

Legalists' Thought of Rule of Law and Its Enlightenment to the Construction of Socialist Rule of Law

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Abstract: Legalism is a school of thought with “rule of law” as its core, which came into being and developed during the spring and Autumn period and the Warring States period. Its thought has a far-reaching influence on Chinese society since then. The “socialist rule of law” that we carry out today is different from the “rule of law” of Legalists. Through the analysis of the main idea of Legalists and Legalists, the author tries to provide some beneficial enlightenment to the construction of socialist rule of law in China.

1. Introduction

Legalist school is a school with “rule of law” as its core, which was produced and developed during the spring and Autumn period and the Warring States period. It is also the most influential school among all schools of thought. The representative figures of Legalists are Guan Zhong and Zichan in the spring and Autumn period and Shang Yang, Li Yi, Wu Qi, Shen Buhai, Shendao, Han Fei and Li Si in the Warring States period. In the Warring States period, the state of Qin was able to win the hegemony of the other six countries, one of the important reasons was that it adopted the Legalists' idea of governing the country. In 221 BC, the Qin Dynasty unified the six states and established a unified centralized state, which also marked the rise of Legalism to the status of national ideology. Although the rulers of Qin Dynasty wantonly killed the second emperor of Qin Dynasty, and the legalist school disappeared with the demise of Qin Dynasty, but the influence of legalism on Chinese society will not disappear with the demise of Legalists. It is undoubtedly of great significance to reflect on legalist thoughts for the construction of socialist legal system in China today.

The thought of rule of law in ancient China was first put forward by Guan Zhong, the forerunner of Legalists in the spring and Autumn period. He pointed out that “the size, the rope and ink, the rules, the Dou Hu, and the angle quantity are the laws.” It means that law is the only standard for people, just like measurement and balance for things. Guan Zhong also first put forward the principle of “the monarch and his subjects are all in accordance with the law”. Later, Shang Yang, Han Feizi and others in the Warring States developed and practiced the thought of “rule of law”, which made the ancient theory of rule of law gradually systematized.

2. The Theoretical Basis of Legalists' Thought of Rule of Law

2.1 We Should Not Imitate the Ancient Times, Nor Blindly Follow the Current System of Historical Development

Legalists advocate the idea of “keeping pace with the times” and believe that society is advancing with the development of history, and the society is getting better and better. The legal system should also “keep pace with the times” and should not be conservative. The legal system should be established according to the situation. Starting from material wealth and social relations, Legalists pointed out that population growth and lack of material wealth were the causes of moral changes. In ancient times, “there were few people but more money and goods, so the people did not fight.” at that time, the rule of virtue and the rule of rites could govern the world. But now “the people are numerous but the wealth is few, the work is hard and the support is poor, so the people

are fighting” (Han Feizi · Wuzhuo). Moreover, there were endless wars between countries, and “strong annexation of state affairs, weak state affairs and defense” (Kaisai, book of the king of Shang)

The ancient society was not perfect. Instead, people should not judge the past and the present. Instead, they should face the changing society and make positive changes. They should not use the methods of the past to govern the changed society. Therefore, in order to survive, be peaceful and develop, we must devote ourselves to enriching the country and strengthening the army, abandon “rule of virtue” and “rule of etiquette”, and implement “rule of law”. Formulate and strictly implement laws suitable for the current situation. As time goes by and governance is not easy, chaos will happen. If the ruling mode remains unchanged with the development of the times, the society will inevitably be in danger. Conservative ideas will affect the stability of social governance.

2.2 The View of Human Nature of Pursuing Advantages and Avoiding Disadvantages

According to the view of Legalists, people have the instinct of pursuing benefits and avoiding harms, and have the nature of pursuing material interests and avoiding dangers and disasters. Ancient emperors abdicated not because of their noble moral character, but because they could not get more benefits from being emperor. Instead, they had to pay more hard work than ordinary people. The craftsmen who made cars hoped that everyone could get rich and promoted, while the craftsmen who made coffins hoped that more people would die. This was not because the former was good and the latter was evil, but because of the promotion of interests. Guan once said that businessmen worked both day and night Cheng, I don't think it's too far to drive a thousand miles. It's because interests attract him in the front. Fishermen are not afraid of danger. They sail against the current and do not care about it for a hundred miles away. They also pursue the interests of fishing. Legalists judge human nature from the perspective of ontology, and think that the relationship between people is a kind of profit-making relationship, full of intrigue and intrigue.

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2.3 Public Law View of “Abolishing Private Interests and Establishing Public Interests”

Legalists believe that the law represents the common interests of the society. Therefore, it is necessary to “promote public interest” and implement the rule of law that is neither intimate nor indifferent, nor superior or inferior. “Propriety” represents the private interests of the nobility. “Public” and “private”, “law” and “ceremony” are just like “good” and “evil”, which are opposite to each other. The results of the implementation of “rule of propriety” are as follows: “before the establishment of the national interest, the land is granted and the salary is extremely high; although the Lord is humble, the officials are respected; although the state land is cut, the private is rich There are few citizens but many private people. “ (Han Feizi? Wuzhuo) Legalists advocated that legislation should uphold the public interest, and the monarch was required to abolish the selfish desire that was detrimental to the national interests, and to formulate laws from the overall interests of the new landlord class. The monarch does not involve himself with his own selfish will, does not govern the country with his own likes and dislikes, and follows the principle of ruling the country by law and governing the world by magic.

However, Legalists described the will of the new landlord class as the will of all members of the

society. As Marx pointed out, “every new class that attempts to replace the old ruling class has to describe its own interests as the common interests of all members of the society in order to achieve its own goals. In abstract terms, it is to give its own thoughts a universal form and describe them It's the only reasonable, universal idea. “ (selected works of Marx and Engels, Vol. 1, P. 53)

3. Legalists' Theory of Rule of Law and Its Implementation

3.1 Legalists Emphasize the Absolute Authority of Law and Advocate Law as the Foundation

The “rule of law” advocated by Legalists emphasizes that the enactment of laws is prior, and the enactment of laws must follow several principles: first, legislation must be made at that time, that is, laws should be formulated to meet the requirements of the times, with the aim of enriching the country and strengthening the army; second, it must be “in accordance with human conditions”, which is essentially in line with the theory of human nature which is good for benefits and evil for evil. Legalists also believe that the enacted law must be the only criterion for judging whether people's words and deeds are right or wrong, merits and demerits, and rewards and punishments. Only in this way can the law be implemented and respected by all. Legalists are utilitarians, and law is regarded as a tool with strong utilitarian color. In the book of Dharma, Li Yi put forward at the beginning: “the government of a king should not be anxious to steal.”. Then he put the punishment of thieves and thieves at the beginning of the article, that is, what is needed to govern the country, the law should be formulated accordingly; Shang Yang also said: “punishment generates force, force generates strong”, it is obvious that the rule of law is a tool and means to achieve the goal of enriching the country and strengthening the army. In the relationship between crime and penalty, Legalists advocate objective imputation, only look at the objective harm, not the subjective fault. In order to prevent and control crimes, we should not rely on education and influence, but on heavy punishment, especially the use of heavier punishment for minor crimes, so that people feel “less profit, more harm”, so that they dare not commit crimes, do not want to commit crimes, and can not commit crimes.

3.2 Advocate “Rule of Law” and Exclude “Rule by Benevolence” and “Rule by Virtue”

Guan Zhong was the first to put forward “rule of law” in China. Han Fei, a representative figure of Legalists, thinks that “governing the people is impermanent, and only law is governing” (Han Feizi · Xindu). Legalists think that rule of law is superior to everything, which is based on the refutation of Confucian “rule by benevolence” and “rule by virtue”. Legalists attach great importance to objective tools. They believe that as long as the law can achieve the purpose of punishing evils and punishing evils, there is no need to ask about the good and evil, and do not ask for the goodness of others. At this time, Legalists view the relationship between law and morality from a very extreme standpoint, which is essentially an immoral theory. According to Legalists, all virtues such as benevolence, righteousness, loyalty and faithfulness are unreliable. Benevolence, righteousness and courtesy are only nominal nonsense, and only legal punishment is most effective. If we want to implement the rule of law, we can't talk about morality. “It is said in this world that those who respect the Lord and protect the country must use benevolence, righteousness and intelligence, while those who do not know how to humble the Lord and endanger the country must use benevolence, righteousness and intelligence. Therefore, if there is a master of Tao, he should be far from benevolence and righteousness, remove intelligence and obey law, which is famous for its wide reputation and prestige, and rule by the people and national security. “. Since Legalists do not recognize the good and justice of morality, there is no discussion about what is good law and what is evil law. People only need to discuss how to implement the rule of law, and do not need to work hard to formulate good law.

3.3 Legalists Regard the Broad Masses of the People as the Objects of the Rule of Law

Legalists advocate absolute centralization of monarchy and emphasize the absoluteness of legal value. Law comes from the monarch and strengthens the country and weakens the people. Law is a

tool for the monarch to control his subjects and rule the people, and the monarch is absolutely above the law. Legalists have no real understanding of “justice of law”, and human rights are greatly restricted. It's just a recognition of the inequality between people and people. He advocates treating the people as traitors and “ruling by treacherous people must be the strongest”. In the Legalists' thought of rule of law, the most important thing for the people is to know and abide by the law. Whether they can know and abide by the law is also the only standard to judge whether the people are good or bad. Therefore, in the Legalists' thought of the rule of law, the law only stipulates the people's obligations, and has few rights.

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4. The Enlightenment of Legalists' Ruling Thought to the Construction of Rule of Law

There are essential differences between Legalists' thought of rule of law and that of today's rule of law. Legalists' rule of law takes royal power as the premise, and it is the rule of law that the monarch realizes “enriching the country and strengthening the army”. The socialist rule of law is the rule of law under people's sovereignty, which pursues democracy, freedom and equality. Its focus is on the restriction of the law reflecting the will of the people on the power with alienation tendency. But through the positive and negative analysis of Legalists' legal thought, we can get some enlightenment, which has certain reference value for the current socialist legal construction in China.

4.1 Establish the Authority of Law, Believe in Law and Oppose the Rule of Man

China is a country with a history of autocratic feudal society, lacking of democratic consciousness and weak concept of rule of law. The decadent ideas of “rule of man”, “official standard” and “power standard” formed for more than 2000 years are deeply rooted. Today, when we vigorously promote the construction of socialist rule of law, we should firmly establish the authority of law, adhere to the rule of law, and oppose the rule of man. In today's world, the idea of “rule of law” has been accepted by various countries with different ideologies, and the rule of law is also regarded as the most effective guarantee for the progress of social civilization. The rule of law is to make the Constitution and law which condenses the people's will higher than the will of any individual, group or political party, and has the supreme effect and authority.

Therefore, we must establish the authority of law and avoid the flooding of the idea of rule of man. At this stage, we should strengthen the construction of the legal system, handle affairs fairly and fairly according to law, strictly enforce the law, do not abuse the law, bend the law for personal gain, and safeguard judicial justice. We should take the law as the foundation and raise the legal consciousness of the whole people.

4.2 Adhere to the Combination of Rule of Law and Rule of Virtue

Law is not omnipotent. It is impossible to regulate all aspects of society. It is only an important means to govern the country, but it is not the only one. Both law and morality are the products of social development to a certain stage. The beneficial combination of the two is an effective strategy to govern the society. To a certain extent, morality can surpass the stage of social development and put forward some higher norms. The law reflects the existing social order. In today's society, because the moral situation is not satisfactory, some people put all the hope of improving morality

on the law. However, if we try to use the law to solve the moral problems, we will cancel the morality and reduce the law Law.

Therefore, we should adhere to the rule of law, at the same time, we should adhere to the combination of the rule of law and the rule of virtue. Morality and law, as two different social norms governing the country, work in different social fields respectively and cannot be replaced by each other. Law regulates people's external relations, while morality dominates people's inner activities. In practice, we should pay attention to the vulnerable groups, pay attention to social equity, narrow the gap between the rich and the poor, strengthen social security, promote employment, and realize social harmonious development.

4.3 Limit State Power and Protect Civil Rights

The decline of Legalists is directly related to the fact that they regard the people as the objects of the rule of law. The core of socialist rule of law is the restriction of public power and the protection of civil rights. Similarly, in our socialist country, all power belongs to the people, and the people should be the subject of the rule of law, and the law should be built on the basis of respect for democracy and human rights. All citizens are equal before the law, and there are no differences in basic rights and obligations due to race, gender, religious belief and other special circumstances; citizens have the right to act in accordance with their own free will when there is no legal prohibition; citizens' rights and freedoms cannot be deprived without due process of law, and all illegal violations should be compensated. On the contrary, state power and power should be the object of state supervision.

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Through the above analysis and comparison of Legalists' Thoughts on the rule of law, it is not difficult to find that it reflects the position of the new landlord class relative to the declining feudal aristocracy and slave owner aristocracy at that time, which is progressive. Legalists attach importance to governing the society according to law, regulate behavior and establish the authority of law strictly, which is the same as the concept of "rule of law" in China. However, there are still many differences between Legalists and modern legal thoughts. Legalists' thought of rule of law is based on autocratic monarchy and individual dictatorship. The purpose of the rule of law is not to protect the rights of citizens, but to suppress the people's resistance. The essence of the rule of law is to establish a centralized regime and provide theoretical basis for the establishment of autocratic centralized feudal system. The socialist rule of law protects the interests of the proletariat, and advocates that all parties, groups or individuals should engage in activities within the scope of the law, and everyone is equal before the law. Legalist rule of law and socialist rule of law protect human rights and restrain power. This is what we should resolutely eliminate. It is undeniable that there are reasonable elements in Legalists' thought of rule of law, which can provide reference for today's "rule of law". In the process of building a socialist country ruled by law, we must face up to the traditional culture, extract its essence, and remove its dross, so as to serve the construction of socialist rule of law.

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