

ANCIENT CHINESE LEGAL CULTURE

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Abstract. *In this article analyzes the development of legal culture in ancient China and its features.*

Key words: *Chinese law, Legalist and Confucian traditions, Chinese legal culture, Spring-Autumn (770-476BC) and Warring States Periods (475-221BC), Han Dynasty (206BC-AD220), "morality" and "penalty".*

Chinese law has undergone continuous development since at least the 11th century BC.

This legal tradition is distinct from the common law and civil law traditions of the West – as well as Islamic law and classical Hindu law – and to a great extent, is contrary to the concepts of contemporary Chinese law. It incorporates elements of both Legalist and Confucian traditions of social order and governance. Legal culture in ancient China is a kind of social ideology that revolves around the formation, development and evolution of law, legal system and legal institution.

First of all, ancient China is a country of agriculture, so there are also agriculture-oriented elements in the legal culture. In other words, the legislation about agricultural production, the land and taxation legislation connected with agricultural production are all important content in Chinese legal culture. In addition, another characteristic of the national condition in ancient China, is being influenced by *Zong Fa* system (the patriarchal system) and it pays much attention to *Lun Chang* (ethics). *Lun Chang* (ethics) refers to the relationship between father and children, husband and wife and between siblings, which is the most significant social relationship.

In *Lun Chang* relationships, there is also content of *Li* (Rites) from Confucianism, such as the ceremony code, basic norms of *Li* and the rights and obligations in *Lun Chang* relationships. When these rites are combined with legal rights and obligations, this is what we call the combination of *Li* (Rites) and Law, which forms ethical law of ancient China, and the rule of ethical law is the rule of ethical law in ancient China.

In this aspect, the ethical law of ancient China is a significant part of traditional legal culture, which is different from legal cultures of other civilizations, therefore the ethical law is also obviously marked with China's national conditions.

Chinese legal culture has undergone long historical development before its formation, therefore it is of historic significance, epochal character and representativeness.

During the Spring-Autumn (770-476BC) and Warring States Periods (475-221BC), the Legalists theory was prevailing and Legalists made declarations on the origin, nature, content, form, function and value of law. In particular, Guan Zhong, one of the earliest Legalists, put forward the idea of "ruling a state under the law". As a result, the legal culture, in the Spring-Autumn and Warring States Periods, was characterized by jurisprudence, and is deemed the most representative legal achievement in this period.

In the Han Dynasty (206BC-AD220), Confucianism was established as the dominant school of thought, and the doctrine on guides and morality in Confucianism, namely the ethical code of "the three cardinal guides and the five constant virtues" (San Gang Wu Chang), was introduced into the law. From then on, the law began to cater to Confucianism, after which, the prominent feature in the law theory was the so called "morality given priority over penalty"(De Zhu Xing Fu) (Note: Dong Zhongshu, a Confucian in the Han Dynasty, established the comprehensive theoretical system of "morality given priority over penalty").

He believed that "morality" and "penalty" shall be placed at different position and "morality" shall be regarded as the priority, advocating "morality over penalty" as well as "more morality and less penalty". The theory of "morality given priority over penalty", after the analysis and support by Confucians in the Han Dynasty, gradually became the guiding ideology for the Han Dynasty in legislation and governance and imposed a far-reaching impact on future generations).

This theory was a feature of the legal culture in that period, and it affected the entire feudal society after the Han Dynasty with "morality given priority over penalty" remained as the guiding ideology in the construction of the legal system. Legal culture in ancient China is a kind of social ideology that revolves around the formation, development and evolution of law, legal system and legal institution.

Chinese legal culture has undergone long historical development before its formation, therefore it is of historic significance, epochal character and representativeness. To prove this point, I will cite the Chinese legal culture in several historical periods as examples.

In any country, judicial culture is a core component of its legal civilization. Similarly, it was one of the fundamentals of the Chinese legal system and an essential achievement of the legal civilization in ancient China.

Proceeding from the unique outlook on life, value orientation, morality and integrity of the Chinese nation, the Chinese judicial culture intertwined the law with ethics, and is thus of distinct Chinese characteristics.

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