

The thought of criminal law implied in Utopia

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Abstract: *In the early Renaissance, the culture of "original desire" had a strong impact on the Hebrew-Christian value system which had been entrenched for a thousand years, and Westerners fell into the carnival of releasing the original desire. Literature in the late 15th century drew this all-destroying frenzy into the buffer zone, where it swirled and accumulated, effectively rewinding the passions and orgies of the pre-Renaissance period. In the field of regulation, In Utopia, Thomas More, an English writer, systematically expounded the essence of the thought of criminal classical school and the criminal social school involving the ideas of legislation, judicature and punishment system, which profoundly influenced the formation and development of later classical criminal law thought.*

Keywords: *Thomas More, Utopia, Criminal Law Thought*

1. Introduction

The humanism in the early Renaissance was always in line with the ancient Helo civilization, which marked the awakening and revival of the "original desire" culture and formed a strong impact on the value system of Hebrew-Christianity which had been standing for a thousand years. The Westerners gradually fell into the revelries of breaking the shackles of God, discovering themselves and releasing the original desire. By the end of the 15th century, three literary giants had brought this frenzy of destruction to the buffer zone, where it swirled and accumulated, effectively repulsing the passions and excesses of the pre-Renaissance period. The English writers Thomas More and Shakespeare and the Spanish writer Cervantes. This paper takes Utopia as the script to analyze the evolutionary map of criminal law thought in the same period.

St. Thomas More (1478-1535) was a famous British humanist with unique systematic views in literature, philosophy, law, religion and other aspects. At the end of the 14th century, the germination of capitalism appeared in England, the "Enclosure Movement", which began in the 15th century and left peasants displaced and helpless, supported the monarchy with the slogan "order rather than freedom", hoping to rely on the king to regain the land that had been expropriated. The complex social reality brought more a profound sense of crisis, and his immortal masterpiece Utopia (1515-1516) is the crystallization of this kind of thinking and exploration. The book is divided into two parts: the voyager Raphael's travels through the exotic utopia of the strange country: the first part mocks the dark social system; the second part describes the beautiful picture of the ideal society. [1] As far as the criminal law thought contained in the works is concerned, the depth, breadth, theory and systematize are far beyond the Decameron and Giantlife in the early Renaissance. With the words of the hero Raphael, more put forward his own thoughts and political views on the rule of law, presciently put forward many theories and opinions that were developed and matured in the Enlightenment period, and systematically expounded the essence of the thoughts of the criminal classical school and the criminal social school.

2. The Analysis of the Essence of Legislation

As we all know, the first cornerstone of the theory of the criminal classical school is the theory of social contract. The dispute between the classical period and the Enlightenment period on "human nature" and the social contract theory based on the theory of human nature are the logical premise for the germination of modern western political and legal thoughts. However, the conclusion of social contract is closely related to the natural state of the primitive society. Referring to the state of nature determined by human nature before the emergence of the state and law, there are many vivid descriptions in the literature of the Enlightenment period, including Hobbes' universal war theory of "human nature is inherently evil", Locke's dual human nature theory of "human nature is neither good nor evil", Rousseau's

Golden age theory of "human nature is inherently good". Corresponding to the three "theories of human nature" advocated by Hobbes, Locke and Rousseau, the "social contract" with legal provisions as the main carrier also includes three kinds.

2.1 Hobbes' Absolutist Contract

Hobbes believed that human nature was full of selfishness and evil. In order to end "the state of war between all and all", the fear of death and the instinct of survival forced people to use reason and summarize some terms of peace -- natural law. To ensure the enforcement of natural law, men must enter into a contract agreeing, on the one hand, to entrust all their rights and powers, including liberty and life, to the "strongest" individual for preservation; On the other hand, for the peace and security of the society as a whole, the "most powerful" individual should strive to use the rights and forces gathered from the citizens, and the authority he obtains to ensure the observance of the contract should be supreme and not bound by law. This is a corollary of Hobbes's "evil of nature", because only absolutely strong and unchecked power can maintain peace and order in a "Wolf and Wolf society". Hobbes's contract theory is obviously unidirectional, that is, it only or mainly has binding force on the people who sign contracts and become the monarch. The populace became a mere beginner under the aegis of the monarchy, acquiring a sense of peaceful existence without any claim to free will. Hobbes, of course, was aware of this, but Leviathan was man's own creation, and people should choose the lesser of two evils: on the one hand, absolute freedom but full of danger of destruction, on the other hand, absolute despotism but enjoying security and peace, and Hobbes clearly believes that the choice of the latter is the expression of human reason. This idea is vividly and accurately stated in Hobbes's Leviathan. [2]

2.2 The "Constitutional Contract of Monarchy" Advocated by Locke

Contrary to Hobbes' extreme concern for social security, Locke's contract theory highlights the pursuit of freedom. According to Locke, there is no judgment of good or evil in human nature, and the state of nature is a state of complete freedom, adjusted by the natural law. People decide their behavior with their innate natural wisdom and accept the gift or punishment of nature. On the one hand, everyone is equal; On the other hand, everyone has the right to punish criminal acts which he considers to be contrary to natural law. The disadvantages of this kind of society are as follows: firstly, the natural state that people enjoy may be destroyed and infringed by others; Secondly, when everyone acts as a judge to judge criminal acts according to natural law, it is easy to exceed the rule of reason. [2] A contract must then be made to ensure that the laws of nature continue to operate in society. According to a contract, people agree to form a community -- a nation. Different from Hobbes' theory of "transfer of all rights", the key of Locke's contract theory is that people still keep all their natural rights after making contracts, and what is transferred to the state is only the power to execute natural law. Locke is the first western jurist who put forward the theory of three rights and separation of powers. The essence of his contract theory is to restrain the power of the government - to keep Leviathan in a cage.

2.3 Rousseau's Call for a "Democratic Republican Contract"

Rousseau believed that barbarians in the state of nature were in the "golden age" of human social development. They have no intellectual knowledge, no good and evil principles, with instinctive compassion and love to suppress the germination of self-interest, to perform the natural law, custom, moral responsibilities. Private ownership is an important step for human beings to enter the state of inequality from the state of nature, and this kind of inequality is the driving force of social evolution and development, and also the initiator of human civilization. People in the state of ignorance can enjoy the freedom to do whatever they want, but with the gradual increase of inequality, the emergence of human civilization has made people wear the shackles forever. The purpose of Rousseau's "contract theory" is to restore the lost state of freedom. [4] This state of freedom is not the freedom of primitive society, but it is built on the basis of fully learning from the accumulation of human civilization. Its feature is that in this state of social union, the obedience of each binding individual to the contract is essentially his own obedience, and the full power of social union will guarantee the personal rights and property rights of each binding individual. That is to say, "to find a form of union which, with all its common power, protects and secures the person and wealth of each, and by this union makes every individual united with the whole merely subject to himself, and still free as before." [4] In order to achieve this goal, each participant in the contract must transfer his "all" rights to the consortium, and each right is "equal", which is to prevent the privileged person from handing over only part of his rights; Participants in the contract give their rights to the collective rather than the individual, in order to prevent individuals from favoritism

in the preservation and use of collective rights; In addition, after the formation of a country through social contract, if the natural law lacks natural sanctions, the law of justice will be illusory in the world, so it must be given life by the social contract to the executive organs and management organs, and the action under the will of government officials must be given by legislation. [2] The law code, as the carrier of contract itself, is a stipulation made by all the people to all the people, with universality of will and universality of object.

As for the essence of legislation, Moore offers a different conclusion from these three points of view in his work, which focuses on the state of affairs before the so-called contract, that is to say, the signing of a contract is not the first step in the examination of the problem, but should be preceded by a step, the legality of the state of affairs that the contract protects. Raphael believes that it is nothing more than a few people, in order to protect their interests in a disorderly state, make rules and then demand that everyone must obey them. This view is very close to that held in Rousseau's *On The Origin of Human Unequal Systems*, that is, the motive force of legislation is the property protection system formulated by a small group of people who wish to protect their interests obtained from the operation of jungle rules. Whether or not such benefits are obtained by peaceful, legitimate means and if they are impartial. [2] This kind of rule is to maintain and defend the existing state of property ownership, only to protect the ownership of the established facts, and will not retroactively evaluate the rationality and legitimacy of the formation of this state of fact. It pointedly points out the instrumental nature of law, whose fundamental purpose is to safeguard the interests of rulers, rather than the contract made by citizens equally.

3. The Deconstruction of Judicial Independence

Moore bristled when he spoke of "judicial independence" and the "arbitrary interpretation" of criminal law by judges. From Raphael's mouth, more questioned the essence of the so-called "power of interpretation of criminal law" and pointed out pointy that any country must adhere to the principle of separation of powers, the king must not interfere in the judiciary, and the judiciary must remain independent. [1] Moore obviously held a negative attitude towards the interpretation function of law, and believed that the so-called interpretation of criminal law was nothing but arbitrarily distorting the original and natural meaning of the code to cater to the political needs favored by the powerful, which made a bitter deconstruction of the so-called "judicial independence right" in the English courts. Under the circumstances at that time, the British judiciary had begun to evolve towards independence, but no one could clearly indicate the connotation of judicial independence, and the arbitrary interference of feudal imperial power and religious power on the judiciary could be seen everywhere. This is not only reflected in the control of the legislative power, but also reflected in the process of judicial application of the so-called arbitrary interpretation of the law, random access to the crime. The Pope, the king and the chief executive all have the power of interpretation of justice, which often results in the whole exercise of judicial power being suspended. Each case is not decided by the judge entirely, but is the result of multi-party wrestling, and no one can accurately predict his own fate.

4. The Disadvantages and Improvement of the Punishment

4.1 The Severity and Harshness of Punishment in Britain

As for the harshness of English punishment, Raphael saw that "the death penalty is everywhere", and the number of people hanged at one time was appalling - "They are executed everywhere, sometimes as many as twenty at a time!" [1] In view of the widely accepted death penalty system at that time, Raphael put forward his own unique opinion, holding that a country should first pay attention to the cultivation of good habits of its citizens, rather than imposing heavy punishment on them, and punishing those who commit crimes because of life is far more reasonable than giving people a way to earn a living. Through the severe condemnation of the abuse of the judicial situation of death penalty, the characteristics of the British criminal law and the turbulent social environment in the 15th century were revealed, and the criminal law thought that crime prevention is more scientific than crime punishment was clearly put forward, especially the educational function of penalty must be paid attention to.

4.2 Causes of Widespread Abuse of Severe Penal

So what accounts for the widespread abuse of such harsh criminal law? Raphael mentioned the

famous "enclosure movement" and put forward the famous conclusion that "sheep eat men". [1] His detailed description of the enclosure movement became a vivid source for Marx's account of the primitive accumulation of capitalism in *Das Kapital*. Raphael believes that the "enclosure movement" is also the profound root cause of the endless crime. The land and pasture on which they lived were robbed and cheated, and the people who had made a living from farming and animal husbandry for generations were expelled from their homes. Faced with an unfamiliar and volatile environment, these people without survival skills and development capital were forced into prostitution. Even to be a villain, there are only two choices -- begging and stealing, and the common point is either hanging on the gallows or being thrown into prison. The social system itself is sick and violent. It can be seen that Moore had grasped the pulse of transitional capitalist society when he created this literary work. He pointed to the process of primitive accumulation of capital and lashed out at the social root causes of a large number of people's crimes, which implied the valuable theoretical core of the school of criminal society.

4.3 Recommendations for the Abolition of the Death Penalty

It is particularly worth mentioning that, as an independent and outstanding humanist, Moore stood at the height of historical development, summed up the two sides of penalty, and even put forward the suggestion of "abolishing death penalty" and "suspending execution of death penalty", which caused a stir in Britain at that time.

The dialogue between the cardinal and Raphael contained many rational and progressive criminal law thoughts, which were gradually recognized by various civilized countries until the 20th century. [1] First, Moore argues, heavy sentences are ineffective at deterring crime. In the face of the cardinal's proposal of heavy punishment to stop theft more calmly refuted it on the basis of objective facts. Under the environment of heavy punishment deterrent, thieves were still escorted to the gallows one after another, and criminal behaviors were not restrained by the fear of hanging, indicating that heavy punishment has little deterrent effect on crime. Secondly, Moore put forward the principle of balanced crime sentencing, pointing out that if a criminal law does not take the principle of balanced crime into account when making penalty, or obviously violates the principle, then the law is flawed, unfair, and unable to effectively perform the basic guidance, assessment and prediction functions of the law. It is worth our attention that more even talked about the correlation between the concept of social harm and illegality in the work. If someone thinks that the thief is sentenced to death not because "the social harm of stealing money is equal to the actual harm of being deprived of life", but because "the thief has violated the law" and thus satisfies the illegality requirements in the crime constitution, then the enactment of such a law itself has no legitimacy. Moore goes on to illustrate his point by citing the criminal law Settings of three countries. Among them are two counterexamples: Manli's legal code abused heavy punishment and Stoic law assimilated and nihilized all values, all contained in a "sin" connotation; The positive example is the Law of Moses, which, although strict, imposes only a fine for theft, which is scientific and reasonable. Finally, for perpetrators of crimes, punishment rules play a guiding and forecasting role of "ladder price list". Moore emphasized that adherence to the principle of balance of crimes will do more good than harm to the whole society, especially from the perspective of victims. Since the death penalty has so many drawbacks, what should be done about those who must be sentenced to death? Raphael suggested to the cardinal "the execution of the death penalty suspended" execution method, with a strong humanistic education of the color of punishment. [2]

Through a series of dialogues between Raphael and the Cardinal, more expressed the thoughts of criminal law, such as "illegal law", "balance between crime and punishment", "modesty of criminal law", "prudent use of the death penalty", "humanism of penalty", "individualization of penalty" and "prevention of serious crimes caused by legislative mistakes", [3] and pointed out the practical basis of "the suspension of execution of death penalty". These ideas are nearly 250 years ahead of the similar views of the Enlightenment criminal jurists.

4.4 The Construction of the Legality of Euthanasia

Incredibly, in the second part of his work, Moore describes the legality and possibility of euthanasia in an ideal world. Moore believes that the theoretical foundation of the legality of euthanasia is based on the right of human freedom. As a natural person, he/she shall have the full right to dispose of his/her life. Once the state of living has been transformed into a torment that causes loss of dignity and happiness, the person concerned shall have the right to dispose of his/her life. Of course, the premise is sufficient and necessary voluntary thinking and choice. Five hundred years later, when euthanasia is still a controversial topic in the field of Western criminal law, we cannot look back on the literary works of

Lord Justice Moore at the end of the 15th century without awe and respect for the spirit of humanitarian innovation and insight.

4.5 Ways to Improve the Penal System

When it comes to the discussion of a more scientific penal system, Raphael listed a Persian country called Polylerita saw a penal execution system, which can be regarded as a classic. The content of reasonable penalty system should be expressed from two aspects. The first is to compensate the victims, pay attention to the restoration and perfection of the social order destroyed by the crime; the second is the punishment and correction of criminals, through ideological correction and vocational training, to help them smoothly return to society as the ultimate goal of punishment correction. From this, we can clearly see the humaneness and scientificity of the execution system advocated by Moore, and predict the germination and development of non-imprisonment punishment measures such as "community labor" and "fine punishment" in European and American countries after more than 400 years. Some of these suggestions, including the detailed and perfect design of the sources of financial expenditure for prisoners' imprisonment, can effectively reduce the burden of the state and taxpayers, while ensuring that criminals are always in the process of "socialization" and will not be isolated from the society due to isolation, which is the most ideal mode of imprisonment.

5. The Ways to Eliminate Crime - Adjusting Social Policies to Control Crime Rate

When we talk about the ways to eliminate crime, we cannot fail to mention the cornerstone of classical theory of criminal school, which concerns the freedom of human will.

Immanuel Kant, the founder of German classical philosophy and the last thinker in the age of Western Enlightenment, was a Faust who made unremitting exploration in the spiritual world. Kant's thought of criminal law shows a distinct color of idealism, and the theory of free will is the cornerstone of his theoretical system of crime and punishment. According to Kant, human dignity lies in freedom, and human beings are always ends, not means or tools; only the choice of a free man can determine everything, and no external or higher law can govern man. In the eyes of Kant, the highest point of human subjectivity is "freedom of will", but this freedom is not unrestricted, it is bound to the transcendental subjective morality of human beings, so it is not the law of nature or the law of anyone. The transcendental subjective morality described by Kant is a "categorical imperative", which exists a priori and is not subject to any concrete experience, personal likes, dislikes and interests. [5] Kant warned people that they must abide by the above morality unconditionally in their hearts, so that they can be liberated from the fate dominated by nature, independent of animal nature, and truly obtain free will. This absolute moral law is not only the basic standard to regulate people's thoughts and behaviors, but also the basis and standard that national legislation must abide by. The core value of law is justice, which comes from the fact that according to the universal law, this action can coexist in action with the free will of every person and all people. [5]

Logically, Kant put forward the basis of the right of punishment - moral responsibility theory. He believed that criminal law shouldered the inevitable moral mission, and the moral law actually existed before the legislation of substantive law. In terms of value content, the two laws should be consistent, so that the law can maintain the nature of justice. Criminal behavior not only violates the laws made by the state externally, but also violates the moral law internally. The perpetrator should bear the corresponding responsibility for the harmful behavior if he carries out these behaviors under the domination of his free will. It is precisely because a crime is committed out of free will that a libertarian should be liable for a crime. [6] In this way, Kant put forward the famous theory of moral responsibility on the basis of freedom of will. Since people have the free will to choose their actions, they dare to avoid good and evil, and from a moral standpoint, they cannot but burden their actions with responsibility. Kant talked about moral commands from free will, and moral commands from legal rules, seeking the basis of the right of punishment, revealing the necessary connection between criminal law and morality, and also revealing the essence of the harmfulness of crime. [5] In addition, Georg Wilhelm Friedrich Hegel, the famous representative of the criminal classical school, was also a supporter of the theory of free will. On the basis of recognizing free will, he put forward the famous attribution theory of subjective and objective dialectical unity: action can only be attributed to me as the fault of the will. [7] Thus, the view of crime and punishment centered on the theory of free will and moral responsibility was gradually perfected. At the same time, it is also from the independent subjectivity of human beings, the freedom of human will, Kant advocated the absolute retributive punishment, equal punishment view. As for the nature of penalty,

Kant still uses the theory of free will to expound on it, holding that penalty is a pure method of revenge for crime, and cannot have any other purpose or requirement. Because human dignity and free will can only be an end at any time, not a means. On the scale of punishment, Kant holds a typical view of equal retribution, which is also based on the free will of human beings. Because man has made a contract out of his free will, any evil done by any man to another may be regarded as an evil done by him to himself. This is the only reliable standard of sentencing, and the other factors are uncertain and difficult to grasp. [7]

More has the similar concepts and opinions of Kant but about 100 years earlier than him, used Raphael's words to explain the only way to solve the crime. Moore has realized that social policy is closely related to the crime rate and tries to find ways to control crime from the perspective of social policy. Moore explained that crime is a social disease, and that its control should rely on comprehensive and systematic social policies, not heavy punishments. Moore used the social contract theory to put forward the principle of the inevitability of punishment, denying the victim, the sheriff or the monarch the right to forgive and pardon the specific criminal. Because clemency is a humanitarian thing to do, but it is fundamentally against the public interest in the contract. The contract is the product of the participation of the whole people, the victim can dispose of his civil rights, but has no right to cancel the criminal punishment, because the source of the right of punishment belongs to the common agreement of the society rather than the individual. [2] [6]

Moore agrees with Beccaria that mercy, as a virtue, should shine in the legislative process, not in the judicial process, and that everyone has no right to grant clemency to criminals. If the inevitable causal chain between crime and punishment is broken, the whole legal system is likely to be shaken, and people's psychology will be disturbed. On the balance of crime and punishment, Moore argued that harsh punishment violated the social contract and criticized the irrationality of the death penalty. An unavoidable logic is that if criminal law is evil, people do not have the right to kill their own kind. The most fundamental way to reduce crime is to pay attention to people's livelihood, arrange employment, and meet people's need to support themselves. However, "forcing people to be thieves and then being the ones who do it" is the most stupid and abhorrent social policy. It will only inspire more anti-social personalities and produce more deformed cancer, but it will do nothing to control crime and purify society. In the end, more pointed out in a sharp tone that the so-called "larceny crimes" were the product of an unfair social system, and therefore, the whole British society was the culprit of "creating criminals", and lashed out at the disadvantages of the British criminal law.

6. Extension and Reflection

Utopia is a great work carrying many progressive ideas and visionary ideas. Its creator must have had profound accomplishments in the field of humanities and art. However, many people do not know that Thomas More was officially Lord Chancellor of the Crown and appeared in public as the king's spokesman. Even so, more was quite dissatisfied with the British political and judicial system, introspective and conceived of an idealized political environment of clarity, and this sentiment and attitude was vividly expressed in his book Utopia. Sadly, Utopia did not win the general recognition of the British society at that time, and the judicial system it fiercely attacked was still not significantly improved for a long time. What is more tragic is that more himself was killed by this brutal and cruel criminal justice system. According to historical records, more died for three reasons. First, more advocated reform within the Catholic Church, with a council of representatives of the church to limit the power of the Pope. He also believed that Europe should be held together by a united church to reduce the scourge of war, which was at odds with King Henry VIII's desire for imperial power over the church. Second, in 1533, after Henry VIII divorced his infertile queen Catherine and married his maid Anne Boleyn, more refused to attend the coronation of the new queen, Anne Boleyn, because Catherine was the Pope's chosen empress. Third, in 1534 Parliament passed the Act of Supremacy, which declared Henry VIII Supreme Head of the Church of England. The whole country was required to take an oath of recognition, which more refused to take. The third incident was the trigger for More's imprisonment in the Tower of London. While in prison, Moore had a classic conversation with his friend Norfolk that makes for moving reading, revealing Moore's devotion to truth, faith and freedom. Finally, Henry VIII's prosecutors falsely accused more of treason by saying that "Parliament had no right to declare Henry VIII supreme head of the Church." Moore, who was Lord Chancellor of the Crown, was now in prison, and though he had argued his case with all his knowledge of the letter of the law and the judicial process, the jury unanimously found him guilty of "treason" and should be cut to pieces. Later, King Henry VIII commuted the sentence from dismemberment to beheading. On 6 July 1535, more went to the guillotine. The whole criminal justice process from putting more into prison, to his trial, verdict and even execution

verified the authenticity and cruelty of Utopia.

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