

## Brief Discussion on the Path Analysis of the Interaction Study between Folk Law and National Law

Yu Liao

Southwest Institute of Nationalities, Southwest Minzu University, Chengdu, Sichuan, 610041, China

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**Abstract:** In the process of constructing the cause of socialism with Chinese characteristics, China vigorously presses forward to rule the country by law and promotes legal construction in all aspects of production and life, which has achieved a groundbreaking construction in the new era, especially for the continuous improvement in the legal system. However, in the process of boosting the legal construction constantly, it has also recognized that the normalization of law has not achieved considerable results. In particular, there are many irregularities in the implementation and operation of the law, which seriously affect the effect of the normative operation of the law, highlighting in the universal existence of legal circumventions. Based on the above analysis, fundamentally speaking, the legal construction cannot achieve a fundamental fit with China's social development, so it is very important that whether it can be consistent with the development of China's social productive forces and the realization of comprehensive and innovative development for Chinese society, especially whether it can be combined with the continuous innovation and progress of people's life. If a society wants to achieve the positive operation and the harmonious development in the end, it is fundamentally inseparable from the constraints and norms of the law, and as long as there is a society, there is a law, so that it can be fully seen that there is a close relationship between law and society. From the perspective of society, there is a conventional folk law. Therefore, in order to promote the favorable interaction between folk law and national law, it is of practical significance to strictly combine with the national conditions and explore a variety of innovative paths under the premise of respecting the legal pluralism theory and from the level of constructing legal system and implementing judicial practice, so as to promote the positive interaction between national law and folk law, and to play a necessary role in promoting the construction of a harmonious socialist society.

### 1. Introduction

In the study of legal scholars, folk law is always a hot topic of study, especially in the innovative construction of China's modern legal system, so the urgency of studying and practically applying folk law has been highlighted. The fundamental value of the law is to implement it into the production and life ultimately through law practices, but for folk law, it can realize the contractual transformation in law practices and play a facilitating role in perfecting and contractually transforming the national law. Therefore, in the long-term study, it can find that there are folk laws in national law, and folk law has the epitome of national law. The fundamental way to achieve the positive interaction between national law and folk law is to change contractually. Only by realizing the contractual change of folk law can the concept of rule by law existing in the civil society be raised to the level defined by the law, while the premise of this change is that national law has greater tolerance towards folk law, especially the implementation of the values of freedom, equality and fairness. Folk law is the strong expression of public opinions, while national law is the expression of national wills. On the basis of separating the nation and folk society, national law needs to express public opinions more and stand on the high-level view of rule by law to promote the coexistence of folk law and national law, share the existence of China's legal resources, and play a role in promoting the effective governance of Chinese society. In the process of long-term construction of Chinese law, on the basis of transplanting western laws, more and more attention has been paid to the study and embodiment of national conditions,

which is also an important embodiment of the beginning of Chinese law. Therefore, in the legal level of constructing Chinese law with "Chinese localization", it is absolutely necessary to go deep into the folk society and sublime the legal will and legal thought of Chinese people to the legal level formulated and widely implemented by the nation, so as to better serve the masses of people, and to effectively promote the eternal fairness and justice in Chinese society, etc.

## 2. Overview of National Law and Folk Law

### 2.1 Positioning Analysis

The definition of national law in Chinese legal field is deeply influenced by Marxism, while many scholars define national law as that, it is formulated and approved by the nation and the nation guarantees its implementation, reflecting that, under the specific condition of material life in China, the people are the will, right and duty of the ruling class and the social relation of protecting the interests of the ruling class, mainly aimed at maintaining social orders and promoting social development. It can be clearly seen that the positioning of national law is based on the national level. Since the reform and opening up, China's laws and regulations have made a breakthrough, and the quantities of both local regulations and administrative regulations are very considerable. However, it is undeniable that most of the laws are the innovative results of transplanting and localizing western laws, and the integration with the development of Chinese society enables their successful practices.

There are many disputes in defining folk law. Among them, some scholars define folk law as a legal system independent of national law, depending on some kind of social authority and organization, so it is obvious that the scope of social relations can be adjusted is also small. But some scholars position folk law as the synthesis of all kinds of norms restraining people and things in a specific time and space. The common ground of the above two definitions of folk law from scholars is the accumulation of experience from the people's long-term historical and cultural lives. However, there are also some scholars who believe that folk law is a legal system recognized by the nation, and its implementation is also compulsively guaranteed by the nation. This definition undoubtedly shows the class nature of law. In addition, some scholars define folk law from analyzing the extension of folk law, that is, the extension of folk law including clan law, village law, industry law and the folk law of ethnic minorities is very broad, highlighting the nature of "non-national law". This definition leads to an increase in the scope of folk law. Finally, from the perspective of social authority, some scholars also define folk law as a kind of social authority with coerciveness and normativity between national authority and public opinion authority.

### 2.2 Analysis of Similarities and Differences

Table 1. Analysis of Similarities and Differences

No.	National law	Folk Law
1	Nationalism	Localism
2	Universality	Regionalization
3	Constructiveness	Spontaneity
4	External coerciveness	Internal controllability
5	Singularity	Diversity

From Table 1, it can be seen that national law is essentially expressed through normative laws and regulations in the judicial practice, which also can be divided into constitution, law, administrative regulation, local regulation and autonomous regulation from its applications at different levels and in different fields, and the above laws and regulations are formulated and implemented based on the fundamental laws of the constitution. While from the definition of folk law, it can be found that its expressive forms is very diversified, including clan regulations, village regulations, religious norms, community norms and ethnic minority norms, etc. It is more of rules and norms accumulated and conventionalized for a long time, which is lack of the authority of law, but goes deep into marriage,

inheritance right, creditor's right and other aspects, and its scope of adjustment is very detailed and standardized, which is also the specificity of folk law.

### **2.3 Analysis of Relationships**

Binary opposition: to some extent, there is binary opposition between national law and folk law. Folk law and national law are formed on the basis of two different knowledge traditions. Folk law has the vitality and the perceptual color, while national law is more rational. Folk law is identified as "non-national law", which is quite different from national law, and the scopes specified by the two are quite different; therefore, there may be a conflict between national law and folk law in practice. However, in the actual normative management, folk law can make up for the scope that cannot be controlled by national law, and it is also a supplement of national law. Therefore, it can be found that folk law cannot be replaced by national law. The political and elite tendency of national law is very obvious, while folk law is social and flexible.

Supremacy of law: it believes that national law is superior to folk law, and is normative and instructive to folk law; while folk law is a legal system formed under the rules and regulations of national law. However, this also negates the status of folk law, which needs textual research and analysis.

Complementary relationship: there is a complementary relationship between folk law and national law, which is also the fundamental starting point of studying the interaction path between folk law and national law. National law to a certain extent will learn from the contents of folk law to effectively make up for the deficiency of national law, and national law to a certain extent guarantees the implementation of folk law. Both exist in the current society and are indispensable to the construction of harmonious society.

## **3. Path Analysis of Interaction Study between Folk Law and National Law**

### **3.1 Recognizing the Objectivity Existing in the Interaction between the Two**

In the process of the normative construction of China's legal system, the complementation of folk law and national law is inevitable and is the need of objective reality on the basis of analyzing the national conditions. While on the basis of objective requirements, it is necessary to promote the positive interaction between folk law and national law. They learn from each other's strengths, promote each other and complement each other. Under the objective of constructing the country under the rule of law and based on the leading position of national law, national law is perfected through folk law, and folk law is guided and improved through national law. They are interacted positively, and jointly serve the construction of socialism with Chinese characteristics.

### **3.2 Correct Positioning of National Law**

In order to promote the effective interaction between national law and folk law, it is necessary to revise the traditional law positively and position the national law correctly. The existence of generalized law is an important theoretical premise for studying the interaction between national law and folk law. At present, there are many scholars who deny folk law, but what are undeniable are those conventionalized rules and regulations existing outside the national law. These can also be defined as folk laws, and are other transformation forms of folk law. Therefore, in order to promote the interaction between folk law and national law, it is necessary to revise the traditional law, redefine the national law, determine the leading position of national law, comply with the identity of society ruled by law, and truly meet the objective of constructing the society ruled by law. In particular, in the current rule of law of socialism with Chinese characteristics, it is necessary to recognize the defects in the standardized management of national law, acknowledge the supplement of folk law to national law, and actively supplement the scope that cannot be governed by national law.

### **3.3 Comprehensive Analysis of Folk Law**

Legal researchers need to correctly recognize the existence of folk law, face the status of folk law, comprehensively analyze folk law from the objective facts, and apply folk law appropriately. From the origin, there must be uneven problems in folk law, because folk law basically comes from the accumulation of people's experience in production and life, and is conventionalized rule and regulation sublimed by experience. As a result, it will inevitably violate the value of fairness and justice followed by law, so a comprehensive analysis of folk law is more necessary. Therefore, it is necessary to learn from the advantages of folk law, and treat folk law from the perspective of dynamic changes. Folk law changes constantly with the objective facts of society, which means that dealing with the relationship between folk law and national law will be complicated, and needs to be from the perspective of details.

### **3.4 Giving Equal Status of Dialogue to the Two in Theoretical Study**

From the perspective of interaction study between folk law and national law, it is necessary to give them the equal status of dialogue in theoretical research. National law and folk law are objectively and practically existed in social fact, and theoretical research should pay an active role in promoting interaction. Therefore, it requires scholars to comprehensively and thoroughly analyze the reason of folk law, the changing background of folk law, the relationship between folk law and national law, the modes of effective interaction between the two, and the changes in economic and social conditions after interaction, and put the theoretical research work in place, so as to play an effective guiding significance for the objective reality.

### **3.5 Legislation Promotes Interaction**

Firstly, folk law promotes national law. Folk law has existed for a long time among the people, which is the rule and regulation tested by production, life and other aspects, so it has great applicability in law enforcement and large possibility in implementation. Folk law has a good folk foundation, and can be fully recognized by grassroots. After subliming folk law to national law, it will narrow the distance and strangeness between the public and national law to a certain extent, ensure the consistency between national law and the reality, vigorously promote the effective implementation of national law's enforcement, and play a very important role in promoting the establishment of national law's authority.

Secondly, national law promotes folk law. This requires national law gives an appropriate space to folk law at the legislative level, and pay attention to the setting of flexible clauses. Then based on the clause selection, on the one hand, the effective implementation of national law is promoted; on the other hand, the authority of folk law in social relations will not be injured.

## **4. Summary**

In summary, there is an inseparable and complementary relationship between folk law and national law, which enables to comprehensively analyze folk law, correctly positions national law, give equal space of dialogue to the two and actively promote through legislation on the research basis of realizing the positive interaction between the two. In this way, it can effectively play the role of folk law in promoting national law and the role of national law in guiding folk law, so as to promote the construction of the country ruled by law.

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