

A Brief analysis of Peng Zhen's Thought of Humanitarian Rule of Law and Its Embodiment in Modern Rule of Law in China

Ziwei Zhao^{1,*}, Peiyao Xu^{2,a}

¹School of Law, Shanxi University of Finance and Economics, Taiyuan 100032, China

²School of business administration, Shanxi University of Finance and Economics, Taiyuan 100032, China

*Corresponding author: 854782091@qq.com, ^a343886938@qq.com

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Abstract. Mr. Peng has served as a party and state leader for a long time. He took the lead in the administration of state political and legal work and made outstanding contributions to the construction of the socialist legal system. In his participation in China's legal system construction, Mr. Peng has always upheld the humanitarian spirit and emphasized that every citizen should be treated equally and his rights and interests should not be infringed at will. In the process of participating in the formulation of criminal law and criminal procedure law, Mr. Peng proposed to shorten the term of custody, kill less and kill cautiously, oppose forced confession, prohibit corporal punishment, correct unjust, false and wrong cases through review, and carry out education and reform on the criminal personnel. By analyzing Mr. Peng's thought of democracy and legal system, this paper explores the humanitarian spirit contained in it, and discusses the study and reference of our modern legal system to Mr. Peng's humanitarian thought.

1. Introduction

During the cultural revolution, China's legal system was seriously damaged and a large number of so-called "special case teams" were set up. However, most of the members did not engage in any judicial work before this period. As one of the victims, Mr. Peng had been unjustly detained for nearly nine years, and he had a deep understanding of the drawbacks caused by the lack of legal system. In addition, Mr. Peng has been in charge of the country's political and legal work for a long time, and he has his own unique reflection, understanding and understanding on the construction of socialist rule of law. After his comeback from the cultural revolution, Mr. Peng strongly advocated strengthening the construction of democracy and the legal system. While leading the political and legal work, he also always upheld the humanitarian spirit, which also had a profound impact on the improvement of China's modern legal system. This paper analyzes the humanistic care embodied by Mr. Peng and its influence on the modern rule of law in China by discussing his specific propositions.

2. Mr. Peng's Thought of Humanitarian Rule of Law and Its Embodiment in Modern Rule of Law in China

2.1. Shorten the Term of Custody

In his book on crime and criminal law, Beccaria argued that deprivation of liberty, as a punishment, could not be carried out before the judgment, if it was not so necessary. In view of the problem of arbitrary detention during the cultural revolution, Mr. Peng insisted that the criminal procedure law should clearly stipulate the period of detention for suspects and defendants, especially shorten the period of detention as far as possible, and resolutely abolish the practice of indefinite detention.

Mr. Peng explained to the central committee on the draft criminal procedure law, saying in his report: "the original time of investigation, prosecution and trial stipulated in the draft criminal procedure law was too long. Regardless of whether the accused is guilty or not, the first trial alone would have taken six to more than 11 months, longer than the nationalist party, the Soviet union and

north Korea, and more than a year if the second trial was added. It has been agreed with the leaders of public security bureau, people's procuratorate and court to shorten the time of detention and interrogation to four to six months. It is estimated that with the organizational strength and working methods of public security bureau, people's procuratorate and court, it will be very difficult to carry out the detention and interrogation. It is necessary for the central government to mobilize enough competent cadres to enrich the judicial front." After negotiating with several parties, the time limit of reconnaissance, prosecution, first trial and second trial was clearly stipulated, and the time was shortened obviously. However, article 92 (end of investigation) of the criminal procedure law (draft) still does not specify the time limit for postponing the trial. Mr. Peng did further research and wrote an urgent letter to the central committee on this issue. He mentioned that this article could easily lead to indefinite detention, and therefore the specific extension period should be specified. The extension period could be as long as one year or as long as two times. Although this proposal failed to be revised for various reasons, Mr. Peng's contribution to shortening the period of custody and protecting citizens' rights is indelible in the history of China's legal system.

Our country in recent years to modify "criminal procedural law" for several times, in terms of criminal detention system compared with the past has had the very big improvement, absorbs the domestic and foreign mature theory, improve the system of the custody of the applicable conditions, detain deadline set is more reasonable, such as general detain deadline specified in the article 154, article 155, article 156 and article 157 the provisions on special detain deadline as well as in other articles involved in the problem of time limit for detention, for the protection of the legitimate rights and interests of the defendant and criminal suspects and more comprehensive. However, the problems such as high utilization rate of custody, disguised detention, maltreatment of detainees and prolonged detention have not been completely solved. According to the statistics of 847 judgment documents on the application of innocent compensation, we found that the longest time of illegal detention was as high as 7,999 days, which is worse for the wronged people and their families (see Figure 1). Therefore, it is necessary to continue to study and implement the humanitarian spirit, follow Mr. Peng's idea of shortening the term of custody, improve the custody system as soon as possible, and protect the legitimate rights of the accused and criminal suspects to the greatest extent.

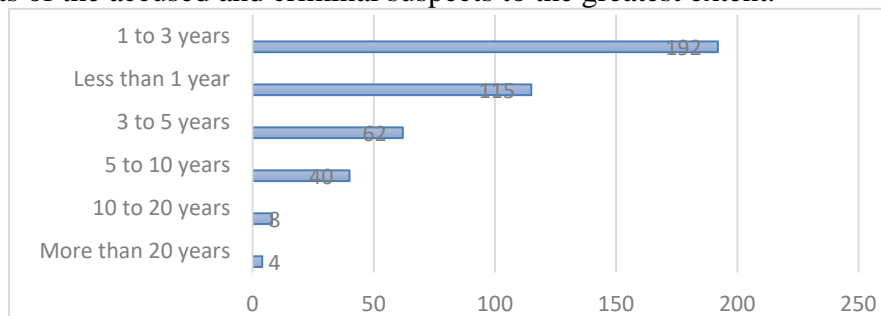


Fig. 1 Statistics of the time spent in custody among the known claimants for innocent compensation

2.2. Kill Less Carefully, Mercy and Severity

Death penalty, also known as capital punishment and life penalty, is one of the oldest methods of punishment in the world. In China's thousands of years of legal culture, due to the strong power and deterrent power of the death penalty, it has often become the favored means of punishment by the rulers, such as hanging, beheaded, dismembered bodies and other torture in ancient China. At that time, in China's social culture with Confucianism as the mainstream, people generally advocated the role of kindness and morality. Therefore, when someone violated the principle of "kindness" and challenged the moral bottom line of the public, people believed that the death penalty was deserved and would never tolerate.

With the development of society and the influx of modern western thoughts, the humanitarian spirit has taken root and germinated in our country. As a compulsory means to deprive others of the right to life, death penalty not only reflects the cruel and cold side of human nature, but also reflects social regression. It is essentially the legacy of homomorphic revenge. What humanitarianism

advocates is to protect people's rights and dignity and oppose the arbitrary deprivation of other people's lives. In today's society, people's awareness of human rights is generally improved, and more and more people realize that everyone has the inherent right to life. Therefore, even the most vicious criminals should be treated as a "human", and their right to life should not be arbitrarily deprived.

Mr. Peng has always advocated the death penalty is less, the better. In his 1963 report on the draft criminal law, Mr. Peng pointed out that we could not abolish the death penalty now, but the death penalty should be reduced as much as possible. Because the whole situation is stable now, and from actual need or international influence, will be sentenced to death penalty provision which greatly reduced; In order to implement the policy of killing fewer people, the Supreme People's Court decided or approved all death sentences before the "cultural revolution". If the death penalty is not executed immediately, a two-year reprieve can be declared to carry out the reform through labor to see the effect. Mr. Peng's proposition that death penalty should be used with caution and less is the best embodiment of humanitarianism.

In this respect, China's modern criminal law also inherits Mr. Peng's humanitarian thought and advocates more and more respect for human rights and people-oriented basic position. On January 1, 2007, the Supreme People's Court formally withdrew the death penalty approval authority granted to the higher people's court for some cases. As the final guarantee of human life, the death penalty approval authority was withdrawn and uniformly exercised by the Supreme People's Court. "Promulgated in 2011 of the criminal law amendment (eight)" canceled 13 kinds of the violent crime death penalty, adhere to the policy of "tempering justice with mercy" criminal justice in China's basic principle. It reflects that the criminals who can be fought for according to law should try their best to fight for, those who can be saved should also be saved as much as possible, those who can be dealt with leniently should be dealt with leniently as much as possible, and the requirements of maximizing the negative factors into positive ones. This series of bold judicial reforms also confirmed what Li Shishi said in "explanation of the draft": the emerging "civilization and humanism of the socialist criminal law with Chinese characteristics".

2.3. Oppose Forced Confession and Prohibit Corporal Punishment

In modern countries under the rule of law, torture is prohibited by all countries because of its wanton abuse of human rights and serious violation of the rule of law. First of all, torture not only violated the right of life and health of the suspect, but also severely damaged the physical and mental health of the victim and the torturer. Secondly, torture can easily cause the victims and their families' desire for revenge, thus disturbing the social order and affecting the judicial authority. Finally, the violation of procedural justice by torture often leads to unjust, false and wrong cases, and also hinders the realization of substantive justice. Professor Lin Lihong of Wuhan university once conducted a survey on the social cognition of extorting confessions by torture. Among the prisoners surveyed, 55.3% had been directly tortured¹ by the police, while 60.1% had been indirectly tortured². On the one hand, it is influenced by the judicial concept of attaching importance to entities and punishing crimes, ignoring procedures and safeguarding human rights. On the other hand, it is the lack of system. For example, the criminal procedure law of China has not made clear provisions on the right to silence and the right to be present during interrogation.

Mr. Peng has always stressed that while the law enforcement agencies severely punish crimes in accordance with the law, they must strictly prohibit illegal detention and "force, supply and trust". Fu Yang, Mr. Peng's son, recalled that his father often taught him that he must pay attention to the facts and evidence and not trust the confession. Why is there "force, confession and letter"? He does not say, and you force him, and you force him, and he confesses, and he confesses, and you believe. Our history has a lot of unjust, false and wrong cases are caused by this reason. Therefore, the criminal

1 Direct torture, namely the corporal punishment that theory bound place says, it is to point to bind, beat, electric shock to wait for direct action to be at the body of criminal suspect or accused destroy means.

2 Indirect torture, similar to disguised corporal punishment, refers to the use of methods other than corporal punishment to torture the human body, such as cold and hunger, long exposure to the sun, sleep deprivation and so on.

procedure law stipulates that the collection of evidence must strictly abide by legal procedures, and it is strictly prohibited to extort confessions by torture or collect evidence in other illegal ways. When dealing with the enemy of the people, Mr. Peng was also able to adhere to the humanitarian principle. He pointed out that the enemy of the people should be treated with dictatorship, but they should not be maltreated, and corporal punishment should not be used.

What Mr. Peng said established the basic principles of torture and procedural violation in the criminal procedure law, our country promulgated in 2014 on comprehensively advancing the rule of law "of the central committee of the communist party of certain major issue decision" and published in 2016 "about the reform of trial centered criminal lawsuit system of opinions" (hereinafter referred to as "opinions") also puts forward several aspects of requirements, including to strictly carry out the principle of the evidence, strive to improve the level of the judicial protection of human rights, such as: We should strictly implement the rule of excluding illegal evidence, further reduce legal disputes in the application of the rule of excluding illegal evidence, improve the interrogation procedure, improve the system of lawyers on duty and legal aid, and give play to the decisive role of the trial. It can be seen that in recent years, China has made remarkable progress in the protection of human rights with the focus on the prevention and treatment of torture. We should continue to improve the relevant system and supervision mechanism in the spirit of humanitarianism, so as to realize the common justice of procedure and entity.

2.4. Review and Correct Unjust, False and Wrong Cases

Admittedly, the occurrence of unjust, false and erroneous cases is indeed a manifestation of injustice, but in the process of judicial practice, due to various subjective and objective factors, it is inevitable to cause errors in the trial of cases. Therefore, for unjust, false and wrong cases, as long as the people's court has the courage to admit their mistakes and even correct them, it is the best proof of the protection of human rights for wronged people. However, the judicial concept of "judge without regret" that our country believed in in ancient times is exactly what Mr. Peng firmly opposed all the time. He once said: "Wrongful arrest and wrongful conviction should be resolutely corrected and rehabilitated... Do not think the wrong case that has 5% does not matter, it is 1% wrong also do not get, it is 1% in your opinion, it is 100% to the person that is wronged, a person is a family, still have the relative friend of surroundings. A wrongful case in a factory or a village is well known to the people all over the country, and its influence is very bad."

Since the 18th national congress of the CPC, the CPC Central Committee with comrade Xi Jinping at its core has paid special attention to correcting unjust, false and erroneous cases, demonstrating the people's court's attitude of seeking truth from facts and its determination to admit its mistakes and correct them. And it is due to the maintenance of the people's court judicial sincere attitude, winging also let more and more people have the confidence to apply for state compensation (see figure 2). In July 2013, the Commission for Political and Legal Affairs of the CPC Central Committee promulgated the guiding opinions on effectively preventing unjust, false and erroneous cases, which clearly stipulated that illegal ACTS such as obtaining evidence through violence, extorting confessions through torture, and concealing and forging evidence should be strictly investigated and punished in accordance with the law. The opinions also showed the core position of trial in correcting unjust, false and wrong cases. This series of laws and regulations all reflect the transformation of China's modern judicial philosophy and the innovation of relevant systems and mechanisms. It can be seen that the humanitarian spirit of attaching importance to human rights and paying attention to human beings has a profound impact on China's judicial system.

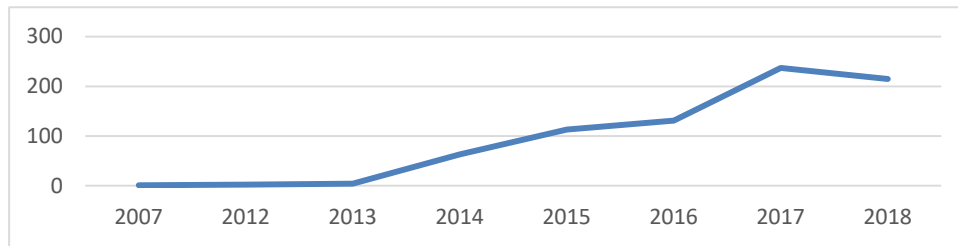


Fig. 2 Between 2007 to 2017, the number of instruments formally making acquittal verdicts.

3. Conclusion

Peng Zhen is one of the important leaders of the People's Republic of China and the communist party of China. He is also a famous political activist and jurist. The humanitarian spirit that Peng Zhen embodied in presiding over the political and legal work has a profound influence on our modern legal system. We should further profoundly study and comprehend Peng Zhen's thought of democracy and legal system, continue to perfect our country's legal system construction, so that the legal system can better serve the economic construction and contribute to the construction of China under the rule of law.

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