

Deconstruction and Construction of the Concept of “The Essence of Law”

Binghan Li

Law School of Southwest Petroleum University, Chengdu City, Sichuan Province, China

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Abstract: First of all, it is not necessary for law to pursue an essence, because the domestic legal theory community uses the categories of “essence and phenomenon” to divide the self and the other, which is subjective and arbitrary. From a philosophical perspective, pursuing the essence of law is a manifestation of human thinking in pursuit of certainty, which is not necessary in itself. Secondly, the domestic legal theory community generally regards the embodiment of the will of the ruling class as the essence of law. By examining the historical evolution of this theoretical research, it can be divided into three research stages. Finally, in order to further promote the construction of a rule of law in China, it should be recognized that law is the embodiment of the people’s will that is people-oriented.

1. The law does not need to pursue an essence

“Is there an essence of law?” is a question of factual judgment, while “Is it necessary for law to pursue an essence?” is a question of value judgment. In the field of social sciences, different people have different understandings of the essence of issues. Based on different perspectives of experiencing social problems and summarizing the essence through rational thinking, it is also different. Therefore, it is difficult to say which is right or wrong, and we can only make value judgments, that is, to explore whether it is necessary to study and what kind of research is more valuable to solve social problems.

1.1. There are problems of subjectivity and arbitrariness in using the categories of “essence and phenomenon”

Domestic Marxist legal scholars classify “non-Marxist” Western bourgeois legal scholars as a category that is opposed to themselves, and use the binary opposition of “essence” and “phenomenon” to divide themselves and others. They define the category of “the essence of law” and believe that the essence of law is “the embodiment of the will of the ruling class”, and criticize Western legal scholars, “Western legal scholars and thinkers are accustomed to discussing law based on superficial phenomena, or equating the phenomenon of law with the essence of law, so they have never truly discovered the essence of law.”^[1] As for the logical gap between “the will of the ruling class” and “the essence of law”, the objective standard for the division of “essence” and “phenomenon”, and whether this division is deliberately made only to express a binary opposition position or an inner thinking tendency of “essentialism”... All scholars are very secretive about these issues, and can only

use the arguments of Marx and Engels as arguments. However, the fact is that these arguments cannot explain why “the embodiment of the will of the ruling class” is “essence”, while other Western legal scholars’ arguments are not essence. For example, they used “*The German Ideology*” as an argument, “The state is the form in which the individuals of the ruling class realize their common interests. In addition to organizing their own forces in the form of the state, these dominant people must also give their will, which is determined by these specific relationships, the general form of the state will, that is, law.”^[2] This can only explain that law is the embodiment of the will of the ruling class, but it cannot explain why the will of the ruling class is the essence of law. In fact, Marx and Engels did not even clearly define law, let alone the essence of law.

So is there an objective standard for distinguishing “essence” and “phenomenon”? The law that can be grasped is, essence is deeper and more stable, cannot be grasped directly through the senses, and needs to be grasped through abstract thinking, while phenomenon is exposed, changeable, and through perceptual experience. For example, Newton’s laws of physics are relative to “apples falling to the ground”. This is the pair of “essence and phenomenon”, because the former is a stable category grasped through abstract thinking, and the latter is a category of perceptual experience.

The Western legal community has different understandings of the connotation of law. They are all categories grasped through abstract thinking and can be called essence. For example, Rousseau believed that “law is nothing more than a record of will and a declaration of public opinion”,^[3] Montesquieu believed that “law is a necessary relationship generated by the nature of things”,^[4] and Cicero of ancient Rome believed that “reason becomes law as soon as it exists. It appears at the same time as the mind of God. Therefore, the true and primary law applied to instructions and prohibitions is the correct reason of the supreme Jupiter”^[5]... These Western legal scholars’ understanding of the connotation of law is not in the category of phenomenon, but in exploring the essence of law. But none of them explicitly put forward the concept of “the essence of law”. Therefore, it is arbitrary and not objective to criticize Western legal scholars simply from their own standpoint by defining “essence and phenomenon”. It is inappropriate for some Marxist legal scholars to use the category of “essence and phenomenon” to set themselves in binary opposition with Western legal research.

1.2. Philosophical implications, there is no need to pursue the essence of law

As previously mentioned, only the domestic legal theory community has explicitly proposed “the essence of law”, this tendency of thinking to explore the essence (the “essentialist” tendency of thinking) is not necessary. Professor Suli Zhu believes that, as a term, “Law” only refines the similarities between different legal phenomena because of the convenience of use, and does not have a fixed essence. “Law” may refer to the code, family law, customary law, or law created by judges... They only have a common name, and do not have a common, unchanging essence. The “essence of law” is actually artificially added by the user to the object of cognition of “law”. Therefore, we should abandon the artificially fabricated “essence” and bring the words from metaphysics into daily life. On the other hand, Suli Zhu also pointed out that the essential theory of deconstruction does not mean abandoning the word “essence” and finding a new word, but abandoning its metaphysical “essentialism” connotation.^[6]

In other words, the pursuit of certainty by human beings is itself a kind of human will. German philosopher Schopenhauer pointed out long ago, “The world, like human beings themselves, is completely will and completely representation, and there is nothing else left.”^[7] Human beings as representation and will and the world as representation and will are unified. Will is manifested as endless desire in the world of representation. “Human beings are completely concrete desires and needs, and are the aggregation of thousands of needs.”^[7] “Will itself is essentially a pursuit without any purpose or end, that is, an unstoppable and endless blind impulse,” and “the will to live can be

denied by curbing this blind impulse.”^[8] The world is a world of representation, which is inherently uncertain. Therefore, the tendency to think about certainty can only be a kind of will, and the exploration of the so-called essence is also a kind of will, which is just a pure desire and blind impulse. Schopenhauer believes that human desires are endless. If desires are not satisfied, they will turn into pain, and if they are satisfied, they will turn into boredom. Life is like a pendulum swinging between pain and boredom. Only by curbing desires and completely denying the will to live can true freedom be achieved. When Husserl proposed “Phenomenology”, he pointed out that we cannot have any grasp of things themselves - or “essence” in the terms other ontological philosophies like to use. The only object of our reason is nothing more than phenomenon, and all we can study is phenomenon.

In summary, this “essentialist” thinking tendency that pursues certainty is unnecessary as a human will. The law itself does not need to pursue an essence.

2. The origin of taking "the embodiment of the will of the ruling class" as the essence of law

As previously mentioned, I questioned the nature of law as the category of “essence”. In the following, I will continue to question whether the nature of law as “the embodiment of the will of the ruling class” is more valuable in solving the current practical social problems in China. To question the “essence of law”, we should first clarify what the object of questioning is. At present, the domestic legal theory community adheres to the basic position of Marxism and the research views of the former Soviet Union’s legal community on the basic issues of law. The consensus on the “essence of law” is that “law is the embodiment of the will of the ruling class.”* Therefore, when we question the “essence of law”, we are actually questioning the nature of law defined in the domestic Marxist legal theory research, because only the domestic Marxist legal theory research has determined the category of “the essence of law.”

2.1. Identify the object of doubt

From the perspective of Marxist research, western bourgeois jurists have various different theories on the concept and basic theory of law, among which the representative ones are command theory, social control theory, will theory, judgment theory, rule theory, behavior theory, and career theory. They either discuss the concept of law from the surface phenomenon of law or from the a priori spiritual world. The key is to use vague language and rhetoric to cover up the bourgeois nature of law in capitalist society. Western jurists and thinkers are accustomed to staying at the surface phenomenon and discussing law, or equating the phenomenon of law with the essence of law, so they have never really clarified the essence of law.^[1]

Therefore, domestic Marxist legal theory research has clarified the category of “the essence of law” and defined it as “the embodiment of the will of the ruling class.” This is exactly what I am questioning, “Does proposing this definition have value in addressing current social and legal issues in China?” (is it more conducive to building a rule of law China under the conditions of a socialist market economy)?

2.2. The research process of “the embodiment of the will of the ruling class” gradually evolving into “the essence of law”

The research process of “the embodiment of the will of the ruling class” gradually evolving into “the essence of law” can be divided into three stages.

* By searching the books Jurisprudence (Fifth Edition) edited by Wenxian Zhang and published by Higher Education Press and Peking University Press, Jurisprudence (Fifth Edition) edited by Guohua Sun and Jingwen Zhu and published by Renmin University of China Press, and Jurisprudence, a key Marxist engineering textbook, we can roughly summarize the current academic community's basically consistent views on the nature of law.

2.2.1. Stage I, the definition of the state

Engels further pointed out that the state recognizes that society is trapped in self-contradiction and split into irreconcilable opposites by examining the origin of the family, private ownership and the origin of the state in ancient society. In order to prevent these opposites - conflicting classes divided according to economic interests - from destroying themselves and society in the struggle, a force above society is needed to ease class contradictions and maintain social order; this force is born in society, above society, and alienated from society, and this is the state.^[9] The state protects the private property of the exploiting class by law, forms private ownership, and enables them to enjoy a sacred and inviolable status. Therefore, the law is a tool to protect the interests of the ruling class and suppress the ruled class.

2.2.2. Stage II, definition of law

The theory of the nature of law in China originated from the former Soviet Union jurist Vyshinsky, who influenced the study of jurisprudence since the 1950s. On July 16, 1938, he defined law at the first All-Soviet Conference of Legal Scientists as follows, “Law is the sum of behavioral rules that express the will of the ruling class and the customs and public life rules recognized by the state power in the form of legislation. The state uses coercive force to ensure its implementation in order to protect, consolidate and develop social relations and order that are beneficial and comfortable to the ruling class.”^[10]

This definition emphasizes the role of state coercive force, emphasizes rule and obedience, and ignores the significance of people’s conscious compliance with the law. This definition is based on Stalin’s theory that class struggle is becoming increasingly acute at the time, and believes that law only “reflects the relationship between the ruler and the ruled.” Some scholars believe that this definition puts “the relationship between rule and obedience in the first place, and only focuses on the violent coercive force of law”, ignoring the cultural and educational role of law.^[11] Since the important thought of the “Three Represents” was put forward in China, the Party has further expanded the scope of the Patriotic United Front. Anyone who has made contributions to the cause of socialist construction and supported the leadership of the Party is a part of the Patriotic United Front. They have long stopped taking the stand of class struggle. If we continue to use the Soviet theoretical paradigm, we cannot reasonably explain the role and status of law under market economy conditions. If we exaggerate the aspect that law is a tool of class dictatorship and believe that law is a tool of proletarian dictatorship, we will ignore the social public function of law and the function of law as a regulator of social relations. Therefore, law should no longer be understood as the embodiment of the will of the ruling class.^[11]

Vyshinsky’s biggest fault was not that he proposed a new definition of law, but that he greatly exaggerated the repressive and dictatorial functions of law in many places based on this definition. Perhaps this was not what Vyshinsky could have expected when he outlined the face of law, but it is unavoidable that this period of Soviet history developed along this trajectory, including Vyshinsky himself, who not only exaggerated it in theory, but also practiced it in practice. What we value is that the shadow of Vyshinsky’s legal theory also shrouded the legal community in my country, and this shadow has not been completely eliminated. Today, we should review and reflect on this.^[10]

2.2.3. Stage III, the essence of law

Since the 1950s, the Chinese legal community has gradually clarified the essence of law by studying the legal theory of the former Soviet Union. Scholars such as Zhang Wenxian and Sun Guohua believe that the essence of law is the embodiment of the will of the ruling class.

2.3. Summary

The domestic Marxist legal theory community divides itself and the Western legal community into essential and non-essential to explain its own correctness. By studying Marx and Engels' theories on the state and the theories of law in the former Soviet Union, it has developed the theory of the essence of law, that is, law is the embodiment of the will of the ruling class. The practice of elevating the will of the ruling class to the essence of law has one-sidedly emphasized the dictatorship function of law, and it is easy to make people ignore the functions of law such as social relationship adjustment, public service, and human rights protection, which is not conducive to the construction of socialist rule of law in my country at this stage.

3. The law is the embodiment of the people's will

There are many doubts about the theory of the essence of law, which has led people to rethink the basic theory of law. I noticed that postmodern academic research is keen on "deconstructionism" and does not tend to construct new theories. This research attitude is not conducive to people's re-understanding of basic theories and solving practical problems. After the reform and opening up, my country has continued to carry out socialist market economic system reform and comprehensively deepen reform, which has also put forward new requirements for the construction of a rule of law in China. In this era, continuing to emphasize the class will of law is not practical in reality except for swearing the position of Marxism. Constructing a set of practical basic theories of law can help people re-understand the law, further protect the rights of the people in the process of the continuous development of the socialist market economy, establish a sense of rights, and thus promote the further development of the socialist market economy. I believe that in order to further promote the construction of a rule of law in China, it should be recognized that the law is the embodiment of the people's will that is people-oriented, and it is also the embodiment of the people's will that is humane, dignified, and protects human rights. Legislation that reflects the voice of the vast majority of the people has never appeared in the guise of a "ruling class", but rather in the guise of humanity and protection of human rights. The fundamental interests of the vast majority of the people have never been reflected in the abstract will of the ruling class, but in moral and good laws that are humane, uphold human dignity, and protect human emotions.

The example is the continuous adjustment of the rules for protecting the interests of the fetus in my country's laws. In an era when family planning is the basic national policy, legal rules must take an instrumentalist stance on the concept of life in order to meet the purpose of controlling population growth,^[12] which has led to the legal community having to strictly interpret the concept of "person". For example, my country's criminal law does not stipulate the crime of abortion, and generally adopts the "independent breathing theory" for the concept of "person". It does not recognize that the fetus can become a person in the sense of criminal law, and harm to the fetus can only constitute harm to women; for example, the previous "General Principles of Civil Law" did not recognize the civil rights capacity of the fetus. In the process of the continued development of the times, the problems of population aging and low birth rate have become increasingly prominent, and the protection of the interests of the fetus by law has been put on the agenda. For example, the "Civil Code" exceptionally treats the fetus as a natural person with civil rights in the case of receiving gifts and legacies. For example, Article 39 of the "Population and Family Planning Law" clearly stipulates, "... artificial termination of pregnancy for sex selection without medical needs is strictly prohibited." This means that the current law has imposed certain restrictions on the subjective purpose of abortion, and the attitude of the legislator towards abortion has further developed from randomness to regulation. Therefore, we can expect that in the near future, the conditions for restricting arbitrary abortion will increase day by day, and we can also reasonably expect that the protection of the interests of the fetus

will be further improved in the future. According to the current trend of my country's population structure, the problems of China's aging population and low birth rate will become more prominent in the future, and even become a key factor that seriously restricts economic development and the development of the national economy and people's livelihood. Therefore, the state's restrictions on abortion, protection of the interests of the fetus, protection of women's rights, and material guarantees for raising children will be accelerated. Many issues will be put on the agenda. As for the question of whether abortion should be defined as a crime, considering that my country, unlike other countries, has not been subject to the ethical and moral constraints of religious culture for a long time, and the society has not formed the ethical and moral concept that "abortion is murder", it is still debatable whether abortion should be criminalized. However, further protection of the interests of the fetus, denying the right of pregnant women and others to decide on abortion under certain conditions, and further providing more material guarantees for women's fertility are the trends of future legal development.

4. Conclusion

Although the article questions the theory of the nature of law, I do not question the Marxist position in legal research. We should acknowledge the outstanding contributions made by Marxist research methods such as class analysis methods, historical materialism, and dialectical materialism to social science research, and we should also acknowledge the class will of law. It is just that the development of each era is different. In the current historical process of further building a socialist rule of law country with Chinese characteristics, the theory of the nature of law that the legal community is accustomed to is worth re-examining - whether the theory of the nature of law is necessary and whether it meets the requirements of building a rule of law in China. The article puts forward some different views, aiming to further protect the rights of the people, establish a sense of rights, and thus promote the further development of my country's socialist market economy.

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