

# *State Governance Logic and Traditional Legal Culture: An Analysis of "Fengqiao Experience"*

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**Abstract:** This paper explores the "Fengqiao Experience" as a dynamic governance model that exemplifies the integration of traditional Chinese legal culture into contemporary political strategies. Originating during the socialist education campaign of the 1960s, the "Fengqiao Experience" has evolved from a mass mobilization practice into a cornerstone of grassroots governance in China. This study argues that the enduring political utility of the Fengqiao model lies in its capacity to operationalize the Confucian ideal of harmony and the historical legal tradition of "resolving disputes without escalation." Through a historical-institutionalist lens, the paper demonstrates how traditional concepts—such as moral mediation, soft law, and community self-governance—have been selectively institutionalized to enhance social control, legitimize state authority, and adapt to the challenges of modern governance. The analysis also situates the "Fengqiao Experience" within China's broader authoritarian responsiveness framework, highlighting its role in mediating the relationship between formal legal structures and informal social norms. In doing so, this study contributes to the understanding of how cultural legacies are repurposed as governance technologies in authoritarian regimes.

## 1. Introduction

As an important experience of the diversified dispute settlement mechanism, "Fengqiao Experience" is the inheritance of the legal culture of the Chinese legal system. Chinese legal system originated in China, relying on Confucian culture and aiming to maintain the legal culture of centralization. According to the traditional jurisprudence theory, the Chinese legal system has the following characteristics: First, the combination of classics and law. The ancient Chinese society respected Confucian culture, and most of its government laws took Confucian classics as the legislative reference. For example, the ancient criminal law system that kinship conceals is not a sin is derived from the Analects of Confucius. When the basic judicial organs judge cases, Confucian classics can fill in the blank of the law to a certain extent, so as to realize the principle guidance of judgment. Second, the combination of all laws, mainly criminal law. In ancient China, criminal law was the main law, civil and commercial law combined with administrative law. Taking Daming Law as an example, criminal law was the main body, while other laws on business, people's livelihood and epidemic prevention were subordinate. Third, the ancient Chinese law takes the value of order as the first, and puts the maintenance of centralization and agricultural production order as the first.

Therefore, in terms of the value of law, the ancient law ranked the value of order first. Fourth, the legal sources of the Chinese legal system include not only the law enacted by the government, but also the customary law and the rural civil covenant, which are also regarded as the basis for case trial, that is, the soft law system and the hard law system have the same legal effect.

## **2. To study the significance of "Fengqiao Experience" and the origin of Chinese legal tradition**

With the upsurge of the third Industrial Revolution, a large number of new industries have emerged. Civil disputes also show an increasing trend with the continuous development of the economy. The dispute settlement mechanism of judicial organs is facing great pressure of procuratorial activities. In this case, "Fengqiao experience" is widely used in the fields of procuratorial hearing, criminal reconciliation, substantive resolution of administrative disputes, judicial assistance, etc., saving judicial resources at the same time, effectively reducing the unstable factors in the period of social change. As a non-traceable dispute settlement experience, "Fengqiao experience" has a significant Chinese legal cultural tradition. Based on the legal system derived from the ancient cultural tradition of "settling disputes and ending disputes", this paper analyzes the origin of "Fengqiao Experience" and Chinese legal culture tradition from the perspective of jurisprudence.

The proposal of the "Fengqiao Experience" began at the early stage of the founding of our country. Our Party Central Committee proposed a new approach to resolving contradictions through "relying on the masses to resolve conflicts locally." Chairman Mao believed that despite years of socialist education, the vast majority of peasants, still influenced by feudal and ignorant thoughts, had difficulty adapting to the trend of socialist development in terms of ideology. In this situation, Chairman Mao both required government agencies nationwide to remain vigilant by strengthening their governance capacity and called for the continuation of socialist education. In May 1963, Chairman Mao held a Central Politburo meeting in Hangzhou, where they specifically discussed and issued the "Decision (Draft) on Several Issues in Current Rural Work," emphasizing the need to address erroneous ideologies such as imperialism, feudalism, and the bureaucratic comprador bourgeoisie through socialist education movements. In order to implement the spirit of the "Decision," the Zhejiang Provincial Party Committee launched a socialist education movement and selected three areas, including Fengqiao District in Zhuji County, to carry out pilot projects for the movement. In other words, the "Fengqiao Experience" originated during the socialist education movement in a special period. Although the "Fengqiao Experience" has democratic characteristics that mobilize the participation of the masses, the initial "Fengqiao Experience" emphasized the "dictatorship" aspect of the "people's democratic dictatorship." This was closely related to the fundamental characteristic of the political and legal system at that time, which emphasized that the element of "law" should be subordinated to the element of "politics," and the effectiveness of political and legal work was ultimately judged by whether political goals could be achieved. As the socialist education movement deepened, Chairman Mao noticed that the political and legal system had developed problems such as the expansion of the scope of struggles and the radicalization of conflict resolution methods, leading to overcorrection. Therefore, he proposed resolving disputes locally, advocating for mass self-mediation, and insisting on the principle that conflicts should not be escalated, which led to the creation of the "Fengqiao Experience."<sup>[1]</sup> Since its inception, the core of the "Fengqiao Experience" has been continuously evolving. Its core is the establishment of grassroots self-governance by mobilizing the masses and adhering to the principle of resolving conflicts locally without escalating them. After the reform and opening-up, the "Fengqiao Experience" was given a new mission due to its unique multi-dimensional, diversified, and

multi-level dispute resolution functions. Since the 18th National Congress of the Communist Party, the "Fengqiao Experience" has added new connotations to the goal of advancing modern social governance, contributing to the creation of a "co-building and sharing" social governance pattern. The "Fengqiao Experience" has transformed from a political mass movement approach to a model of grassroots social governance; from a rural governance experience to an important part of the socialist rule of law concept in urban and rural social grassroots governance; from a rigid stability-maintaining governance approach to an administrative guiding principle for protecting citizens' rights; and from a method of conflict resolution involving mass participation and democratic decision-making to a model of coordinating the relationship between justice and social self-governance in China's grassroots social governance.<sup>[2]</sup>

The "Fengqiao Experience" is highly compatible with the legal tradition of the Chinese legal system. This is mainly reflected in the fact that the "Fengqiao Experience," as a diversified dispute resolution approach, insists on resolving contradictions at the grassroots level and not escalating them. This fundamentally aligns with the Confucian idea of resolving conflicts and stopping disputes. Secondly, the "Fengqiao Experience," as an important measure for internal stability maintenance, provides a new approach to resolving internal contradictions within the people in a reasonable and legal manner. This approach inherits the Chinese legal system's concept of "harmony being paramount," not only ensuring social harmony but also maintaining healthy interactions between the government and citizens. Thirdly, although the Chinese legal system gradually declined after the fall of the Qing Dynasty, its "people-oriented" value concept still provides important references for China's modern rule of law construction. Therefore, studying the "Fengqiao Experience" in the context of the Chinese legal system's legal origins holds significant importance.

The "Belt and Road" initiative advocates for the construction of a shared, consulted, and jointly built international community of shared interests through institutional public goods, material public goods, and ideological public goods. The so-called ideological public goods refer to non-exclusive products that provide consensus and experiences for all members. In this process, ideological public goods are mainly formed through the combination of international and domestic norms. International norms generally refer to formal legal sources such as international treaties, customary international law, international judicial precedents, and general legal principles, as outlined in Article 38 of the Statute of the International Court of Justice; domestic norms are based on national legislation, as well as relevant legislative and judicial experiences. As an excellent dispute resolution experience proposed and developed in China, the "Fengqiao Experience" has, with the advancement of the "Belt and Road" initiative and the promotion of Confucius Institutes, become a part of China's advanced judicial experience. Originating from traditional Chinese legal culture, it can be offered as an ideological public good to the countries along the Belt and Road initiative. Therefore, studying the "Fengqiao Experience" is an important manifestation of China's "cultural confidence."

### **3. China's ancient legal cultural tradition of "resolving disputes and stopping conflicts"**

The Chinese scholar Liang Qichao pointed out that the term "fen" in "dingfen zhizheng" is similar to the modern legal concept of rights. He stated, "The establishment of rights must rely on law; thus, resolving disputes and stopping conflicts is necessary." The essence of "dingfen zhizheng" was to ensure public compliance with laws and the proper enforcement of legal rules by government officials.<sup>[3]</sup> In ancient Chinese society, litigation was considered a last resort for dispute resolution. Lawsuits consumed significant time and effort, often hindering agricultural productivity. Additionally, due to the low population and the strict penal system of ancient China, a conviction

for a criminal offense frequently led to corporal punishment, rendering the offender incapable of participating in agricultural work. To mitigate these consequences, the government widely implemented criminal mediation measures to reduce the number of criminal cases. The main characteristics of this criminal mediation measure are as follows: first, in the criminal procedure law, try to focus on mediation and avoid using criminal punishment; Second, in the value ranking of law, the value of order is ranked in the first place, supplemented by the value of efficiency as the second order, emphasizing the important requirements of the country for the stability of order. Ancient Chinese law was characterized by an integrated legal system ("zhu fa he ti") with a strong emphasis on criminal law. On this basis, the government handled civil disputes from a macro perspective, establishing a unified legal order from the central government to local administrations. This approach prevented conflicts arising from overly complex legal statutes and inconsistencies in legal application. Many contemporary civil disputes and minor offenses stem from ambiguities in legal application and misunderstandings of legal principles. The legislative tradition of "zhu fa he ti" in the "dingfen zhizheng" legal culture essentially combined multiple branches of law to comprehensively regulate legal matters, effectively avoiding judicial dilemmas caused by legislative complexity. Additionally, institutions such as the "suspension of litigation during the farming season" balanced legal dispute resolution with economic productivity. Furthermore, "dingfen zhizheng" culture promoted "diverse dispute resolution mechanisms", where judicial decisions were based not only on statutory law and imperial decrees but also on Confucian classics, which served as a form of "soft law." This resulted in a dual legal framework where "hard law and soft law coexisted", forming a diversified dispute resolution system.

The "Fengqiao Experience," as a diversified dispute resolution mechanism, has continuously evolved with the changing times, presenting different legal core principles. It also serves as an inheritance of China's "resolving disputes and stopping conflicts" legal culture. This article examines the diversified manifestations of the legal tradition of "resolving contradictions locally without escalating them" in ancient Chinese society, with the most typical examples being the "Ting" system during the Qin and Han dynasties, the "Ting-song" system during the Qing dynasty, and the "criminal clemency" system during the Tang dynasty. The study aims to explore the inheritance of the "Fengqiao Experience" and traditional Chinese legal culture.

### 3.1 The "Ting" System during the Qin and Han Dynasties

The establishment of the "Ting" system can be traced back to the pre-Qin Warring States period, where its original purpose was for military outposts and supply stations for couriers. After the implementation of the county and district system during the Han Dynasty, the "Ting" gradually became a grassroots governance unit and emerged on the stage of legal history. The judicial functions of the "Ting" during the Han Dynasty included maintaining public order through patrols, handling civil disputes, and announcing the latest imperial laws. In addition to maintaining law and order, investigating crime scenes, and capturing criminals, the primary function of the "Ting" was mediating civil disputes. The "Ting" chief, who was responsible for education and moral guidance, also served as a mediator. For example, in ancient China, one of the most serious crimes was filial impiety. It was believed that even upright officials found it difficult to handle family matters. Under Han law, if parents sued their children for being unfilial and the accusation was proven, the children could be sentenced to death. Due to the population decline caused by wars with the Xiongnu, the "Ting" chiefs would often intervene before cases reached the courts, using persuasion, education, and mediation to resolve or even eliminate conflicts.

### 3.2 The "Criminal Clemency" System during the Tang Dynasty

The origin of China's ancient criminal clemency system dates back to the Zhou Dynasty. The policy of criminal clemency mainly applied to individuals who were elderly and without dependents, in poor health, or were the only male heirs in their family. Those who fell into these categories were protected under the Tang Code and could be exempted from the death penalty for serious crimes, being instead sentenced to lighter forms of punishment such as labor.

### 3.3 The "Hearing Lawsuits" System during the Qing Dynasty

The "hearing lawsuits" system in the Qing Dynasty was a typical application of the Confucian principle "to listen to both sides is to understand clearly" in the judicial system. The system was based on reason and, under the explicit provisions of the \*Da Qing LüLi\* (Great Qing Legal Code), allowed officials, local gentry, and other participants to attend court sessions held by county officials and judicial officers. They could request lighter treatment or exemption from punishment for those involved in cases, appealing from a perspective of reason and fairness. The decision to reduce or pardon punishment was based on the "reason and fairness" promoted in Confucian classics like the \*Analects\*, which suggested that concealing the wrongdoing of a close family member should not be considered a crime. In this context, although the individuals involved in the case had violated the legal and social order of the time to some extent, punishment could be mitigated or waived based on reasoning, thus easing social conflicts and maintaining state stability. The "reason and fairness" included in this system primarily encompassed three aspects: First, it required that judicial officers, when making legal judgments, should not separate the facts of the case from the historical context in which the incident occurred. Second, it involved seeking leniency based on the interpretations of Confucian classics by renowned scholars of the time. Third, it aimed to preserve interpersonal relationships, where, after reconciliation between the parties involved in the dispute, petitions for leniency were made based on the outcome of the reconciliation. The three practices of "listening to both sides for clarity" in Qing Dynasty judicial practices not only analyzed cases from multiple perspectives—reason, law, and the interests of the ruling class—but also conducted a comprehensive evaluation based on three indicators: the social impact of the verdict, the maintenance of legal order, and the interests of the ruling class. This process led to judgments that balanced the maintenance of national authority and political stability while also ensuring social fairness.<sup>[4]</sup> From these examples, it is evident that China's ancient "listening to both sides for clarity" prosecutorial hearing system focused on moral judgment standards in the context of governance by virtue. Governance by virtue refers to a system that integrates law, public customs, and social ethics for comprehensive governance. From the perspective of governance values, governance by virtue advocated for moral education, supported by the state's coercive power, effectively combining the rationality of social governance with the authority of legal order.

## 4. The Implications of the Chinese Traditional Cultural Origins of the "Fengqiao Experience" for Dispute Resolution Mechanisms

### 4.1 Skillful Application of Soft Law

Western scholar Bodenheimer pointed out that in the process of implementing legal systems, a particular method of resolving legal issues may acquire an undeniable force, compelling legal decision-makers to accept it. This force may stem from several sources: first, from a fixed and inevitable condition of human nature; second, from the inherent necessity of a particular form of coercion; third, from the fundamental attributes of political and social institutions; and fourth, from



people's recognition of the essential conditions or prerequisites that constitute a particular social structure.<sup>[5]</sup> In judicial practice, excellent traditional culture, customary practices that align with public order and good morals, and legal concepts that conform to the rule of law can provide valuable guidance for judicial activities. Ancient Chinese legal thought advocated for a people-centered approach, balancing reason and law as fundamental principles. While such thought is not a formal source of law, it provides fair solutions to legal disputes while minimizing negative social impacts. To a certain extent, it offers valuable guidance for achieving the objectives of modern dispute resolution efforts.

In the context of domestic law, soft law is typically applied as a governance model in the field of public governance. It is considered a continuation of the basic theories of public law and can, further, be confined to the field of administrative law. In other words, soft law refers to legal norms that may not have a complete enforcement structure and do not require state coercion for implementation but can produce social effectiveness. In essence, soft law is formulated or recognized by the state, but its effectiveness is achieved not through state coercion but through social enforcement, self-regulation, or mechanisms of autonomy.<sup>[6]</sup>

As mentioned earlier, ancient Chinese law made extensive use of village covenants and Confucian canonical laws as important bases for social mediation. These norms can be viewed as soft law norms within social governance. Unlike hard law, soft law lacks legal coercion and is more flexible, allowing it to overcome the lag of law by adapting to changing times and providing normative content aligned with those changes. As discussed earlier, the Chinese concept of "listening to both sides for clarity," the core spirit of the hearing lawsuits system, and the institutional provisions of the "suspension of litigation during farming seasons" all embody cultural traditions presented in the form of soft law. The "Fengqiao Experience," as a dispute resolution mechanism primarily based on soft law, provides advanced soft law pathways as an alternative to a single hard law approach.

#### **4.2 Effectively Drawing on Ancient Legal Thought to Achieve Theoretical Updates to the "Fengqiao Experience"**

Taking the ancient Chinese principle of "listening to all sides leads to enlightenment" as an example, this concept primarily served as an auxiliary "reasonableness" basis for ancient judicial officials in the application of law, as exemplified by the Confucian notion that "concealing a relative's crime is not a crime". Through textual research, this paper argues that the ancient principle of "listening to all sides leads to enlightenment" can be integrated into the prosecutorial hearing system to achieve more effective expected outcomes. First, the principle of "listening to all sides leads to enlightenment" advocates for a comprehensive analysis of cases involving discretionary non-prosecution, cases with significant societal impact, and cases affecting the public interest from the perspectives of law, reasonableness, and public order and good customs. This approach contributes to the establishment of an administrative hearing system that balances both legal principles and human sensibility. Second, the principle of "listening to all sides leads to enlightenment" can be effectively integrated with the Fengqiao Experience. The Fengqiao Experience emphasizes resolving issues locally by leveraging the self-mediation abilities of the people, fully mobilizing their collective strength and initiative, and incorporating insights from the public, judicial authorities, and other governance institutions to refine the prosecutorial hearing system. Third, in essence, the principle of "listening to all sides leads to enlightenment" functions as a mechanism for legitimacy review of judicial activities through the right to information and public opinion supervision. This multi-dimensional, multi-level, and multi-perspective approach provides a more comprehensive resolution to issues related to grassroots governance.

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