

From the Theory of "Good and Evil" to the Theory of the Rule of Law

Ming Yu-zhang^{1*}

¹ School of Law, Jiangsu University, Zhenjiang, Jiangsu, 210223, China

*e-mail: 532720327@qq.com

Abstract— In the current social background, a relatively perfect legal system has been established, and there are many laws and institutional norms to maintain social order. In this context, if we want to further improve the current system, we also need to learn from history. The study and study of pre-Qin legalist thought, in fact, can play such a role. At present, the study of pre-Qin legalist thought, for the current construction and development of the rule of law, is also relatively important.

I. INTRODUCTION

First of all, from the source of legalist thought, it was first produced in the Spring and Autumn period, the Warring States period, when the society was in a violent turbulent process. At that time, the landlord class began to rise and the slave society began to break down. Many vassal states began to expand their political ambitions, so they sought reform and reform. Under this background, legalism came into being. When legalists study the theory of human nature, their purpose is to develop a set of practical governance theory, so in the process of research, this paper will take the theory of human nature as the starting point of research. To explore some human nature ideas reflected in the legalist thought of rule of law.

II. "GOOD BENEFIT EVIL HARM" THEORY OF HUMAN NATURE

A. The meaning of the theory of good profit and evil harm human nature

Ok, for preferences, expectations; Profit, to translate profit, good; Righteousness of evil, hatred and avoidance; "Hurt" means hurt and disinterested. The theory of human nature, which mainly studies human nature, is the combination of the natural and social attributes of the concept of "human". The thought that "good and evil harm human nature" generally means that people have the instinct to seek good and avoid harm.

Legalists believe that everyone has the nature of "good, evil and evil" and "good to avoid harm". Guan said the businessman works day and night, and a thousand miles doesn't seem far away because he is attracted by the immediate benefits. Fishermen are not afraid of dangers, upstream, even sailing hundreds of miles, in pursuit of fishing interests. Therefore, in the process of reform, Shang Yang also proposed that in the process of reform, human nature must be grasped and the rule of law should be carried out. Only in this way can national governance be better completed. So it can be seen that the generation and development of the next thought is also because he wants to better achieve his political goals. Because it was a time when vassals were divided and melee, many vassal states were seeking reform and reform. Shang Yang, the representative of legalism at that time, was a great reformer. In that era, a hundred schools of thought contended. Therefore,

people pay more and more attention to some academic concepts and thoughts, and want to use it to guide practical practice. People have become mercenaries who will stop at nothing to satisfy their desires, even if those values are universally recognized and openly encouraged. Han Fei was shocked by this world, which influenced his thoughts of pursuing human nature, and finally regarded the legalist theory of human nature as "good and good and evil".

B. The connotation of the theory of benefitting and harming human nature

In the connotation of the theory of human nature, we can see that the thoughts put forward by legalists are different from the views of other theories. They consider problems from a utilitarian perspective, and the starting point of research is also a kind of human psychology, aiming to better realize the purpose of national hegemony. Therefore, in the process of studying legalist thought, he did not aim to realize the interests of the people, or to realize some kind of social welfare, but to realize a political purpose. So there is a big difference with our current idea of the rule of law.

According to legalist thought, everyone has some nature in human nature, such as greed for profit, good and evil. That is to say, for anyone, seeking advantages and avoiding disadvantages is a kind of human instinct, is a kind of natural instinct of human nature. For example, Han Feizi believes that the reason why people tend to be good and avoid evil and seek advantages and avoid harm are the requirements of human nature. Because people in the process of survival, to rely on their own body to resist the cold. But the body alone was not enough to protect itself from the cold, so outside help had to be sought, such as hunting for the skins of wild animals to keep warm. Legalists believe that self-interest is an instinct. Of course, there are scholars who disagree with these views. Some scholars believe that the legalist theory of human nature can in fact be summarized with the character of evil. "In the spirit of human nature, only profit, profit but most legalists believe that human nature is evil, Xunzi's disciple Han Fei has an obvious view on this. In order to fulfill the original intention of legalists in the Yuan Dynasty, the thesis only takes utilitarianism as the viewpoint of "taking good and evil as harm".

The economic base determines the superstructure. The economic base with slow progress cannot respond to the

material needs of the people with huge growth rate. Therefore, people compete for limited material wealth in order to survive and live a better life. Of course, it's not just about material benefits, it's about reputation, too. But this is not because of human nature, but because of "self-centered", to take some simple examples: the person selling the house wants everyone to be rich, all rich, not because he is so noble, but because only rich people can afford to buy a house; The shroud seller opened his shop near the hospital, not because he was wicked, but because he wanted to make a living and do more business. In this way, what we call "good" and "evil" is not because human nature is evil, but that it is so, human nature.

III. THE INFLUENCE OF THE THEORY OF GOOD FOR GOOD AND EVIL AGAINST HUMAN NATURE ON THE LEGALIST THOUGHT OF RULE OF LAW

From the perspective of the relationship between the rule of law and humanity, Han Fei, the representative of legalist thought, turns injury into another aspect that benefits from the above "self-caring", making full use of humanity to regulate human activities so that everyone can gain their own ego. People's own interests become the driving force for people to realize their career, promote harmony among people and promote social stability. Han Fei's theory of human nature starts from "good interests", takes individual interests as the axis, and pursues "public interests". As far as its realization path is concerned, the rule of law is the only way.

"Everyone who rules the world must be ruled by favors and those who like favors and those who don't, so both rewards and punishments can be used." Rewards and punishments can be used, bans can be established, and governance tools can be used." This sentence has two meanings. One is to point out that human nature is the foundation of the rule of law. The second is to analyze the different ways of ruling the world in different times: in the case of "ancient" things and enriching the people, the conflicts of interest between the people are relatively mild, the people do not fight, and the people govern themselves. At this point, the strategy for governing the world can be "moral". "Governance" and "today's world", "less wealth", the lack of social material wealth makes the conflict intense. At this time, moral preaching can only be reduced to empty talk, can only guide the situation, reward and punishment, the rule of law. In order to resolve disputes, power is advocated, violence is prohibited and order is maintained.

The legalist rule of law is the best choice based on the theory of "good, good and evil". This does not mean that the choice was forced. The rule of law is the best choice for society:

A. Standardization of the Law

Law is the balance of a country and the measure of the words and deeds of its people. It is recorded in the Sutras and classical books. It is manufactured by the government and widely available to citizens. Punishment is stable and not easy to execute. The rules of reward and punishment shall be enforced by the state. Basically, it refers to the nature of guiding and controlling people's behavior as a mandatory code of conduct.

B. Universality of Law

As an open social norm, law has universal binding force. Only law can provide uniform standards for people's words and deeds. Just as a carpenter's craft requires a measuring stick, thread, and ink to be accurate, an experienced merchant needs stones and beans to weigh something.

C. The justice of the Law

The justice of law is premised on openness. Allow officials and citizens to monitor each other on the basis of open and clear disclosure. Officials dare not break the law arbitrarily, and the people dare not break the law arbitrarily. If the subjects of a country do not obey the law, the most likely "law" is self-defeating if it does not work. Therefore, legalists believed that only when the king and the subjects, the upper and lower levels, all abide by the law, can the country get "great rule". At the same time, "great governance" also relies on the concept of rewards and punishments, does not vary from person to person, does not obey the law.

To sum up, the "good reason and evil profit" of the theory of human nature is not only the ethical starting point of the rule of law thought, but also the process of realizing the rule of law. The rewards and punishments are determined by the "benefit" and "harm". The law rules the country. A powerful promoter of rationalization.

IV. THE DIFFERENCE AND ENLIGHTENMENT OF LEGALIST THOUGHT OF RULE OF LAW IN CONTEMPORARY RULE OF LAW

A. The difference between legalist thought of rule of law and contemporary thought of rule of law

We believe that, under the background of the current era, there is no doubt that there are some differences between the rule of law advocated and the rule of law promoted in legalist thoughts. Although they are completely identical, they also have some common points, such as emphasizing the important role of law, especially the important role of statutory law, but there are very big differences in the specific connotation. However, it is helpful to carry out the current legal practice to not deny the correct understanding and cognition of the past thoughts, because to draw some nutrients from the traditional culture is also helpful for us to carry out the current idea of governing the country by law and promote the construction of a socialist country under the rule of law.

First of all, legalists emphasize the rule of law, the ruler is the ruler. It is the rule of the monarch rather than the rule of the people. The current "rule of law" is based on the "rule of the people under the leadership of the Party." In this kind of ruling and exploitation society, there are very big differences in the ruling class's oppression of the people. Our constitution clearly stipulates that all power belongs to the people, so we can think that under the current background, the rule of law we advocate is the rule of law of the masses.

Secondly, there are certain differences in the purpose of the rule of law. The rule of law advocated in legalist thought is to treat the people as the objects to be governed. The purpose is to realize the maintenance of power through regulating the behavior of the people, that is, to complete the constraint on people. The emphasis is on the protection of the sovereign's

rights. However, in the context of our current era, the owners of the rule of law power advocated are the people. In fact, any state organ or person specifically exercising state power should exercise the power within the scope of legal norms, that is, to emphasize the rule of law and serve the people. So as long as the public authority or the staff of the opposite exercise power, beyond a certain boundary, or in violation of the provisions of the procedure, then they have to bear certain consequences. This is the fundamental difference between the rule of law proposed under the background of the two times.

Third, the equal application of law is emphasized. Although the law in the past legalist thought is a tool of governance, it is not uniformly applied to all groups, but a core principle in the current rule of law is the principle of equality. It differs from the fact that legalist thought uses the method of rule of law to break the hierarchy of privilege with "no punishment", to put all people under control, to suppress and prevent people from being forced to obey the rule of monarchy "severe punishment law". The "rule of law" in the current context is not only the principles and rules of justice and the final bottom line, but also a guarantee of social fairness. However, we do not regard law as the only means to maintain social order, or even in all scenarios, it is necessary to apply law to complete the maintenance of the system. In many cases, it is more dependent on social public morality, or other non-legal methods to accomplish.

Finally, there is a great difference between the source of law in legalist thought and the source of current law. In legalist thought, law should be authorized by the monarch. In fact, the rule of law advocated is to elevate the monarch's personal will into law. The legal system we are currently promoting is certainly different from this idea. To obtain the authorization of the Constitution, the enactment of laws essentially comes from the authorization of the people, so we believe that the will reflected in the Constitution and the law is the will of the people. This means that governing the country according to the law is essentially based on the will of the people. So we can define the essence of the current rule of law, which is the rule of the people. This is different from the rule of law mentioned in the legal thought, which is still the monarchy in the final analysis.

It can be seen from the above content that the rule of law advocated in legalist thought is also established on the basis of the profound understanding of the theory of human nature, but it is still a tool to maintain feudal rule in essence. However, the current rule of law is based on the people. The ultimate goal of world domination is to conform to and serve the will of the people. There's a big difference.

B. The reference significance of "Human Nature Theory" of legalists to contemporary rule of law

The thought of legalist rule of law was put forward more than two thousand years ago, which can also be said to be the formation of an important school of thought in Chinese ancient history. In the current construction of the rule of law, we should properly absorb the essence of this excellent legal culture. Thus to better develop our country current rule of law. Specifically, we can learn from the following aspects.

1. Legislation

In fact, the reflection of human nature theory in legalist thought has positive and progressive significance. Although in essence it is still a reflection of the will of the monarch, it has also taken into account the thoughts of the governed. Although this was only a strategy for even beneficial management of the world in the social context at that time, it opened a gap for authoritarian rule to focus on human beings and played a huge positive role in social governance. At present, in the process of building the rule of law, it is also necessary to develop on this basis. For example, in the process of legislation, it is necessary to fully understand the thoughts and positions of the people, to ensure that the enactment of laws really meet the requirements of the broad masses of the people and truly reflect the will of the people. To realize this purpose, in the current legislative process, we also widely absorb the participation of social public opinion, and strictly in accordance with the democratic, open and transparent procedure, and complete the perfection and establishment of our legal and regulatory system.

2. Law-abiding aspects

The fundamental purpose of legalists to advocate and develop the rule of law is, of course, to maintain the rule and management of society under the feudal autocracy. But from another point of view, if a legal system and norms can be consciously observed by the broad masses of the people, then such a law is full of vitality and vitality, so from this point of view, the law must be observed is also in the process of legal work in the current need to pay attention to a problem. In particular, it is necessary to pay attention to the government must strictly abide by the law and carry out administrative acts in accordance with the law. For the general public, the process of consciously abiding by the law is actually a process to help strengthen the construction of the rule of law. It is also more beneficial for the operation of the legal system if the awareness of abiding by the law can be determined in the public community. Therefore, the discussion of human nature seeking advantages and avoiding disadvantages in legalist thoughts can also become a reference in the process of carrying out law-abiding work.

3. Law enforcement

In the process of research, legalists have fully understood human nature and emphasized the use of rewards and punishments to complete the promotion and deterrence of legal effects. However, we should not overemphasize the law as a tool of punishment. If we only see this part of the role of law, we will lose the real purpose of developing the rule of law at present. Under the current background of The Times, the more significance of our implementation of the rule of law is to better protect the interests of the broad masses of the people by restricting the exercise of public power, so that the rights and interests of the people will not be improperly infringed due to the abuse of power. Therefore, in the process of using the coercive power of law to ensure the stability of social order, we should also ensure that the law enforcement process must be in line with the law, so as to give the public a clearer psychological conviction, and make people more trust in the legal system. This requires law enforcement staff in the process of law

enforcement, must be civilized and standardized, must really do people-oriented, to the law as the criterion.

4. *Judicial aspects*

In judicial aspect, the theory of human nature in legalist thought also gives us some inspiration. For example, some punishment theories proposed by legalists may be too strict, which will intensify social conflicts to some extent. In the process of maintaining social order, we can not ignore the importance of justice. Generally speaking, we all believe that in the process of safeguarding fairness and justice, the judiciary is the most important bottom line. Therefore, under the current background, in order to realize social welfare and to better play the role of the judiciary, it is necessary to strengthen the perfection of the supervision mechanism, so that the people can feel the fairness and justice close to life in their daily life. So that every judicial result can be open and transparent, can be perceived by the public, touch, contact.

The legalist opened the first of our ancient rule of law, which has exerted important influence on the judicial system of the later generations. In this way, it can better form a close alliance between the rule of law and the rule of virtue, and give full play to the role of the legal system. It is also a necessary requirement for the maintenance of the existing order and the protection of the rights of the people. The doctrine of heavy punishment carried out by legalists had positive significance at that time, for example, it filled a blank of the previous theory and made up for the uncertainty of people's national policies in the previous process of governing the country. Of course, in the current society, we can not copy some of the previous theories, we must discard some of them do not meet the requirements of the current era. Only by taking its essence, discarding its dross, absorbing and utilizing the things in line with the requirements of the current era background, can we really play its role and significance.

5. *Rule of law*

Han Feizi, a representative figure of legalism, once proposed that if everyone did not restrain his own desire for profit, it would also bring disaster. Or a pursuit of one's own desires, if it is not carried out in accordance with order and norms, it will easily cause the disorder of social order. Because the nature of human beings is to seek advantages and avoid

disadvantages, they are selfish and will not consciously do good deeds, so at this time, more powerful external forces are needed to suppress them to carry out some behaviors in line with social order and social norms. This is also an important reason for legalists to emphasize the rule of law. Legalists and scholars supported the concept of heavy punishment and pursued strict criminal law. Emphasize the educational and intimidating role of law. Although it cannot be fully applied to the contemporary society, it is of reference significance to the development of the current legal system. In the process of implementing the rule of law, in fact, it is necessary to strengthen the political stability and consolidation, especially to solve some corruption and bribery problems emerging under the current era. If these problems can not be properly solved, will shake the current social foundation. In the process of anti-corruption work, in order to maintain social order and stability of the political environment, it is necessary to strengthen certain control and crackdown. This is also the objective requirement behind the current economic development. At present, there is a diversified development of interests in the society, so some people in order to seek illegitimate interests by all means, falsification. To do anything for money, this has caused a great impact on our market economy system. One reason is that they believe the cost of breaking the law is so small that the punishment is not enough to cause them significant damage. While achieving certain results in the rule of law in our country, we must make full use of human nature, maximize advantages and avoid harm, and increase the cost of illegal crimes. At the same time, we should put law in the first place, standardize people's ideological behavior, with moral education, ensure the steady development of our country's modernization.

REFERENCES

- [1] Lin Zhe, Human Nature Theory, Humanitarianism and Human Rights Research, *Jurist*, 2006 (6).
- [2] SONG HONGBING, "ON THE QUALITATIVE PROBLEMS OF LEGALISTS' THEORY OF" RULE OF LAW ", *PHILOSOPHICAL RESEARCH*, No.11, 2012.
- [3] SUN SHUSHENG, "LEGALISM: HISTORICAL DISCOURSE AND CONTEMPORARY MISSION", *COLLECTION OF POLITICAL SCIENCE AND LAW*, No.6, 2010.