

The Guiding Ideology and Principles of Chinese Ancient Criminal Law Interpretation

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Abstract: Guiding ideology and principles of criminal law interpretation were of different characteristics in different historical periods in ancient China. In terms of the development and change of the guiding ideology of the interpretation of criminal law in ancient China, it was generally manifested as follows: “Legalist School Thought” - “Huang Lao Theory” - “Confucianism” - “Integration of Confucianism and Metaphysics” - “Orthodox Confucianism” - “Neo-Confucianism”. As far as the interpretation principles of criminal law were generally manifested as follows: “Principle of taking law as teaching and taking officials as teachers” - “Principle of conforming to Confucianism” - “Principle of conforming to Confucianism”, “Principle of prudent treatment to changes and truth” and “Principle of uphold law as reason” - “Principle of taking ethics as the core” - “Principle of taking strictest as the core”.

Introduction

It is undeniable that the hermeneutics of criminal law has been gradually produced and developed after the emergence of written criminal law. According to the existing historical documents, the earliest written criminal law in ancient China can be traced back to the spring and Autumn period and the Warring States period in 536 BC. However, in view of the lack of historical documents, the research conditions on the interpretation of criminal law in this period can not be tested. Not only that, but also the historical documents about the interpretation of criminal law from 536 B.C. to Qin Dynasty are unknown. According to the <Qin Bamboo Slips> Unearthed in 1975, <Legal Questions in Qin Bamboo Slips> should be the earliest documents about the interpretation of criminal law in China [1]. In view of this, the study and investigation on the interpretation of ancient criminal law in China are correspondingly limited to the period from Qin Dynasty to Qing Dynasty.

The Guiding Ideology and Principles of Criminal Law Interpretation in Qin Dynasty

In Qin Xiaogong's period, Shang Yang began to change law based on Li Xuan's <Law Scripture> . After two modifications by Qin Shihuang and Second Emperor in Dynasty, <Qin Law> was able to form a complete system. During this period, “Reforms of Shang Yang” and “Burning Books and Burying Confucian Scholars Alive” broke out and “Legalist School Thought” has always occupied a dominant position. Under the influence of Legalist School Thought with the strictness, “Taking law as teaching and Taking officials as teachers”, as a kind of principle, was established in Qin Dynasty. Since then, in the process of civilizing the masses and applying laws, All people must act in strict accordance with the law, and all doctrines other than the law were rejected. At the same time, if the masses wanted to learn the law, they must take the officials who were familiar with the law as teachers, and it was forbidden for the people to discuss the law privately. From an objective point of view, as the concrete embodiment of the original legal thought of crime and punishment in ancient China, the principle played an irreplaceable role in the process of criminal law interpretation in Qin Dynasty [2].

However, the Legal Thought of Crime and Punishment from this principle was essentially different from “The Statutory Principle of Crime” proposed by Beccaria and Feuerbach in the 18th century. The former was a reflection of the thought of legality with great limitation and formality in ancient China. Although it was of the strictness in the law interpretation, the law at this time was the law of the Emperor himself and the purpose was nothing more than to maintain the sovereign power of the Emperor himself. The latter was based on democracy, freedom and order, and its purpose was to protect the legitimate rights and interests of individual citizens.

The Guiding Ideology and Principles of Criminal Law Interpretation in Han Dynasty

At the beginning of the Western Han Dynasty, in order to achieve recuperation and consolidation of power, the rulers abandoned the “Legalist School Thought” with strictness and adopted the “Huang Lao Theory” of “governing by inaction” as the core. In the period of Emperor Wu of the Han Dynasty, in order to further forge ahead, the rulers changed “Inaction” into “action” under the strong advocacy of Confucian scholars represented by Dong Zhongshu. From then on, the Confucianism with the core of “benevolence and righteousness, sacrifice one's life for righteousness, and govern the country with benevolence and filial piety” was established as the leading thought. As for the guiding ideology of the interpretation of criminal law at that time, it also experienced the transformation process from Huang Lao's theory to Confucianism. Under the influence of Confucianism, “Confucian Classics” that interpreted the law of the Han Dynasty with the help of the essence of the school of classics was established [3].

With the increasing influence of “Confucian Classics” on the interpretation of criminal law, “Principle of Conforming to Confucianism” was established. Since then, in the process of interpreting the Han law, Confucianism has become the only standard for interpreting legal norms, and other theories cannot be applied. For example, when the situation of concealing crimes between father and son appeared, Dong Zhongshu explained: “According to the essence of Confucian classics, this situation was in line with human nature, so the father should not be applicable to the punishment of implicating others related to the one charged or found guilty [4]. It is obvious that “Principle of Conforming to Confucianism” had a great influence on the judicial practice at that time.

The Guiding Ideology and Principles of Criminal Law Interpretation in Jin Dynasty

In the process of interpreting the laws in Jin Dynasty, many experts and scholars not only adopted Confucianism, but also combined Metaphysics which was popular at that time. Under the influence of Metaphysics, “Principle of prudent treatment to changes and truth” was established, which is that legislators, judges and legal interpreters should pay attention to the development and changes of the society and carefully examine the implied natural and social laws. For example, Zhang Fei, a jurist in the Jin Dynasty, once said that in the process of trial, a judge should not only start from the legal meaning at that time, but also examine the law from many aspects. After all, law itself is a kind of social norm with profound truth[5]. Since then, “Principle of prudent treatment to changes and truth” worked with “Principle of Conforming to Confucianism” on the criminal law interpretation in Jin Dynasty.

At the same time, some experts and scholars who advocated “legalist school thought” and put forward “principle of uphold law as reason”. The principle was that in the determination of all criminal acts, the judge must judge according to the proper meaning of the legal norms, and the interpretation beyond the meaning of the legal norms was not allowed. For example, Liu Song, who was in the same period as Zhang Fei, once said that the interpretation of law was to interpret the original meaning of legal norms[6]. Obviously, the principles of criminal law interpretation in the Jin Dynasty formed a coexistence of “Principle of Conforming to Confucianism”, “Principle of prudent treatment to changes and truth” and “principle of uphold law as reason”. Therefore, the guiding ideology and principles of criminal law interpretation in Jin Dynasty were of a compound type.

The Guiding Ideology and Principles of Criminal Law Interpretation after Jin Dynasty to Tang Dynasty

After Jin Dynasties to the Tang Dynasty, Confucianism gradually returned to the orthodox position and “Principle of Conforming to Confucianism” continued to play a leading role. However, the guiding ideology and principles of criminal law interpretation changed correspondingly in this period, especially in Tang Dynasty.

Although the guiding ideology of criminal law interpretation in Tang Dynasty is still Confucianism, it is different from that before. On the one hand, the Confucianism had formed a unique and orthodox ideology in Tang Dynasty, and other schools of thought had not a substantial impact on it. On the other hand, the rulers of the Tang Dynasty, on the basis of the collapse of the Sui Dynasty, vigorously advocated the "people-oriented thought"[7]. Since then, the thought of "morality as the main part and punishment as the auxiliary part, as well as etiquette and law" had been integrated into Confucianism.

From the influence of Confucianism in Tang Dynasty, “Principle of taking ethics as the core” was established on the basis of feudal ethics. The "ethics" from Confucianism was integrated with the legal system at that time, and it was the only standard for the interpretation of criminal law. Since then, in the process of criminal law interpretation, there had been the integration of "propriety" and "law", and the unification of legal norms and moral norms[8]. It is undeniable that there are similarities between “Principle of taking ethics as the core” in Tang Dynasty and “Principle of conforming to Confucianism” in Han Dynasty. However, the differences between them are also very obvious. The former only focused on the ethics of Confucianism. The latter not only focused on Confucianism, but also integrated the classical essence of other schools.

The Guiding Ideology and Principles of Criminal Law Interpretation after Tang Dynasty to Qing Dynasty

After the Tang Dynasty and before the Song Dynasty, the traditional Confucianism was still the guiding ideology of the interpretation of criminal law. However, from the Song Dynasty to the Ming Dynasty, the traditional Confucianism gradually developed into Cheng Zhu Neo-Confucianism, and then Cheng Zhu Neo-Confucianism was fully absorbed by the Qing Dynasty. Since then, the guiding ideology of criminal law interpretation in the Qing Dynasty has been embodied in the philosophy of "keeping the natural principles and destroying human desires"[9]. Cheng Zhu Neo-Confucianism advocated that “The three cardinal guides and the five constant virtues” was “Natural-principle” of human's innate existence. “Natural-principle” was pure and innate moral ethics, which has the characteristics of goodness. "Human-desire" was a kind of absolute evil completely opposite to “Natural-principle”. Once the needs people pursue exceed the reasonable limit, which was against “Natural-principle” and was not allowed by the national law.

In order to better maintain the feudal ethical order in Qing Dynasty, under the guidance of Cheng Zhu Neo-Confucianism, “Principle of taking strictest as the core” was established. Since then, “Principle taking ethics as the core” was replaced by “Principle of taking strictest as the core” as the only principle in the process of criminal law interpretation of Qing Dynasty[10]. However, “Principle of taking strictest as the core” in Qing Dynasty was different from the current principle of strict interpretation. The purpose of the former was to maintain the feudal privileges by strict interpretation. The purpose of the latter was to protect the legitimate rights and interests of citizen by interpretation with the concept of the rule of law.

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