
The legalist community in Henan and the Chinese early legal civilization----- centering on the pre-Qin period

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Abstract

In the formation process of Chinese early legal civilization, a large number of legalists have sprung up in Henan. Aimed at the social governance dilemma at that time, Henan legalist community not only described some significant theoretical problems, such as the rule in accordance with established laws and thoughts of governance trickery, but also opened the origin of Chinese early legal theory; they also have played a key role in the formulation of Chinese early statute law, and run together in law making both in the official and private field to open the new stage of Chinese legal construction; Henan legalist community have made an outstanding contribution to the Chinese early law education field, whether in the private law education or official law education, their achievements are elegant and deeply influence the later generations.

Keywords

Legalist community; Theory of law; Statute law; Law education; The Chinese legal culture.

1. Introduction

Although the determinism of geographical environment praised by Montesquieu and Hegel has been criticized and queried enormously in the 20th century, we couldn't ignored the influence and effect of geographical environment on the territory civilization development entirely, especially in the early stage of civilization. Even Marx and Engels have arrived at the similar conclusion in their research achievement, at the preliminary stage of human civilization, the geographical environment has great influence on the material production activity of human community, and then to affect the types of human civilization and its development course to a large extent, but it is its inherent law which dominates the human society historical development. [1] Actually, a lot of histories seem to be able to verify the correctness of this theory. The origin of Chinese early law civilization was closely related to Henan. Because of the wide category of geographical environment, from the visual angle of Henan legalist community, this paper hopes to provide some helps and revelations to this significant topic, the central China and Chinese legal culture.

2. Henan legalist community and Chinese early law-governing theory origin

Han Fei is praised as the master of legalist school by academic circles, the main basis is his thought: enact and execute laws, rule with Monarch's status and power. From which we can conclude that the three core ideologies of the pre-Qin legalist school are, enact and execute laws, rule by political trickery, and use Monarch's status and power. But at root, enact and execute laws and rule by political trickery are proposed and developed by Shang Yang and Shen Buhai, the representatives of earlier legalist school in Henan.

2.1 Shang Yang's thought: to follow and rule in accordance with laws

Shang Yang, whose homeland is Wei (now in Liangzhuang Town, Neihuang County, Anyang city, Henan province) in the Warring States Time, is the representative of Chinese early legalist school. The core content of Shang Yang's legal thought is to follow and rule in accordance with laws, which is the origin of Chinese early legal theory, to select its key points and discuss briefly as follows:

2.1.1 To elucidate the importance of law in national governance

In the Spring-Autumn and Warring period, faced with the social turmoil, all kinds of strategies of running a state have appeared consecutively, which brought selection possibility for the politicians at that time. Because each school preached their own strategies vigorously, the politicians were difficult to select. Especially in the two big schools, Confucianism and Legalism, their hostile criticism and attack formed the first famous dispute between Confucianism and Legalism.

In order to criticize the fallacy of propriety which was praised highly by Confucianism, Han Fei expressly pointed out that, the law is peoples' life, the root of state affairs management, it is used to guard against the people. To abandon the law for state affairs management, which is just like to hope to get out of starve while discard food, to abandon clothes in order to keep warm, and hope to go east while walk to west. [2] It clearly shows that the law is a cold iron for state affairs management, and kindheartedness is not enough to cure the world.

Because of fully understanding of the significant place of law in the national governance, from the dimension of history, Shang Yang summarizes that to continue use the laws is a traditional behavior of a wise monarch in the history. Just like he says, a wise monarch should pay attention to the law, doesn't listen to the illegal speeches, doesn't praise the illegal behaviors, and doesn't do the illegal things. He should listen to the legal speeches, praise the legal behaviors and do legal things. So, the state politics is clear and bright, the territory is extensive, the force is strong, and the monarch status has been improved. This is the highest state of political correctness. [2] [The monarch and his subjects]. So when the saint grasping the political power, no one has slain under torture which is not because the saint doesn't use torture and doesn't kill person, just because the law carried out by saint is easy to understand, and he sets up judges and legalist-trained officials to be the teacher of peoples, to teach them to understand the law. Consequently, peoples all know what should avoid, how to avoid trouble and close to happiness. Wise monarch governs the state on the basis of peoples' self-government, the state will be in good order. [2] This offers sufficient historical basis for the rule of law governing function.

Shang Yang's theory that legal institution could manage the state affairs has enriched the epistemology of early Chinese law, at the same time, it has improved the legalism's social status to some extent, and provided public opinion and theory supports for legalism to go to foreground of history.

2.1.2 To expound the theory of united punishment

Shang Yang has also discussed the implementation effect of law enforcement. He believes that, the reason for national turmoil is not the legal confusion nor the legal has no effect. Any country has legal, but no one can ensure the legal must be enforced. [2] Therefore, to ensure the implementation effect of the legal, which is the key point of national management. Aim at the huge social resistance brought by the social long-standing abuse that punishments do not go to the senior official, and rites do not extent to the common people at that time, Shang Yang understood more than ever that to restrict the privilege of legal institution was very important.

In order to maintain the authority of law and fulfill its function, avoid some officials and nobles are above the law, Shang Yang elucidated the theory of punishment without a grade for the first time in our country. According to Shang Yang, united punishment means punishment without a grade, from minister, general, senior official to civilian, no matter who refuses to accept the order from monarch, violates national law or destroys the law established by monarch, could be sentenced to death, not

pardon. The one who has rendered outstanding military service before, but violated law latter, couldn't relieve punishment. The one who has done good things before, but made a mistake latter, couldn't break the law. Even those loyal officials and dutiful sons who has violated law must be punished by the size of their sin. The officials who execute the legal violated the law could be sentenced to death, not pardon, and their father, mother and wife were implicated. [2] This theory firstly regulates the equality of all the legal subjects without monarch before the law; secondly, the theory of united punishment declares the end of privileged stratum's legal privilege and opens the legal structure that monarch should act in accordance with law. Although the theory of united punishment of Shang Yang neglects of monarch control, but it is commendable from the view of law development history with obvious social progressive.

2.1.3 To praise the doctrine of severe punishment

Shang Yang also further notes that, severe punishment is another key factor to maintain the legal to fulfil its function. He believes that, severe punishment is the best way to stop crime. Severe punishment can catch the prisoner, so peoples dare not test to violate the law, and then there are no punished people in the state, therefore, the purpose of severe punishment is not kill. [2] He thinks the severe punishment can let people fear of the law and dare not violate it, so the social could be managed. Just because of this understanding, he overturns the predecessors' habits to criticize bellicosity, sanguinariness and severe punishment, and puts forward the point of view that, to wipe out the war by war even make a war, to eliminate killing by killing even kill someone, to eliminate punishment by punishment even aggravate punishment, all of these are possible.

Shang Yang also recognizes that, the earlier the punishment intervened, the better effect of social management. So, he puts forward the point that light punishment and heavy penalty firstly. To punish the people who commits a misdemeanor heavily, so the slight crime will not happened again, and then the serious crime will not appeared, which means to manage the state at the time of national stability. To punish the people who commits a misdemeanor lightly and punish the people who commits serious crime heavily, so the slight crime will not stopped, and then the serious crimes are unable to stop, which means to manage the state at the time of people mess. So heavy penalty for light crime, the penalty could be eliminated and things could be done, the country would be powerful. If use light penalty together with heavy penalty, then the penalty has used and crime has still happened, the country would be weakened. [2] In addition, under the guidance of this thought, Shang Yang also advocates to use penalty before crime happened. He says, to punish people after the crime, the evil would never severed; to reward the righteousness considered by people, the crime would never be removed. If penalty couldn't remove evil and reward couldn't restrain crime, the country would be messy. Therefore, the monarch punishes the people before crime, the big evil would never happen; rewards the people who informs on the criminal, so the minor crime would not slip through, and then the country is in good governance. [2]

2.2 Shen Buhai's thought of governance trickery

Shen Buhai, whose homeland is Zheng (now in Zhengzhou city, Henan province) in the Warring States Time, is one of the famous representative of Chinese early legalist school, his thought is known for the governance trickery.

About the content of governance trickery, we couldn't find much more in details in Shen Buhai's speeches, we just know it in the discussion of Han Fei. The way of managing the state, is to give each person the corresponding position according to his ability, and let him worthy of his position. The monarch uses his power to investigate the officials' talent. [3] The governance trickery has clear difference with legal, for management objects, executive subjects, pattern of manifestation and main feature.

The main content of Shen Buhai's thought of governance trickery includes:

2.2.1 To elucidate the importance of governance trickery.

Shen Buhai's thought of governance trickery is based on the understanding that the Monarch's threat comes from the courtiers. Shen Buhai thinks that to carry out the rule of law, the monarch should grasp the centralized power to drive the courtiers. He emphasizes, the wise monarch should grasp the powers which concern the nation's safety, such as legislation, appointing and dismissal, deserving award and punishment, and so on; [4] therefore, he emphasizes those theses, such as, the monarch regards the populace as the most dangerous enemy, to build high city wall and guard against tightly. But the one who replace the monarch to get the state power is often the minister around the monarch; a family is easily to be broken with a jealous wife and a country is easily to be defeated with treacherous minister, and so on. He repeats his call for the significance and inevitability of governance trickery of monarch to beware of the ministers.

2.2.2 To construct the system of governing stratagem. Overall, Shen Buhai's governing stratagem consists mainly of two aspects.

First, to ask for the match between names and actualities. Shen Buhai thinks the significant responsibility of monarch is to give the minister suitable position according to their capability, and take strict examination to standard the ministers' behavior exactly according to their responsibility. Such as he says, the monarch formulates laws to standard the peoples in jurisdictions, and makes them to perform their roles. The ministers do everything by rule, and the regime system would function well. And Yao governed by reputation all over the world, good governance over the world by good reputation. Also Jie governed by reputation all over the world. Its' reputation brings a tumult leading to sage's attention on reputation. Lord deals with big frame, officials deals with details.

Second, methods of monarch's inaction. Shen Buhai advocates Taoists's laissez-faire, especially emphasizes the monarch must be good at camouflage, Can't let liegeman easily found that the real intention of the monarch, And then to avoid heavy pitch monarch, eventually achieve seeing alone, listening alone, resolve alone purposes. In Shen ' s opinion, seeing alone brings clearness, listening alone brings smart and resolve alone brings monarch.

Despite the academic idea of trick governance of shen many criticism, but his ideas are greatly preferred by all previous dynasties ruling class in Chinese feudal society with the man governance.

Shang Yang's Legal governance and Shen Buhai's trick governance are inherited and developed by a master of legalist Han Feizi, and eventually constitute main departments of Chinese legal thought, and deeply affect the development of Chinese legal civilization.

3. The emergence and development of Henan legalist group and Chinese statute law

The emergence of statute law is a great event in humanity legal development history, while the emergence and development of Chinese statute law have close relation with Henan legalist group. The typical representative figures are Zi Chan who compiled the official statute laws, Deng Xi who compiled the private statute laws and Li Kui who compiled the first systematic statute laws in our country.

3.1 Zi Chan and the beginning of Chinese official statute laws

Zi Chan, whose homeland is Zheng (now in Zhengzhou city, Henan province) in the Spring-Autumn period, he is famous for promulgating a decree on a tripod which launched the beginning of Chinese official statute laws. In terms of time, the penalty tripod casted by Zi Chan is about one century earlier than Twelve Tables the first statute law of Ancient Rome. It occupies a prominent position in the world legal history.

Zi Chan's time in charge of the state of Zheng, although the Confucian heritage has still existed, the privileges of slaveholders couldn't shake, and the phenomenon of nobility grab land has prevailed over. In order to limit the slaveholders to do everything, Zi Chan has made a lot of important measures

which could affect Chinese history. As the commentary of zuo records, now, you assist the state of Zheng, delimit the field mark and ditch, set up the rules of government affairs slander, formulate three kinds of laws, and cast them on the tripod. [5]

Zi Chan's measures break the legal institution that the power of the law is endless without published. To let the people know to some extent which behavior should violate the law and should be punished by what kind of penalty. Undoubtedly, it limits the privileges of the nobility, and breaks the tradition of rule by rites. [5] Although Zi Chan's governing concept is not entirely break from the Confucian, but his penalty tripod has obvious limit and regularize the privileges of nobility, and open a new period of Chinese legal development.

3.2 Deng Xi and Chinese private laws

Deng Xi, whose homeland is Zheng (now in Zhengzhou city, Henan province) in the Spring-Autumn period, his great contribution in legislation is the penalty carved on bamboo, which launched the beginning of Chinese private statute laws.

Although Zi Chan's penalty tripod limited the privileges of slaveholders to some extent, Deng Xi's penalty bamboo has ensured the benefit of feudal aristocracy. In order to defend the benefit of emerging aristocracy, Deng Xi starts from the social reality requirement, on the basis of Zi Chan, to put the benefits of slaveholders and feudal aristocracies into the penalty bamboo.

Considering the content, Deng Xi not only has inherited the legal achievement of Zi Chan, but broke through and developed his legal thought, in some respects, he has reproached and denied Zi Chan. He says, to take rightness as mistake and take mistake as rightness. [6] Although Deng Xi's criticism and negation of official law are inopportune or inappropriate, but from a legal perspective, his eccentric act in a certain extent enriches the content of our country's statute law, and creates a new way to formulate law.

Considering the influence, because Zi Chan's penalty tripod is in the former, and it is the expression of state will, so Deng Xi's penalty bamboo of course couldn't be compared with Zi Chan's penalty tripod. But in terms of agree with the social reality, Deng Xi's penalty bamboo probably come out much better. We could find the argument form the following several historical materials:

The first one: Si zhuan killed Deng Xi, and then used his penalty bamboo. [5]

The second one: Zi Chan's penalty tripod is poorly conceived, so Deng Xi takes the theory of both will do, assumes infinity, to win. Because his penalty bamboo is more rigorous than penalty tripod, so though Si Zhuan killed Deng Xi, he had to use Deng Xi's penalty bamboo. [7]

In short, although Deng Xi's private laws has violated status law's taboo which result in his death, but because his legislative purpose adheres to the following principles: compliance with nature, compliance with human nature and state management, offer abundant intelligence reference for compilation of the later age statute law.

3.3 Li Kui and the systemic statute laws of Chinese feudal society

Li Kui, whose homeland is Wei (now in Puyang city, Henan province) in the Warring States Time, is one of the major representative of Chinese early legalist school. His main historical contribution is to carry out the first systemic statute law in China, Canon of Laws. Guo Moruo, the famous historian once praised Li Kui as the father of legalism. Some important historical classics such as the collection of Yiwen Zhi in Han Shu, also treat Li Kui as the head of legalists.

Canon of Laws appeared in the period of Li Kui take charge of Wei, subject to the dispersion of laws and the system is hard to form at that time, on the basis on collection and identification of other country's statute laws, Li Kui wrote the Canon of Laws.

From the characteristics of Canon of Laws, it is praised by later generations because of its complete system. Due to the absence of the original text, this conclusion only can be presumed by two historical materials. The one is, in the third years of Duke Xiao of Qin, Shang Yang went to Qin with the Canon of Laws, and formulated the Qin Law on the basis of it. Another one is, in the early Han Dynasty, Xiao

He formulated the Nine Chapter Law on the basis of Canon of Law. Whether Qin Law or Nine Chapter Law, they all have a relatively complete system feature, and the two laws are formulated on the basis of Canon of Laws by add or delete, so, it is credible to say that Canon of Laws' system is complete.

From the content of Canon of Laws, it includes six aspects of content which could be proved in the Criminal Annals of Jin Book. It contains, at that time, to continue to use the old law of Qin and Han dynasties, some provision of the law were formulated by Li Kui, the strategist of Marquis Wen of Wei. Li Kui wrote the laws of country, wrote the Canon of Laws. He thought that the most urgent event in the country is the thief, so he formulated the law begun at Pilferage and Thief. The thief needed to be attacked and arrested, so he wrote Net and Arrestment. He wrote the Miscellaneous Law aimed at those frivolous cunning, climbing over the wall, gambling games, borrow money avariciously and luxury excessive behaviors. He wrote the Specific Law to discuss detailed about the addition and subtraction of laws. So there were totally six chapters, and formulated various offenses. Shang Yang used it to assist Qin, and Han Dynasty had followed the rule of Qin dynasty. On the basis of Qin Law, Xiao He added three chapters, Xin, Jiu and Hu, formed the Nine Chapter Law. [8] It is easy to see that the law of Pilferage, Thief, Net, Arrestment, Miscellaneous and specific are the main constituent parts of Canon of the Laws, and it is precisely the key of legal system tradition inherited and imitated by the later feudal dynasties.

In addition, in the pre-Qin period of China, there are some other Henan legalists made positive efforts for the creation of Chinese early statute laws. Such as penalty symbol made by Li Kui in Han, and Shang Yang's political reform in Qin, have issued and carried out as statute laws ultimately.

In conclusion, in the process of Chinese early statute laws development, Henan legalist group has made a positive contribution, and accumulated precious wealth for Chinese early legal civilization.

4. Henan legalist group and Chinese early legal education

Legal education and legal practice are both the important part of Chinese early legal civilization, and the power and safeguard of Chinese early legal civilization development. In Chinese early legal education and practice, a large number of Henan legalists have sprung up.

Compared with the western legal education at the same stage, whether the education institutions, faculties or teaching activities, Chinese early legal education is not very rich, but we can still sort out the history of Chinese early law clearly. There are two forms of ancient legal education, private school and official school. The ancient Chinese legal education could be traced to the period of Spring-Autumn and Warring States. It came in the form of private.

4.1 Deng Xi and Chinese early private legal education

During the late Spring-Autumn period, along with the ceremony disintegration has been broken in the official education mode, on the motivation of competition of various states, the social status of ideologists has been enhanced, so different forms of administering policies have chance to show to each other, which provides the necessity for development of private education. Zheng Shaomao in Lu and Deng Xi in Zheng are the typical representatives of Chinese early legal education.

During the administration of Zi Chan, Deng Xi set up private schools for legal education. It contained, Zi Chan administered Zheng, and Deng Xi tried every means to embarrass him. He arranged with the people who has case, and helped them to engage in the case. A long dress was the remuneration for big case, and a short dress was the remuneration for little case, so there were countless people offered all kinds of clothes to follow him to learn how to engage in a case. [6] We can see that Deng Xi's private legal education has a significant impact at that time.

Actually, the activity mode of Deng Xi's private legal education was not confined to private schools. He also took advantage of posting and publishing penalty bamboo to teach legalism to citizens. Deng Xi engaged in legal knowledge dissemination, and not afraid to the government ban, Zi Chan banned to post everywhere, and Deng Xi turned to deliver an anonymous letters; Zi Chan banned to delivery

casually, and Deng Xi turned to deliver attached with other items. [6] Moreover, he went to court for others.

As the people at that time always criticized Deng Xi like to create strange speech and different word, in fact, this kind of criticism was just highlights his remarkable and outstanding thinking ability. Therefore, his legal education has a significant effect on the student necessarily. As historical records, Deng Xi once said, in conversation, we need to distinguish different categories to make sure there is no contradiction. Different threads should be well organized and have no logical disorders. We should let others understand our meaning, our words should express our meaning. [9] The sagacity of Deng Xi in argue has affect his legal education key point naturally. His Liangke theory and the anecdote of dead body redemption are the most typical presentation. It is difficult for Deng Xi to achieve success because his private legal education has violate the ruling class's fundamental interests, but the social effect of his teaching model and content has the immeasurable effect in the ancient China legal education history and far-reaching effect on the private legal education for future generations.

4.2 Li Si and the end of Chinese early private legal education and the beginning of official legal education

Li Si's homeland is Chu in the end of the Warring states period (now in Shangcai, Henan province), he is the famous politician and legist in Qin dynasty and plays a key role in the transformation of Chines early legal development.

After the establishment of Qin dynasty, the political unity should lay a well social foundation for private legal development, but because the rulers has strengthened the concentration of power of emperor and then adopted intensive method on the control of ideology, the natural development road of Chinese early legal education has been broken and lost the great opportunity.

About the speeches of Li Si to suggest to abolish private legal education in order to strengthen thought control, has recorded in history in detail.

The system of five emperors is not repeated from generation to generation, the system of Xia, Shang and Zhou is not followed from generation to generation, too. But all of them has governed the state well with their own system, which is not mean that they want to opposite to each other, just because the times have changed and the situation was different. Now your majesty has created a great cause, established the immortal work through the ages, that is not dull and ignorant Confucian could understand. Moreover, what Chunyu Yue said were the things happened in the three generations of Xia, Shang and Zhou, where is worthy us to follow? Formerly the dukes has disputed with each other, so they needed to solicit lobbyists in quantity. Now the world is peace and the law has made only by majesty. So the common people should be committed to agricultural production and readers should learn the law and banned punishment. Now the Confucians do not learn the today's law but to follow the ancient to defame the present age and delude the common people. Prime Minister Li Si advised, the world is diffused and chaotic at the ancient time, no one has been able to unify it, so the dukes have set up together, and they all quoted the ancient and damaged nowadays. People only appreciated their learned knowledge in private, and criticized the system established by the state. Now the monarch has unified the whole country, and distinguished right from wrong by himself. But private schools criticized the laws together, they taught people to discuss the order after transmitted according to what they learned, to censure in mind when enter court and discuss in the street when out of the court, to boast themselves for fame and wealth in front of monarch and elevate themselves by pursuing strange speech, and to take the lead to make libelous speech in the public. If the private schools haven't been forbidden, the power and influence of monarch should be declined and the power of cliques should be formed. I believe it is suitable to forbid these. I request to burn down those ancient books and records which are not belong to Qin. In addition to the books which are managed by official, the other Poem and Book should be sent to local official to burn down totally. The one who has dare to talk about Poem and Book should be put to death in public. The one who has used ancient things to criticize the present should be killed with the whole families. If the official who knows and not to report should be

punished with the same crime. The one who hasn't burn down the books after the order transferred thirty days should be tattooed on the face and transported to the borderland for four years, to defend the bandits during the day and build the wall during night. The books about medicine, divination and planting are not banned. If someone want to learn laws, he should take the government officials as teachers. [10]

Because Li Si thought the flourishing of private schools was a big taboo of national governance and go against to the political security of governor, so he advised strongly to adopt compulsory means to prohibit private schools. The private school which was just spring up at the end of the Spring-Autumn period has stopped abruptly. However, because Li Si is the representative figure of legalism, he has paid a certain degree attention to legalism when he was proposing to forbid other schools of thoughts, so, in a way, it has provided the safeguard for the continuation of legal education, just the form of legal education has been changed, from the original private school to official school, this is the famous classroom legal education in Qin.

Unlike the private school education at the end of warring state period, the classroom legal education system with obvious official quality adopts the model of social education to replace school education, and asks all the people in society to learn law. Setting up rural officials who take charge of education, and selecting the one whose age is more than fifty years with good moral integrity and could lead others to be kind, to in charge of grassroots legal education and publicity. At the same time, recruiting and selecting government officials in the central and all levels government to teach law and order, and cultivate the law-enforcement officers. This kind of legal educational pattern which takes law as teaching content and takes official as teacher, has a profound influence on the legal education for China's later feudal society.

In conclusion, Henan early legalist group has made great contribution to the beginning and evolvement of Chinese early legal civilization. To some extent, it is probably fair to say that, as an important part of the Chinese early legal civilization, central plains early legal civilization affects the process of Chinese legal civilization. At the different stages of Chinese historical development, could find the figure of Henan legalist. Until today, the central plains legalist group is still active in each area of socialism legal construction and playing an increasingly important role in the process of legal construction in China.

Why a large number of Henan legalist group has appeared in different historical stage? What kind of role dose the central plains legal civilization play in the evolution process of Chinese civilization? In the context of law-based governance, how to play the positive role of Henan legalism better? All of these are worth our deep consideration.

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