
A Brief Analysis of the Differences in Legal Culture between China and the West

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Abstract: To promote cross-cultural exchanges and mutual learning in the rule of law in the 21st century, it is particularly important to deepen the understanding of the legal traditions of China and the West. As an important component of the cultural systems of China and the West, legal culture carries the historical memory, values, and social structure of a nation. There are significant differences between Chinese and Western legal cultures, which are not only reflected in the surface structures such as the construction mode of the legal system, the value orientation of legal concepts, and the operation mode of judicial procedures, but also rooted in the deep structures such as historical and philosophical traditions, social ethical foundations, and cultural psychological mechanisms. This article focuses on the differences between Chinese and Western legal cultures in terms of ideological sources, value orientations, social functions, and public recognition, and deeply analyzes the fundamental reasons for the differences from the perspectives of history and philosophy. Based on the background of globalization, it proposes possible paths for mutual learning between China and the West. The article aims to provide theoretical references for promoting mutual understanding and cooperation between China and the West in the legal field and promoting the common development of the rule of law civilization on the basis of respecting cultural diversity.

Keywords: Legal culture; Differences between China and the West; Comparative study

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1. Introduction

Legal culture is a subcategory of culture and profoundly influences people's behavioral norms^[1]. Legal culture itself refers to the overall manifestation of people's cognition, attitude, and concept of law, as well as the function and status of law in society during a certain historical period and social environment. It is both a product and a carrier of culture. Different scholars may have varying definitions of the connotation and scope of legal culture, which reflects that legal culture, as a complex concept, involves multiple dimensions of factors^[2]. Therefore, it is not difficult to understand that due to differences in historical development paths, philosophical thought bases, and social life structures, China and the West have formed distinct legal cultural traditions^[3].

2. Ideological Origins

2.1. Ideological Origins of Chinese Legal Culture

The ideological roots of Chinese legal culture can be traced back to the various schools of thought during the Pre-Qin

period, with the influences of Confucianism, Legalism, and Taoism being the most prominent.

Confucianism emphasizes “rule by virtue” and advocates “rule by ritual”, stressing moral education and human relations. It holds that a hierarchical and orderly social structure can be established and social harmony achieved through “ritual”, that is, moral education and ethical norms. Core concepts such as “benevolence”, “righteousness”, “propriety”, “wisdom”, and “trustworthiness” have profoundly influenced the value orientation of traditional Chinese law, making it not only a tool for regulating behavior but also a means to maintain ethical norms and promote social morality. Traditional Confucian concepts such as “the three cardinal guides and the five constant virtues” and “the ruler rules, the minister serves, the father leads, and the son follows” still leave traces in Chinese society today. Legalism advocates “teaching by law and taking law as the teacher” and “no distinction of rank in punishment”, emphasizing the use of clear and strict legal systems for national governance and social control, and emphasizing the objectivity and authority of law. Contrary to their surface appearance, the Confucian and Legalist schools gradually absorbed and borrowed from each other after the Han Dynasty, forming the traditional legal concept of “virtue as the mainstay and punishment as the auxiliary, and the unity of ritual and law”. Through the long-term selection and sedimentation of history, the two schools contributed to an indispensable legal work in China and even the world - the “Tang Code”. In this composite system, law is not only a tool for punishing crimes but also a means of promoting moral education, and “going from ritual to punishment” becomes the basic logic of traditional legal operation. In addition, the Taoist ideas of “following the natural way” and “governing by non-action” have also imperceptibly permeated into law. The legal concept that “law should conform to human nature and the way of heaven and not overly interfere with the natural order of society” clearly shows the influence of Taoist thought.

In summary, the complementary ideological structure of Confucianism, Legalism, and Taoism makes traditional Chinese legal culture emphasize social order as a whole and ethical obligations. To a large extent, law is regarded as a tool for maintaining the norms of society and educating the people, rather than a system for defining and protecting individual rights.

2.2. Ideological Origins of Western Legal Culture

The formation and development of Western legal culture have also been deeply influenced by multiple intertwined ideological traditions, with the core being the rational spirit of ancient Greece and the rationality of the rule of law in ancient Rome. The famous Greek philosophers Socrates, Plato, and Aristotle initially constructed the dual concept of natural law and positive law, emphasizing that law should embody universal rationality and the principle of justice. Roman law further laid the institutional foundation of the civil law system through systematic codification, strict procedural rules, and specific concepts of rights, making law a technical normative system for regulating social relations.

Most Western countries are common law countries, and their legal culture did not arise out of thin air but was gradually formed through the accumulation and integration of a series of profound ideological origins over the course of history^[4]. Since the late Middle Ages, the reinterpretation of natural law by Christian theological ethics, especially scholastic philosophy, has injected moral sanctity and universalism into Western legal culture. Subsequently, the modern Enlightenment Movement became a crucial turning point for the formation of the modern Western concept of the rule of law. A large number of thinkers such as Locke, Rousseau, and Kant advocated for individual autonomy, equality of rights, and the social contract, arguing that the existence of law is to safeguard people’s natural rights and freedoms, and that government power must be strictly constrained by the constitution and law. This ideological tradition gradually evolved into a modern rule of law model supported by human rights protection, separation of powers, and procedural justice.

Western legal culture is not the product of a single tradition but rather the result of multiple ideological streams accumulating and evolving over time. Therefore, its formation and development is a process from seeking external rationality and divine will to discovering and defending the intrinsic value and rights of individuals. It integrates the philosophical speculation of ancient Greece, the legal practice of ancient Rome, the moral concerns of Christianity, and the rights consciousness of the Enlightenment, ultimately constructing a modern rule of law model with the essence of restricting public power and protecting private rights.

In contrast, the traditional Chinese legal system lacks the concepts of individualism and equality of rights in the Western sense, and more prominently features the characteristics of ethical and order-based laws^[5]. Western legal culture emphasizes systematization, logic, and judicial independence in its institutional design, and always stresses the functions of legal rights protection and power restraint in its value orientation^[6], demonstrating a strong individualism and formal rationality.

3. Value Orientation

3.1. Value Orientation of Chinese Legal Culture

Chinese legal culture has always emphasized that collective interests and social harmony occupy a core position in the value system. Law is regarded as an important tool for maintaining national stability, social harmony, and family ethics. Under this tradition, individual rights are often embedded in the social relationship network, and the law focuses on resolving disputes, educating the people, and achieving overall social coordination and unity. This concept originates from the Confucian tradition of “valuing righteousness over profit”, emphasizing an individual’s responsibility and obligation to the family, society, and the state rather than the legally defined personal autonomy space. For instance, within the traditional “Three Cardinal Guides and Five Constant Virtues” ethical framework, the ruler is the guide of the minister, the father is the guide of the son, and the husband is the guide of the wife. The responsibilities and obligations under this hierarchical order are absorbed by the law and become important considerations in judicial decisions. Specifically, when judges make judgments, they not only rely on written laws but also integrate “emotion, reason, and law” for comprehensive judgment, aiming to achieve a result that conforms to the general moral concepts and ethical norms of society, in order to “stop litigation and disputes” and maintain social order. This legal culture has profoundly influenced the development trajectory of the Chinese legal system, making it more inclined towards social governance and moral education rather than merely protecting and remedying rights.

Therefore, in the traditional Chinese legal system, there is a more common tendency of moralization of law and ethical judicialization, and the judicial process often involves the unification of substantive justice and social effects.

3.2. Value Orientation of Western Legal Culture

In contrast, since the Roman concept of private rights and the Enlightenment, Western legal culture has always attached great importance to the protection of individual rights and freedoms, viewing law as a fundamental tool to resist the infringement of public power and protect the private domain. The priority of individual rights over state power is the core value of Western legal culture. The ideas of John Locke have had an extremely profound influence on Western legal culture. His core viewpoints include: natural rights, which are the inalienable rights of life, liberty, and property that people are born with; social contract, which means that the government is established to protect these rights and its power comes from the consent of the governed; and limited government, which means that if the government infringes upon these rights, the people have the right to resist. These concepts directly gave rise to the Western legal culture’s notions of “rule of law” and “rights-based”, that is, the primary purpose of law is to protect individual rights from arbitrary infringement (including from the government). In addition, although the Magna Carta (1215) was a product of the feudal era, its Article 39 - “No free man shall be arrested or imprisoned or deprived of his property or outlawed or exiled or in any way destroyed, except by the lawful judgment of his peers or by the law of the land” - became the ideological source of the “Due Process of Law” in later times, establishing the principle that even the royal power must be subject to legal constraints.

A comparison of the development and evolution of Chinese and Western legal cultures reveals that traditional Chinese legal culture focuses on the public, with “law centered on punishment”^[7] and emphasizing the pursuit of social adjustment and regulation; while traditional Western legal culture focuses on the private, with “law centered on the spirit of contract”, viewing justice and freedom as ideals^[8]. These two legal cultural orientations have no absolute superiority or inferiority, but they profoundly influence the construction and operational logic of the legal systems in China and the West, and have shaped different models of social governance and citizens’ legal awareness in different historical contexts.

4. Social Functions

4.1. The Social Function of Chinese Legal Culture

In traditional Chinese society, law was more often regarded as a tool for the state to exercise its rule^[9], used to maintain the stability of the regime and the social hierarchical order^[10]. Influenced by the Legalist idea of “teaching through law” and the Confucian concept of “virtue as the mainstay and punishment as the auxiliary”, law was often associated with punishment and control, and did not become an object of universal belief among the people. The public often held a skeptical and distant attitude towards official law, and preferred to resolve disputes through informal means such as folk mediation, interpersonal relationships, and moral negotiation to restore interpersonal harmony and avoid going to court. “Disliking litigation” and “fearing litigation” became common psychological states among the people^[11]. Traditional social resources such as clans and village regulations played important roles in resolving actual disputes, effectively functioning^[12]. Specifically, clans mediated internal conflicts through the authority of the clan head and dealt with disputes among members based on clan rules and family laws; village regulations, centered on moral education, resolved disputes at the grassroots level through mutual restraint and persuasion among neighbors.

These informal mechanisms not only made up for the insufficient penetration of official law in grassroots society but also strengthened the ethical order and interpersonal relationship network of traditional society, making the social function of law more focused on maintaining the ruling order.

4.2. The Social Function of Western Legal Culture

Western society has long held a deep faith in law, which is regarded as having supreme authority, not only as the foundation of social governance but also as a cultural identity and value support. This concept of the rule of law is rooted in natural law thought, the Christian view of divine order, and the social contract theory advocated by the Enlightenment: natural law thought holds that there exists a universal law derived from nature and superior to man-made laws, providing a philosophical basis for the legitimacy of law; the Christian view of divine order regards secular law as the manifestation of God’s will on earth, emphasizing the sanctity and inviolability of law; the social contract theory of the Enlightenment asserts that state power originates from the consent of the people, and law is the embodiment of the people’s will, thereby establishing the constraining effect of law on government power.

In the Western tradition of the rule of law, law transcends political power and even surpasses the government; the constitution, as the fundamental law, has the function of constraining state power and safeguarding citizens’ rights. The judicial review system of courts grants judicial organs the power to review whether legislative and administrative acts comply with the constitution, ensuring the unity of the legal system and the supreme status of the constitution; the universal compliance of citizens through their daily respect and observance of the law jointly builds a “law above all” cultural ecosystem. This ecosystem not only regulates the behavior of social members but also shapes the core values of fairness, justice, and rights protection in Western society, becoming a key cultural force for maintaining social stability and promoting social development. This difference reflects the deep-seated divergence between China and the West in terms of legal culture: Chinese tradition places greater emphasis on the practicality, governance, and social control functions of law, stressing that law serves the goal of governance; the West, on the other hand, emphasizes the transcendence, normativity, and rights protection functions of law.

5. Public Recognition

5.1. Public Recognition of Chinese Legal Culture

China has long been in the “rule by law” stage, focusing on using law as a tool for national governance and relatively neglecting its functions of rights protection and public opinion absorption. During this stage, law was more often seen as an embodiment of the will of the ruling class, with the concepts of “punishment originates from military force” and “law comes from the sovereign” being emphasized. The formulation and enforcement of law often carried a strong

administrative flavor, and the public's perception of law mostly remained at the level of "fear" and "obedience" rather than active recognition and application.

However, with the comprehensive advancement of the rule of law after the reform and opening up, China has undergone a historic transformation from "rule by law" to "rule of law" - not only focusing on the completeness of the legal system and establishing a socialist legal system with Chinese characteristics centered on the Constitution, but also emphasizing the implementation effect of law, the full protection of rights, and the effective restraint of state power.

Under this background, citizens have more opportunities to actively participate in legal practice through various channels such as public consultation on legislation, the people's jury system, judicial supervision, the petition system, and legal aid. The legal awareness of citizens has also been continuously enhanced through ongoing legal education (such as "Constitution Publicity Week" and "Law Enters Six Areas" activities), rights enlightenment education, and the construction of a legal culture. More and more people have come to realize that law is not only a norm for constraining behavior but also an important weapon for safeguarding their own legitimate rights and interests. However, due to the influence of the "rule by man" concept in historical traditions, the interference of factors such as "relationships" and "human feelings" in social customs, and the imbalance of some grassroots legal service resources and the existence of individual irregularities in the implementation of law, the public's trust in law and the willingness to use law to resolve disputes are still in a stage of gradual growth and improvement.

5.2. Public Recognition of Western Legal Culture

In Western legal culture, the tradition of citizen participation in the legislative and judicial processes has a long history, which can be traced back to the city-state democracy of ancient Greece, continued in the development of civil law in the Middle Ages, and became an important feature of modern rule of law societies after the establishment of constitutional and legal systems through the bourgeois revolutions in modern times. The multi-level legal participation channels not only vividly reflect the political concept of "sovereignty of the people", that is, state power comes from the people and serves the people, but also effectively cultivate citizens' awareness of rights and rules - citizens gradually recognize their legal rights in the participation process, and at the same time understand and respect the behavioral norms established by law, making law no longer an external coercive constraint but internalized as a value consensus and behavioral standard that the whole society adheres to.

Strong legal awareness has led to a cultural habit in Western society of resolving disputes through judicial means. Whether it is personal disputes or group conflicts, people first think of seeking legal help and resolving them through legal means such as litigation or mediation rather than resorting to violence or other illegal means. This trust and reliance on the judiciary have made law enjoy high authority and credibility in social life, becoming the core force for maintaining social order, resolving social conflicts, and ensuring fairness and justice, and thus deeply shaping the foundation of public recognition of the rule of law in Western legal culture.

Therefore, the differences in citizens' participation and legal awareness between China and the West not only reflect the different stages of historical evolution but also reveal the future direction of China's rule of law development - that is, while improving institutional construction, more emphasis should be placed on the cultivation of the foundation of a rule of law society and citizens' legal culture^[13].

6. Conclusion

The differences between Chinese and Western legal cultures are deeply rooted in their respective rich historical and cultural soils, reflecting different paths of civilization and value choices. Since the reform and opening up in 1978, economic, cultural, and trade exchanges between China and the West have become increasingly frequent, especially cultural exchanges have become more active^[14]. Entering the 21st century, exchanges at the national and individual levels have become more frequent and complex than before. With the in-depth development of economic globalization,

the commonalities between the laws of different countries have increased while differences have decreased^[15]. Chinese and Western legal cultures are influencing and learning from each other (such as the similarity between China's "plea bargaining system" and the Western plea bargaining). During the process of building the rule of law, China has gradually absorbed concepts such as rights protection and procedural justice from Western legal systems; the West has also begun to pay attention to the harmonious values and mediation mechanisms in Eastern cultures, attempting to strike a balance between judicial efficiency and social harmony.

Under the background of globalization, due to the stable characteristics of traditional legal cultures and material production methods, Chinese and Western legal cultures still have differences in terms of the spirit of law, value concepts, and legal beliefs. Against this international backdrop, the author believes that promoting dialogue and exchanges between Chinese and Western legal cultures under the premise of respecting differences not only helps to build a more just and efficient legal system but also opens up a possible path for the common progress of human legal civilization.

Disclosure statement

The author declares no conflict of interest.

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