

On the influence of Chinese traditional legal culture on the modernization of the rule of law

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Abstract: The Fourth Plenary Session of the 18th CPC Central Committee pointed out: "Learn from the essence of Chinese legal culture and learn from the user experience of the rule of law in foreign countries, but never copy the idea and model of the rule of law in foreign countries. "To comprehensively deepen judicial reform today, to realize the great rejuvenation of the Chinese nation, we must have an independent Chinese spirit and build our legal self-confidence. The governance model and governance capacity of a country are closely related to the country's historical heritage and cultural traditions. Therefore, we must face up to the significance of traditional Chinese legal culture for modern legal construction.

1. Introduction

When it comes to Chinese traditional legal culture, people may have doubts today. Does China have a legal tradition? Isn't the traditional Chinese society governed by man? Don't modern Chinese laws move to the West? Even, perhaps someone will ask, is there any law in ancient China?

Not to mention the above, just to wonder why, in a country with thousands of years of history, it is always Learning Western Law System? Where is its legal system? In other words, does it have its own traditional legal culture? What is the value and significance of its own traditional legal culture in modern law today?

2. Organization of the Text

With the acceleration of the pace of social modernization in China, politics, economy, science, and technology, education and so on have gradually developed towards modernization, and the law is no exception. Along with the rapid development of law modernization, the relative tradition of law has been concerned. Law, as a product of the state, has an inheritance. How do you view this inheritance? Or how to view the influence of traditional legal culture on the modernization of law has become a problem that modern legal people must face up to. The reason why there is a series of questions is that the traditional legal culture was once neglected in the process of law modernization. So why is this happening?

One of China's greatest tragedies, the study of all the advanced achievements of the West, has not been active learning from the beginning, but passive acceptance. This was seen as the beginning of the modernization of the law at the end of the Qing Dynasty. But the lawmen overlooked an important issue when China was in the late feudal society and the West was a developing capitalist country. In the concrete analysis of concrete problems, every ruling class represents the most advanced level of productive forces in the society at that time, the economic base determines the superstructure, and the policy or system of each stage is also determined by the economic base of the time, so it is not to be concluded.

If the law of the late Qing Dynasty was only the beginning of the tragedy, then what eventually played out was the outbreak of the Opium War in 1840. They began to explore the way to save the nation. In the process, they first saw the western advanced artifacts, then to the advanced system, and finally, to the advanced culture. They tried to find all the advanced western cultural

achievements that could make themselves strong. Subconsciously, they have regarded the West as the strong, regarding themselves as the weak, in their ideas, only to learn from the West to strengthen themselves. It is unfair to view the traditional Chinese legal culture on the premise of this consciousness.

But, at the time, emulating the West was an irresistible world trend. Under the social background at that time, China had to accept westernization. However, in accepting Westernization, the Chinese people have neglected to see how the Western institutions are superior, and that is the Western ones, which are born in the West and are better than the West and conform to the western trend of historical development. Therefore, we cannot blindly learn everything in the West. As a country with a history of five thousand years, it has its development track, it needs to dig out the essence of its history to promote the development of modernization.

The development of everything has its history, present situation and future. As a result of the evolution of history, all the present is bound to be inextricably linked to certain elements of history. Just like the modern Chinese legal consciousness, no matter how many western advanced theoretical ideas, it cannot get rid of the inertia influence of Chinese traditional legal culture on it. Therefore, we need to face up to the status of Chinese traditional legal culture.

First, define the scope. What is Chinese traditional legal culture? Chinese traditional legal culture refers to the sum of all cultural factors formed in the long history of China or the Chinese nation, which are related to the law and have the characteristics of the times and nationalities. This mainly includes two meanings: one is the culture related to ancient law, which is a part of the traditional Chinese culture, and the other is the broad understanding, starting from the influence of modern law, to trace back those ancient traditional cultures which may have nothing to do with the ancient law at that time, but deeply influence the modern law.

Secondly, it is necessary to clarify the characteristics of Chinese traditional legal culture. Only clearly its characteristics can better grasp its advantages.

(1) People-oriented. Chinese traditional legal culture is based on Confucian culture. All national policies and systems must take the best interests of the people as the starting point and the foothold, and the law as one of the governing tools is certainly no exception. People-oriented, not only to protect the people, compassionate people, more important is to teach the people, enrich the people, attach importance to educate the people, make people good. Today, the state advocates "people-oriented", which is the inheritance and development of the thought of "people-oriented".

(2) Rule of law The idea is deeply rooted. As early as in the Book of Changes, there is a hexagram that is "Song Gua", and is dedicated to how litigation. Therefore, it can be said that as early as the Shang and Zhou dynasties, people already have a sense of the rule of law. Among the kings of the past dynasties, those who attached the most important to the concept of the rule of law should count the Ming Tai zu Zhu Yuan Zhang, who personally compiled the Ming Da Gao, and printed it into a book for the general public to carry out legal education. Not to mention its actual effect, only from this policy, the ancient Chinese rulers attached importance to the concept of the rule of law. Although the traditional legal culture insists on interest litigation and no litigation, the idea of rule of law contained in its concrete viewpoint still influences the Chinese people imperceptibly, making people know the law, fear the law and abide by the law. Advocates of western law believe that China has been unable to govern since ancient times, but this does not mean that the people do not have a sense of the rule of law.

(3) The grammar system is well developed. In China, the procedural law may have many immature or imperfect systems, but its statutory system is quite developed. From "Gan Shi", "Tang Shi", "Jiu Xing", "Lv Xing", to the Spring and Autumn period of the casting penalty Ding, published the statute law. During the Warring States period, Li Kui's "Fa Jing", various laws since the Qin and Han dynasties, after thousands of years of precipitation, formed a statutory system, represented by the "Tang Lv Shu Yi". Although in the statutory law system, it is mainly based on criminal law, but its content is all-encompassing, all over the civil law, administrative law, commercial law and so on. Therefore, China's legal system cannot be arbitrarily considered imperfect. Only the cultural characteristics of China and the West are different, the division criteria are different, and the

expression is not the same.

In addition to the above three remarkable characteristics, the traditional Chinese legal culture also has some other characteristics. For example, the combination of rule of man and the rule of law, the relatively developed rule of officials, the rich and colorful legal culture, adhere to the simple materialist dialectics, the excellent legal art (especially the legislative art and the judicial art).

Finally, the modern Chinese Rule of Law and construction must draw lessons from the traditional Chinese legal culture.

First, the conditions of social life have continuity and inheritance, so it is necessary to draw lessons from the traditional legal culture for the construction of the modern rule of law. Second, the social existence determines the social consciousness, the traditional legal culture as a kind of ideology. Its formation and development depend on the development degree of the social material production mode. Therefore, different societies have different social consciousness.

Therefore, how to realize the contemporary value of Chinese traditional legal culture is a question worth pondering. Based on the inheritance of history, the construction of modern rule of law also needs corresponding institutional arrangements. Specifically:

(1) Build up cultural confidence.

There are resources for the development of modern rule of law in Chinese traditional legal culture, and there are many historical conditions and cultural details to form its unique model of rule of law. Therefore, confidence in the traditional legal culture is needed.

(2) Correct understanding of Chinese traditional legal culture.

A comprehensive and objective view of traditional legal culture, including its meaning, characteristics, research purposes and so on. As far as possible to show the history of the development of ancient Chinese law in front of people, so that we can have an objective, scientific judgment on the development of ancient Chinese law.

(3) Look for roots.

Chinese traditional legal culture is the crystallization of the wisdom of all ethnic groups and the basis of national rejuvenation. To leave this foundation and talk about building a modern rule of law system is undoubtedly empty talk. It is not only the only way for the modernization of the rule of law, but also a shortcut to accelerate the modernization of the rule of law.

(4) To carry forward and modernize the inner spirit in the traditional legal culture.

Traditional legal culture, a specific product of specific time and space, has a distinct epoch, which determines that we must go beyond its inherent historical connotation, its valuable content, a new interpretation. Inject new connotations to produce new functions to meet the needs of the new era.

3. Conclusion

China's traditional legal culture needs to be respected and faced squarely. This is an issue that every Chinese, especially the legal person, must pay attention to. The development of China's modern rule of law must be based on the biggest reality of China, which contains the historical tradition of the development of Chinese law and culture for thousands of years. If we want to achieve the goal of socialist rule of law construction with Chinese characteristics, or if we want to have dialogue with the countries with developed world rule of law and have our right to speak in the circle of rule of law, we should not only make institutional innovation based on the current social reality but also pay attention to the traditional legal culture of China and dig out the essence of it which is conducive to the development of the rule of law today. It is necessary to face up to the traditional Chinese legal culture for a very simple reason. The traditional Chinese legal culture has existed for thousands of years, its continuous precipitation and inheritance, its influence has penetrated every corner of Chinese society.

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