THE VALUE OF CHINESE TRADITIONAL LEGAL CULTURE

Law and jurisprudence are ancient questions for discussion in the human being's history of civilization. Different recognitions and understandings lead to various words to describe them, depending on various points of view of people living in different times. To compare the differences of the value of law between China and western countries on the background of culture has always been the focus in the study of Chinese law circle. For centuries, Chinese people have been in pursuit of the ideal of "a powerful country with wealthy people". In their pursuit of the ideal country, some questions related to law emerge in their mind. For instance, whether the ancient Chinese legal culture, whose core is Confucian human relations and morals, has its significance in the modern world? If the answer is positive, then what is the standard to evaluate it?

I believe that in China today the comparative study of the legal cultures between China and western countries is following a fixed thought process. That is, compared to the western countries, China did not create the "instrumental reason", a phrase described by Max Weber. Thus it is hard to provide ideological resources for a modern country that is not only a society ruled by law but also a modern industry and commerce society advocating rights and fortune. However, I do not assume this conclusion as a matter of fact.

Law, is not only related to the realities of the Chinese society, but also closely related to Chinese wisdom of philosophy.

Nowadays, academic circles endow those categories, such as the law, the society ruled by law and the science of law, with much fair meaning. The reason
is that they attempt to use legal rules to build up a basic framework for a society, in which they can make clear people's anticipation of the relationships between rights and obligations including personal relations, relations between the individuals and the society, and relations between the individuals and country. That is to say, as a social phenomenon, the law, in spite of the great differences of dissimilar eras, has one similarity. It is created for the aim at resolving problems in people's lives, and it will be enriched in the process of solving those problems. The key point is that what life is? What is the meaning of life? What is the relation between law and those questions? My answer is that law is not only related to the realities of the human being's life, but also closely related to the meaning of life. People always have relatively clear understanding of the former, but many scholars neglect the latter, especially the question of how ancient Chinese people understood the meaning of life.

So, how is the law related to the human being's life? Firstly we'd better talk about what is life. Life has different levels. According to A.H.Mastro, a person's life has five levels: First, physiological necessity; second, necessity of safety, third, necessity of love, passion and belongingness; fourth, necessity of pride; fifth, necessity of self-realization (self-expression). An American philosopher, James said "there is a physical me, a social me, and a spiritual me". In a word human being's life can be divided into two parts, that is, the material life and the cultural life. The law, as rules to regulate peoples' behaviors, builds the fundamental system of rights and obligations. Though it does not directly satisfy the basic necessities of life, that is, the necessity of food, clothing, shelter and transportation, it resolves disputes that happen in obtaining these necessities. So as to be closely related to people's interests and lives, then how is law related to the cultural life? We know that law has three elements: concepts, rules and doctrines. Rules or standards form a code of conduct. They regulate the behaviors of people. But the skyscraper of law is not only built up by rules, it also needs the support of the predetermined worth hiding behind the regulations. People of one period not only use law to resolve problems happening in the reality, but also divide it into different types and ask whether there is something superior to the law of the material life. Why do we say law is sacred? Why is law equal to justice? To answer these questions, we should go back to the meaning of human being's life, rather than solely rely on mandate rules. Legal rules sometimes are based on objective knowledge, but the explanation of the meaning of life is not only based on it. It is concerned with the wisdom of philosophy. If we do not understand ancient Chinese law in this sense whether in a broad sense or a narrow sense, we cannot grasp the real meaning of the worth of Chinese legal culture. It is second issue I want to explain.
The meaning of life: a special point of view that ancient Chinese considered the law

Compared with the western countries, ancient China found a state on morals rather than law. It did not attach great importance to the value of law. Though there existed laws, it was the penal code referred only to penalty rather than individual’s right. Such conclusion may not be wrong. But we may feel that such estimation of the value of ancient Chinese law somewhat hints the arrogance of modern man. And more values of western jurisprudence are imposed on it rather than the real circumstances of ancient Chinese.

In fact, we can find distinct answers from the ancient Chinese books to the question of whether ancient Chinese took much of law or not. Even on the second thought that ancient Chinese law, whether in a broad sense or a narrow sense, did not consider issues from the individual’s point of view, we cannot deny such a fact that, interests and litigations embodied by the concept of right in modern jurisprudence did always happen in people’s real lives. When people’s property, health and lives are violated, they needed the protection and remedy of law as well. Before the Napoleon civil code in France in 1804, the code of Tang dynasty and the code of Song dynasty had been made for nearly a thousand year’s. At that ancient time, people could not clearly tell apart the injury caused by a civil affair or a criminal affair. For example, whether a strike was a tort or a crime? Modern jurisprudence has specific theories to identify the boundary of these two, but at that time, there was none. However, when frays happened and disputes, or even injuries, how could ancient Chinese law neglect them? Though there were not concepts of “tort”, there were some similar phrases such as “statutes allow execution to prevent injury” in the Code of Tang dynasty, “if injured by others, a person can get compensation” (479); “those who cast away, lose or destroy the official or private possessions, whether by oversight or intention, would reimburse the damage” (519), etc. The code of Tang dynasty or Song dynasty led the country into several hundred years of commerce prosperity and cultural development, which is highly praised by Chinese and foreign scholars as well. A Japanese scholar, 坂本太郎 commended that era as “an epoch that founds the state on culture and regulates the society by law”. It does not mean that when we talk about Chinese history, we only bring to our attention the most splendid period, the Tang or Song dynasty, I just give an example to explain that ancient Chinese had their own and unique wisdom of philosophy to recognize law. So, how did ancient Chinese look upon the social phenomenon, the law, from their unique point of view, the meaning of life? I will answer this question in two parts. Firstly, what was the meaning of life? Secondly, according to this point of view, in which aspects did ancient
Chinese value laws? Why did the law take the subordinate place? Which kind of wisdom of philosophy did Chinese legal culture reflect?

When we say the meaning of life we mean the reason why people do their conduct and why they do in the very manner. The understanding of the meaning of life by ancient Chinese is closely related to the Chinese philosophy. It contains three parts, the issue about the universe, life and knowledge. In Chinese culture, the issue about knowledge was not developed sufficiently, and the issue about the universe served the social reality and the life. So the issue about life took the central place. That is to say, ancient Chinese believed that, man between the Heaven and the earth, should imitate the rule of the outside world, subsist without cease, live in a vigorous status, and cultivate morals and intelligence. In a word, be a superb person in the reality. Even as a small child who began to learn, he was told how to be a person. It meant “a man of noble character who learns for virtues”. According to Chinese traditional philosophy, the meaning of life lies on the understanding of how to be a noble man. People could not avoid various difficulties in their lives, and the most difficult thing was not poverty, but how to be a noble man. “It is difficult to be a person” is a profound truth recognized by ancient Chinese. The great ancient Chinese philosopher, Confucius said “Set your heart on the truth, hold to virtue, lean upon human-heartedness, and seek relaxation and enjoyment in arts”. In the doctrines of Confucius, the material life and desire for survival should not be denied. But if people only stay on this level, man could not differ from beasts. So the spontaneous desires and the pursuit for fortune are not the meaning of human being’s life. The meaning of life lies on the transcendence of fame and wealth and the spontaneity.

Generally speaking, the main trend of Chinese culture is the belief that, firstly, man lives between the Heaven and the earth, and the universe, man, man’s life and the society are closely related. The nature of the universe is the source of the humanity, the logic of the matter, and the righteousness of the thing. Secondly, man has an inclination to be good, so does the universe. Chinese ancient philosophers believed that if a man could develop these interior virtues, he understood the natures of man and the principle of the universe. They though that “too fully develop the kindness of the heart is to understand human nature; to understand human nature is to understand the mandate of Heaven”. Thirdly, the meaning of life lies on the recognition of the moral of an individual by himself. He does his best to be a wise and honest person who understands benevolence and justice. Fourthly, the truth of life, that is, the reason why a man has a man’s life, as it should be, is the same principle of the universe. So man should be determined to persist in the truth, and pursue to realize the meaning of life. However, there are various kinds of desires and
temptations, so the true meaning of life has always been devoured by these desires and temptations. Only when a person earnestly and sincerely perseveres with his goodness, could he hold his truth and ideal. Fifthly, the superior ideal of ancient Chinese is to cultivate themselves, put family in order, rule the country well and regulate the disordered world, by means of earnestly and sincerely pursuing and learning the truth. Each individual spontaneously obeys the rule of virtue strictly, and then the society can be in perfect harmony with the universe, and become a prosperous and ideal society.

From this unique point of view, Chinese are pragmatists. Firstly, in a narrow sense of law, they thought much of punitive function of the criminal law. Secondly, in a broad sense of law, which consists of etiquette, justice, institution and regulation), they paid attention to the mutuality of these four parts. It was said that once those four parts were well-developed, the king was ready to control the country, Thirdly, whether in the historical period of “Spring and Autumn” or the Han dynasty, when the ideology of Confucianism and the thought of realizing a state ruled by law merged together, law seemed to be a public instrument, and its function was mainly to get rid of self-interests. Fourthly, ancient Chinese founded their society in the interests of the whole nation. They thought highly of the law’s role in a state and society, but did not take it as a superstition, which reflected a unique pragmatism and reasonableness. Fifthly, in the field of judicature, especially when handling civil cases, they insisted on justice, but also paid attention to the combination of justice, statutes and human touch. It showed their high standard of execution of justice and unique jurisprudence. A classical ancient Chinese magistrate once said “we eat rice grown by people; put on clothes made by people; how dare we say that people can be cheated? We ourselves are people. We are not overwhelmed when we are appointed an official, neither are we depressed when we loss our position. Do not say a position is of no use, because people rely on a local magistrate.” But why was the law on a subordinate position? Why there was no concept as “sacrosanct law”, which existed in the history of western countries? The reason is that the Chinese meaning of life was different from that of the western countries. To the latter, they had the ancient Greece wise philosopher, Plato; in the Middle Ages, Christians emphasized on people’s free will under the apocalypse by God. In ancient China, Confucius was a virtuous and benevolent noble man. Plato was thirst for knowledge, and the western countries had a tradition to value an individual’s freedom and rights. While in ancient china Confucius was honest and benevolent and ancient China did not take the law as a sacrosanct reason. The law was a punishment and its function was to make up the holes in the harmonic system. So it was on the subordinate position. An individual’s worth did not rely on the rights protected by law, but on an idea
Chen Lingliang, *The value of Chinese traditional legal culture* (pp. 17-23)

that “a man’s worth is to be a noble man and to help others”. A fine law existed in everyday life rather than in a sacred hypothesis.

It is surprising that ancient Chinese legal culture is mostly close to modern jurisprudence. Because the central task of the latter is to divest of the sacred hypothesis and find the righteousness and justice from the realities rather than to resort to God, which is in full agreement with the ancient Chinese philosophy.

**The process of valuing law coincides with the wisdom of the philosophy**

Since modern times, the judgment of Chinese legal culture has been following one standard, that is, whether it could fit in with the pursuit for material fortune in the modern industrial and commercial society. In this point of view, ancient Chinese law seldom set up statutes according to the principle of protecting individuals’ right. It was different from a legal system based on private law or civil law. So it had conflicts with modern legal principles. For this reason, many scholars have neglected Chinese legal history, even by jurisprudents. Some one said in a seminar about examination for justices that the subject, legal history, was useless, and it had no difference whether people knew Cicero or not. Many people believe that modern jurisprudence is to protect “an economic man’s reason”; they concern much, about the techniques of the law, the regulation and the appliance of them. They seldom think about the wisdom of philosophy behind law. In fact, it the rules or regulations depart from the meaning of life, they will have no fresh life at all, as plants without roots or fishes out of water.

In the eyes of the western philosopher Russell, knowledge can be divided into three parts: first, the objective world, in which the authenticity can be tested; second, the belief or, theology, in which truth cannot be tested but only through devoutness or apocalypse; third, something between those two fields, that is, philosophy, history, etc. Russell was not a jurisprudent, so his theory maybe a one-sided view. Jurisprudence is a kind of knowledge between physical science and theology. Compared with the subject of philosophy or history, it is unique for its value of justice. It pays attention to the property interests and the meaning of life. Jurisprudence or the law is not only technical regulations for material interests, but also related to the philosophy. Of course, we do not mean that people should live in a world without the physical support but only virtues. It is the same reason why China should learn from the foreign.
However, we need to recognize that the value of law is not only based on material fortune. There is another standard, the wisdom of philosophy on life. The value of life depends on certain amount of fortune, but the increase of fortune does not necessarily lead to the increase of the value of life. Modern science and technology have helped people gain a large amount of material fortune, and the productivity increased thousands of times in the preceding periods. But modern science and technology can also ruin the whole human society in a split second. The instrumental reason of law cannot solve all problems, and modern Chinese are not wiser than before just because of their mastery of western jurisprudence or value standards. On contrary the Chinese legal culture has attached great importance in solving problems in reality, as well as answering the question of what is the meaning of life. I wish more and more people could realize that. And I believe that Chinese legal culture will contribute to the human being’s civilization as it has been in the history.