

On Qitian Chen's New Legalism Thought of “Unity of Man and Law”

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Abstract: Qitian Chen is a representative of new legalists in modern China. Starting from the Legalism thought in the pre-Qin period, he paid attention to the construction of political culture, and successively integrated nationalism and democratic political theories into the Legalism thought. He advocated to build a sound legal system and to improve the political and cultural literacy of the masses at the same time. Through exploring the thought of ruling-by-law which was suitable for the democratic political system in modern China, he constructed the new Legalism theory which combined the rule of law and the rule of virtue.

1. Introduction

During the period of the New Culture Movement, scholars tried to seek the way of saving the nation from subjugation and ensure its survival. Qitian Chen referred to the traditional political wisdom of China. Centering on the Legalism political thought, he studied the thoughts and classics of Legalists in Chinese history, such as Yang Shang, Fei Han and Juzheng Zhang, and put forward the theory of “new Warring States” and “new Legalism”, expecting that the “new Legalism” can save our country under the historical environment which he called as “new Warring States”.

Qitian Chen's attention to the current situation changed from saving the country to founding the country. His new Legalism thoughts were also redefining, changing from the appeal of Anti Japanese War to the construction of democratic politics, and from the study of political system to the study of political culture. The new politics he advocated was not legalism politics in the pre Qin period, but the democratic politics that modern China wanted to implement. The new politics was different from the pre Qin thought which laid emphasis on law and underestimate Confucianism; it combined the rule of law and rule of virtue. Chen advocated that, “only the new politics is the politics combining the rule of law and the rule of man.”[1]

2. The Legalism Thought Advocating Force

In the era of modern China, the country was being divided up by great powers. Qitian Chen, like other patriots, sought the way to save the nation from subjugation and ensure its survival. He believed that the world pattern of this era was very similar to the situation of Warring States in Chinese history; it can be regarded as the “new Warring States”. How to make our country and nation strong and not be bullied? How to make China as rich and powerful as the Qin Kingdom in the Warring States period? Chen sought for political and ideological power from traditional cultures, and chose the Legalism. He believed that “among traditional Chinese doctrines, Legalism has the greatest political and historical values as well as practical effect.”[2] Comparing the present situation to the Warring States period, he hoped that the country could dominate the world through “law”, and won in the current war through the “force” of Legalism.

In order to explain why Legalism can save China from the dangerous situation at that day, Qitian Chen comprehensively elaborated four reasons. First is the relationship between Legalism and politics. In China, Legalism is one of the six schools of thought. It advocated to “govern the country by rules”, to “judge cases according to laws”, and to “clear cut job responsibilities”. In other words,

Legalism is a kind of politics which manages the country by law; in that society, a comprehensive assessment system is built to carry out rewards and punishments. [2]

Second, Legalism advocates force and power. Different from Confucian values of morality and benevolence, the Legalism holds that, “the relationship between the state and the people or between the state and the state is quite different from the relationship between people and people and must be based on power. The relationship between the state and the people should be based on power, that is the foundation of state. Internally, we should try our best to control it through power, instead of benevolence and virtue of Confucianism.” [3]

Third, Legalism can maintain a unified situation. Qitian Chen believed that although there were four main schools in traditional Chinese political thoughts, but Legalism was he only one with pure political theories. The state of Qin adopted Legalism thought, ended the disputes among warring states and built a unified empire. In the history of China for more than 2000 years, there were several troubled times, but every time we could bring order out of chaos. Legalism is one of the main reasons why the situation of unification can be maintained. Therefore, to study political science, we must study Legalism; to study Chinese history, we must also study Legalism. [4]

Fourth, Legalism is similar to western culture. Qitian Chen believed that the modern western culture included nationalization, national defense, democratization, legalization, scientization and industrialization. Among them, nationalization, national defense and legalization are the inherent concepts of Legalism in China. [1]

In this period, Qitian Chen advocated the new Legalism thought which focused on saving the country. He yearned for the glorious history of Qin state which unified the six kingdoms by Legalism, and hoped that Legalism could change the situation of modern China. In the “new Warring States”, China could rise like Qin again. However, the new Legalism thought he referred to was not the complete copy of the pre Qin Legalism thought, but a Legalism thought with strong nationalism color and was suitable for the establishment of a modern state. If we say that the “old Legalism” established autocratic empires as well as the monarchy political theory, the “new Legalism” would be able to establish modern states as well as the democratic political theory.

3. Transition to the Unity of “Human and Law”

With the changes of the current situation at home and abroad, the application of Qitian Chen's new Legalism thought shifted from saving the nation from subjugation to the construction of democratic politics. He put forward a new Legalism thought of “the unity of human and law”. In October 1945, he mentioned in the preface of *On Democratic Constitutionalism* (the revised edition), “more than ten years ago, when the author wrote an introduction to *Chinese Legalism*, he intended to reorganize old Legalism theories and then establish a new Legalism theory. Analyzing the old Legalism theory can help us to understand the monarchy in the past. The establishment of a new Legalism theory will guide the future democratic politics. However, it is easy to sort out old theories, but it is difficult to establish a new one. It was not until the last two years that this pamphlet was published.”[1] In his book, Qitian Chen explained many problems about “rule of man” in democratic constitutionalism in detail, which is also the transition of his new Legalism thought from advocating power to “combining rule of man”.

Legalists in the pre Qin period believed that without law, a country would not exist; without ruling by law, a country could not be governed. Qitian Chen no longer considered laws as the only objective standard of ruling the country. He summed up that the failure of constructing a democratic system in history was because the lack of corresponding democratic political culture. Through a systematic reflection on the two constitutional movements in the late Qing Dynasty and the early Republic of China, Qitian Chen thought that both the Qing government and the Beiyang Government lacked the sincerity to implement constitutionalism. In face of opposition factions, rulers did not show the spirit of tolerance, compromise and ruling of law. They did not follow the rule of law and used force to solve political disputes. This is a common historical lesson learned from the failure of the two political transformations.[1] He even thought that it was correct to attribute the immediate cause of

the short-lived democratic politics in the early Republic of China to the destruction of warlords represented by Shikai Yuan, but the main reason was that, “the style and the system were not democratic”.[1]

Qitian Chen also pointed out in *On Democratic Constitutionalism*, in the past 40 years, most people who talked about constitutionalism in China only knew that constitutionalism was a kind of rule of law, but they did not know that constitutionalism was also a kind of rule of man. Therefore, they only cared about the constitutional system, but neglected the style of constitutionalism, especially the problem of how to govern constitutionalism by law and constitutionalism by man.[1] In his article, *Russell on Democratic Politics and China*, he introduced Russell's four conditions for establishing a more perfect democratic political system, namely, political conditions, economic conditions, propaganda conditions as well as psychological and educational conditions. These four conditions are the rule of man or demeanor of democratic politics. Therefore, “we firmly believe that democratic politics is not only a matter of rule of law, but also of rule of man; it is not only a matter of system, but also a matter of demeanor.”[1]

Therefore, in Qitian Chen's view, the rule of law without rule of virtue is the reason why we can not truly realize democratic constitutionalism. Therefore, China should not only pay attention to the construction of a democratic system, but also need to pay attention to the cultivation of democratic demeanor. Democratic knowledge and system can be imported and imitated from foreign countries, but the democratic demeanor and habits required for the operation of the democratic system can not be imported or imitated from foreign countries; it requires political activists and ordinary Chinese people to learn.[5]

4. The Theory and Practice of “Unity of Human and Law”

Junmai Zhang once mentioned in *The Way of Founding a Country*, there are two sources for the improvement of state organization during the founding of a nation. One is law and the other is morality. He thinks that the highest principle of nation building is citizens' collective morality and the habit of ruling of law. These two things can be compared to the source of water and the root of tree. If we do not have the morality of citizens, the democratic politics, the planned economy, the five-year plan of the Soviet Union, and the four-year plan of Germany will all become blind imitation with ludicrous effects, not to mention the great cause of the founding of the new China. [1] Qitian Chen, like Junmai Zhang, believes that political culture and political system are equally important in building a new political system, and demonstrates the inseparability of “rule of law” and “rule of man” in theory and political practice.

4.1 “Unity of Human and Law” in Theory

The rule of law and the rule of man, which one is more important? In his *Philosophy of New Society* and *On Democratic Constitutionalism*, Qitian Chen mentioned that the rule of law and the rule of man should be integrated, and that this argument has a long history in politics. Looking back to the source, we need to explore the differences between the political views of Confucianism and Legalism. The Confucianism holds “governing by man” and “governing by virtue”; they constitute a political philosophy of ruling by man. Legalism holds that the law is superior to humans, which constitutes a political philosophy of ruling of law. [4] “Believing that people is the most important factor in politics is a kind of political philosophy of “rule by man”; it is the proposition of Confucianism. Believing the law is the most important factor in politics is a political philosophy of “rule of law”, which is the proposition of Legalism. Since the Spring and Autumn period, these two views have been antagonistic and censured each other.” [4]

Qitian Chen believes that law and human are inseparable in politics. In history, the Confucianism and Legalism opposed each other, thus mistakenly separating the two factors of law and human. At present, the construction of democratic politics needs to reconcile the rule of law and the rule of man, but this is not to reconcile Confucianism and Legalism, but to discuss the powers of these two factors in politics as well as their relationship. The political theory separates of the rule of law and the rule of

man can only lead to the false rule of law and the false rule of man in actual political practice; it can not establish the true rule of law or the rule of man. [4]

In order to emphasize that the “rule of law” and “rule of man” are inseparable, Qitian Chen expounds the dialectical relationship between them in his *Philosophy of New Society*: rule of law is the mechanism of rule of man; rule of man is the power of rule of law. Without the rule of law as the mechanism, the rule of man will have no basis. Without the rule of man as the driving force, the rule of law can not be launched. The true rule of law must have corresponding rule of man, and the rule of man must have corresponding rule of law. If we do not pay attention to the rule of law but only emphasize the rule of man, then the rule of man will become “private governance”. If the rule of law is not emphasized, the rule of law will become “decorative governance”. In order to avoid the malpractice of private governance and decorative governance in Chinese politics, it is necessary for the new political philosophy to fully implement the principle of the unity of the rule of law and the rule of man. [3]

4.2 “Unity of Human and Law” in Political Practice

The political system and political culture were separated several times in history. Before the constitution was made, there were many doubts about the implementation of the new democratic political system, most of which were about the construction of political culture. Even if the authority had confidence in establishing the political system, we still need to worry about the cultivation of political culture. Therefore, Qitian Chen consciously put the new Legalism thought of “the unity of human and law” in the process of participating in the constitution. In addition, he mentioned in the *Preface to the Revised Edition of the Theory of Democratic Constitutionalism in Manuscripts in Jiyuan* that, “*On Democratic Constitutionalism* was Qitian Chen's theoretical achievement on the implementation of democratic constitutionalism in China in the late period of the Anti Japanese war. After the victory of the Anti Japanese War, when I participated in the Political Consultative Conference, the Review Committee of the Draft of Constitution and the National Assembly of the Constitution successively in the past thirty-five years, I decided my attitude towards various constitutional issues in the light of the various reasons mentioned in this book. The current Constitution, enacted by the National Assembly on December 25 of the Republic of China, has indeed established a system scale of democratic constitutionalism for China in the future. It can be said that it is the crystallization of the collective wisdom of the Nationalist Party, the Youth Party, the People's Social Party and people without party affiliation.” [5]

As Qitian Chen said, the Constitution of the Republic of China formulated in 1946 was not an official document. It integrates political culture into the Constitution and puts forward requirements for the moral standards of the president and citizens. For example, for the provisions on the president's power, the presidential system neither completely entrusts the executive power to the president like the United States, nor deprives the responsibility of the big president like France. Instead, it gives the president the ability to coordinate with the court and the executive office. It avoids the strong emphasize of “rule of man” given to the president in the draft of the May Fifth Constitution, and endows the president with transcendent status and prestige under the rule of law. It realizes the harmonious unity of “rule of law” and “rule of man”. The president is elected by the national assembly; he is the head of state, commanding the land, sea and air force, and can appoint civil and military officials. So in politics, he is not only the head of state, but also a person who bears the responsibility of the state. [5]

The Constitution enacted in 1946 stipulated that the Legislative Assembly should be directly elected by voters, which changed the indirect election in the draft of the May 5th constitution. “In the early years of the Republic of China, the parliament was indirectly elected. Those who defend indirect elections fear that the majority of voters are not wise enough to elect good leaders. Therefore, voters can only elect members, who will elect leaders afterwards... In this Political Consultative Conference, it should be carefully discussed that weather the Legislative Assembly could be directly elected by voters.” [5] The Legislative Assembly sets up direct election, which puts forward higher requirements for citizens' moral ability. “A country must cultivate good citizens with the ability to

distinguish good and evil, and then citizens can make good use of their right to participate in political affairs in elections.” It requires our citizens to have corresponding political culture within the framework of political system, and truly realize the “unity of human and law”.

5. Summary

Since the westernization movement, the thought of “Westernized Chinese style” has been used as a powerful tool for national salvation and self-improvement. From techniques to political systems, from ideology to culture, all these things were “westernized” with the help of “Chinese style”. Qitian Chen's democratic political thought integrated the rule of virtue in the traditional political culture and the rule of law under the western political system. His transformation from paying attention to the construction of the legal system to “the unity of human and law” is actually the integration of political system and political culture after seeking to build a single political system.

From Qichao Liang's theory of the New People at the beginning of the 20th century, China experienced 18 years of “political tutelage” during the reign of the national government. To the middle of the 20th century, when the establishment of a democratic political system was required, how much did our national political quality improve? Did the cultivation of political culture catch up with the construction of political system? Perhaps only intellectuals who pursued and practiced democratic politics in that era would know. Perhaps, Qitian Chen and other predecessors who advocated new Legalism thought of “the unity of human and law”, and the historical experience of requiring the common progress of political system and political culture have certain reference significance for us to build the political system of the new era.

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