisprudence: the return of Austin's positivist jurisprudence. Contemporary Chinese jurisprudence should re-examine the research province of jurisprudence established by Austin, pay attention to and explore the value of positive law, so as to promote the development and perfection of the socialist legal system with Chinese characteristics. In the second place, the sublimation of the research object of jurisprudence: the establishment and extension of the jurisprudential category of the rule of law thought in a new era of socialism with Chinese characteristics. On the one hand, we should establish the guiding position of the rule of law thought in the new era to the research of jurisprudence, and clearly belong to the research category of jurisprudence. On the other hand, we should make clear the blending and boundary between jurisprudence and other disciplines such as politics, philosophy and natural science. In the end, the concretization of the research object of jurisprudence: the correspondence between jurisprudence and department laws. We should give full play to the pivotal role of the "Fali" behind the department law in communicating jurisprudence with legal rules and adjudication cases, so as to realize the category reshaping of socialist jurisprudence with Chinese characteristics and construct the discourse system of socialist jurisprudence with Chinese characteristics.

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