

Explore the In-Depth Analysis and Comparison of the Legal Differences between China and Foreign Countries

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Abstract: Explore the reasons for the different laws between China and typical foreign countries, and conduct in-depth analysis and comparison. We choose to compare the reasons for the differences in intellectual property law between China and typical foreign countries from the aspects of state, society, morality, law, family relations, crime, punishment and, and conduct in-depth research and discussion on this theme. Analyze the differences between China and typical foreign countries from as many fields and aspects as possible, so as to explore and understand the causes of different social phenomena and different problems in intellectual property laws in different countries, so as to guide solutions and methods.

Keywords: The law, Compares, Abroad

1. Introduction

China's infrastructure has developed rapidly over the past 20 years, and everyone who has been abroad can feel it. At the social level, in the 30 years since the reform and opening up in 1978, China has undergone an extraordinary journey, creating a new path of modernization, sometimes referred to as the "Chinese model", the path of socialism with Chinese characteristics, and has persevered in its unwavering path. At the moral level, China has one of the most glorious and uninterrupted histories and cultures for thousands of years, and has also nurtured and accumulated many valuable spiritual wealth and people's basic codes of conduct to guide life and spirituality. It is further clarified from the legal level that ethics and law are mutually reinforcing. At the level of family relations, there is an essential difference between China and the West. In terms of crime, China has always been the most populous country in the world, but China has always had the lowest crime rate in the world. In terms of punishment, there is also a corresponding influence in the formation of the Western criminal law system, and the Chinese criminal law tradition is more inclined to rationality and ability.

2. National comparison

As an infrastructure maniac, China has developed its infrastructure rapidly in the past two decades, which can be felt by all those who have been abroad. In terms of hardware, China is more advanced, with high-rise buildings, wide roads and highly covered communication networks, which are outstanding in many developed countries. But these are some intuitive personal feelings, from the data comparison of China and the United States, Japan, Britain, France, Germany traditional five big powers. Respecfrom energy, transportation, communications, water conservancy, science and technology, health, culture, education, sports, pension, environmental protection all aspects to a 360 degrees seamless comparison.

According to the data, in terms of hardware, such as energy, transportation and communication, and the developed international industry, but there are still some disadvantages in education, culture, pension, sports and other soft supporting facilities. This is understandable. For example, Guangzhou and Shenzhen. Although the GDP of Shenzhen has surpassed that of Guangzhou, Guangzhou still has obvious advantages as the center of South China in terms of soft education and medical care.

3. Social comparison

Although the 60 years-year history of new China is often divided into two and thirty years, there is a common denominator in the ultimate goal, which is to explore the road of China's modernization. The previous 30 years hoped to break down the capitalist legal power and pursue a new road of modernization, in a kind of anti-modernization way, by emphasizing ideology and subjective initiative. In the next 30 years, marked by the reform and opening up in 1978, it has gone through an extraordinary journey and created a new road of modernization, sometimes called the "China Model".

China's model has gone from questioning to widespread global recognition, thanks to two points. One is its own success. In the past 30 years, China has surpassed the Soviet Union (Russia), Italy, Britain, France, Germany and Japan, ranking second in the world and becoming a huge influence on the world. In this process, 400 million poor people have been lifted out of poverty, and the whole society has enjoyed the fruits of economic growth. This unrecognizable fact is naturally convincing. At present, mainstream economists around the world believe that China will become the world's largest economy in at least a decade and the most 20 years. The first bimonthly issue of 2010 published the University of Chicago professor and Nobel laureate Robert in economics. Mr. Fogel's article predicts that China's economy will reach \$123 trillion by 2040, nearly triple the global economic output seen in 2000. China's per capita income is estimated to be \$85,000, more than double the European Union and well above those of Japan and India.

4. Moral comparison

Law and morality are two different social norms in human society that adjust and restrain people's external behavior and inner thoughts. They have different focuses in the adjustment of social order. Law is often considered as a rigid and mandatory social norms, it can only regulate and restrain people's external behavior, cannot regulate people's internal ideological activities; and morality is considered as a relatively flexible principle, it cannot force the society, but it is based on people's traditional beliefs and concept of justice, guide people's thoughts, let everyone's heart naturally form an inherent fair and just habits, thus naturally regulate their own external behavior. Due to the differences in people's geographical environment, economic conditions, national form, social structure and other factors, there are obvious differences in the evaluation criteria of the relationship between law and morality.^[1]

4.1. The basic idea of law and morality under the western legal thought

Western jurists thought critically studied the relationship between law and morality, and formed different cognitive understandings, so that western jurists were divided into different legal schools. Among them, the school of natural law and the school of analytical positivism law.

4.1.1. School of natural law

The answer of the natural law school to the relationship between law and morality has experienced a gradual change process from abstraction to concrete. The school of natural law always emphasizes the rational law of all things developing according to the natural law, namely the natural law, which is based on ethics and morality. Its essence is the moral law, which is an eternal and universal moral principle. Natural law is the fundamental basis and standard for the formulation of real law, and real law must always pursue and conform to the basic value of natural law. Therefore, the real law created by people, that is, law, is not a necessary form of rule for the ruling class to realize its interests, but law is only a means to realize the lofty moral law advocated and followed by natural law. Therefore, the relationship between law and morality is not isolated or unconnected, and the justice advocated by morality is what is supposed to be realized by law, and the two are closely combined together. Socrates in ancient Greece said, "Only by consistently abiding by the law and obeying the law can moral standards be realized and justice be reflected."

Plato believed that "when legislators enact laws, they should take the purpose of overall morality. "The meaning of Aristotle to the rule of law is that the law that everyone obeys should be good law, or law in accordance with moral principles. "The practical meaning of law should be the (permanent) system that promotes all the people into justice and virtue."^[2] Cicero of ancient Rome believed that "the republican government 'was organized in accordance with' justice' and the laws of nature, and in such a country, both the ruling class and the ruling class were to obey the law."^[3] After World War II, natural law arose again, and theories made new breakthroughs and developments. Although the theoretical

connotation of the classical natural law school and the new natural law school is different, they both emphasize that law always takes certain moral principles as its ideal goal. "The natural law stretching for thousands of years all contains the best moral care of human beings".^[4]

4.1.2. Analytical positivist school of law

The view of the analytical law school on the relationship between dry law and morality also has a process of development and change, that is, from the complete exclusion of natural law to the gradual coupling. The early school of analysis always insisted that there is no inevitable connection between law and morality, and even if the standard of moral requirements is evil, as long as it is determined in the form of law, it must be observed by the whole. In the early analysis, the school of empirical law does not answer the question of whether law is moral, nor does it discuss the value of law. Even if there is some accidental connection between law and morality, there is no necessary connection between the content. The new analytical law school gradually loosened the attitude of "at odds" with the natural law school, and recognizes the coupling relationship between law and morality under certain conditions. It is believed that there is a commonness factor between legal rules and moral rules. "The moral rules and laws of duty and duty are somehow significantly similar enough to show that the use of common words between morality and law is not accidental," recognizing and summarizing the content of the minimum natural law. "These universally accepted principles of conduct, based on fundamental facts concerning humans, their natural environment and purposes, may be considered the minimum content of natural law".^[5]

4.2. The basic concept of law and morality under the Chinese legal culture

In Chinese traditional culture and thought, the general principle of communication between people in civil society is "convincing people by virtue", and the basic value of state rule is "virtue, punishment and punishment" and "governance and virtue" advocated by Confucian culture. In the pre-qin hundred period, the monarch must be "ethics" can be the world this by the culture actively advocated by the Confucian idea, has developed from the theoretical stage to the practice of the monarch, other, such as Taoist Lao zi advocated "inaction" thought, mohka Mozi advocated "love, the attack" thought reflects the period of the monarchy. In the Western Han Dynasty, the cultural rule thought of "dethroning all schools of thought and respecting Confucianism alone" was determined, and the thought of "virtue" gradually became the orthodox thought and the guiding ideology for the formulation and implementation of laws. Of course, in the feudal society period dominated by the thought of rule of virtue, the thought of legal system, that is, punishment, was not completely ignored. The ruler often takes punishment as a ruling tool to govern the world, and maintains the social order advocated by morality, which complements each other with morality. Therefore, the basic thought of integrating morality, propriety and punishment has been formed.^[6]

And the legalists advocated with punishment to rule the country, although in the social period play a positive role, but the qin dynasty of a flash in the pan rapid demise that only a set of harsh legal system rules is not fundamentally good governance, in the applicable penalty at the same time, must with certain code of ethics as the pursuit of the core value concept. Moreover, the legalists at that time that the "rule of law" advocated by the state only regarded the law as a ruling tool, and did not regulate the ruler itself into such severe punishment and severe law. The ruler was above the law, which made the value of the existence of the law questioned. Through the above elaboration of the relationship between law and morality, which are the representative ones of western legal thought and Chinese traditional legal thought, we can draw the following conclusions from the evaluation of law and morality:

4.2.1. There is a intersection between western legal thought and Chinese traditional legal thought

Western natural law starts from human nature, advocates the protection of human dignity and freedom, emphasizes the reflection of human nature from the highest requirement of "goodness", and advocates the unity of man and man, man and nature, and the harmony between man and society. Natural law is the basis and basis of the formulation of real law, is a natural rational value, is also the highest natural law leading all beings, is a harmonious and orderly natural state. Emphasize that law is a tool to realize the harmonious order expected by morality. However, in Chinese traditional culture, Confucianism advocates the thought of "unity of man and goodness of human nature", that benevolence, righteousness, propriety and wisdom are the common rationality of human beings, which is inherent in human beings, and that punishment must assist moral application, which has many similarities with the rational view of the western school of natural law.

4.2.2. Different emphasis on moral concerns

In western legal thought, it is mainly to on whether law has the moral attribute or not. Natural law emphasizes that law is a means and tool to realize morality, while the empirical law school emphasizes that there is no inevitable connection between law and morality. In the traditional Chinese legal ideology and culture, the morality of the people himself, especially for the moral cultivation of the rulers, put forward high requirements.

4.2.3. Western society and Chinese society have different legal and moral requirements

Due to the western society from ancient Greece has formed a relatively free loose speech environment, each school scholars can fully speak freely, opinions, the relationship between law and morality to fully explore and elaborated, thus formed the law as the core, the prevailing rule of law has a relatively complete legal system. And ancient China on the whole with morality as the core, the popular virtue, legal thought only in the spring and autumn period of the warring states period, as a small branch of Confucianism, legalism is not completely fully developed, law just as a moral adjustment in some social order cannot be applicable, law is moral auxiliary tools.

4.2.4. A rational choice of China's modern legal procedure and justice

In view of the traditional cultural thought that China takes morality as the criterion of adjusting social order for thousands of years, the construction of a mature legal society is not a day for the development of the rule of law in China. In Chinese traditional litigation culture, people generally pursue "reasonable" empirical justice. Therefore, in Chinese society, people's pursuit of moral justice and legal procedure justice is different.

Today's world is a world of open information, or information explosion. With the popularization and rapid development of the network, the network public opinion becomes an important force to supervise the handling of judicial organs. Sometimes, the judges may influence the trial in order to conform to the socially recognized evaluation system; on the contrary, without emphasizing the strict application of judicial procedures and the neutrality of the judges, both the application and the independence of judges, the law means rigid and ruthless to the public. The public hope that the procedure can be concluded in a timely manner according to the demands of social morality, while the procedural justice requires strict accordance with the procedure. These differences in the perception of justice inevitably lead to a conflict between the two sides. In order to better solve these conflicts, it is necessary to design the procedural justice of public opinion supervision. According to the theory of procedural justice, the justice procedure set up limits the procedural obligations that the power subject should abide by. Therefore, procedural justice is not only a measure of justice, but also conducive to preventing the abuse of public power. It is an effective mechanism to restrict power by using due process rules. From the perspective of supervision by public opinion, by strengthening the rules of procedural justice and perfecting the relevant system arrangement, the subject prevents the generalization and abuse of supervision by public opinion, ensuring the reasonable operation of law and morality, and thus achieving better supervision effectiveness and effectiveness; following the due process is conducive to creating a more relaxed social environment for the supervision by public opinion. It is of great significance to carry out supervision by public opinion according to legal procedures to better play the effectiveness of supervision, promote socialist democracy and legal system and the construction of a harmonious society.

5. Legal comparison

Now there are several tendencies in the world, including Anglo-American law systems (such as Britain, the United States, South Korea), Roman law systems (such as Germany), and socialist law (China). Japan originally inherited the mainland law system, and later turned to adopt both British and American law. The so-called British and American law system, there is no written legal provisions to stipulate the rights and obligations between the litigants, they try a case on the original case as the basis, the judge in the trial stage, also known as the unwritten law countries, and the national parliamentary system (tripartite), marriage and family are different from the mainland law system; the so-called Roman law system refers to the corresponding legal provisions as the norm; our country is a little more than the Roman law.

6. Family relationship comparison

Differences between Chinese and Western family structure. Chinese people attach great importance

to blood and family relations, and the main characteristic of Chinese people's family structure is the big family. There are two main family structures in modern Chinese society: core family and extended family. Westerners do not care as much about blood relations as the Chinese do. In western countries, the core family is absolutely dominant.

Differences between Chinese and Western family concepts. China's family concept is still very strong, blood relationship, family ethics, deeply rooted in the brain, parents and children are always a family. The foundation of western society lies in individuals, and western cultural values take individualism as the core.

The relationship between children and their parents is different. In Chinese families, children rely on their parents when they are young, and their parents make a lot of personal sacrifices for the family, but they ask their children to obey more. When children grow up, they are responsible for supporting their parents, but in some cases they will continue to rely on their parents. In Western families, parents and children are more equal. There is not so much dependence between children and their parents, children do not live at home after middle school, and young people are proud of their independence. When parents are old, they do not rely on their children, and their children do not have the responsibility to support their parents. Both sides do not have so many obligations and responsibilities, and the relationship between parents and children in the family is equal.

7. Crime comparison

China is a country with a relatively low crime rate in the world. Due to China's unique historical and cultural tradition, although China has long been the most populous country in the world, but China has always been the lowest crime rate in the world. Especially after the founding of the People's Republic of China, the great superiority of the socialist system rapidly appeared in ancient China. The absolute number of criminal cases and the crime rate were kept at a very low level for a long time, some crimes were almost extinct, and the public order was extremely good.

At present, China's crime rate has increased significantly compared with that in the early days of the founding of the People's Republic of China (2.9 per thousand in 1956, the lowest since the founding of new China), but even at its peak, it is still much lower than other major countries in the world. China has always been one of the lowest crime rates in the world.

8. Punishment comparison

Medieval classical church law was an important stage of the whole development history of church law, representing the highest achievement of church law, and played a key role in the formation of western legal thought. During this period, the church law gained the pattern and maturity of criminal action. In the formation of the western criminal law system also has a corresponding influence, the Chinese criminal law tradition is more tend to rational and capability, on the criminal law object of the law, the prince, the common people with crimes, its characteristics requires nothing, in the origin of criminal law and religion, and more show "punishment began with the soldiers, derived from si". In terms of the influencing factors of the criminal law system, the tradition of Chinese criminal law more reflects the elements of localization.

9. Conclusions

Through the above research, we hope to discover the differences and commonalities between China and foreign countries, hope to seek common ground while reserving differences, and as our common home, we must jointly respect and advocate the diversity of world civilizations, and maintain peace, development, fairness, justice, democracy and freedom as the common pursuit of the people of the world.

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