



# A Philosophical Perspective on the Breakdown of the Rule of Man Element in Ancient Chinese Laws

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## Abstract

Under the development of the Chinese legal system and monarchical authoritarianism, the influence of human rule and emotions remains prominent. Consequently, the characteristics of the law can appear somewhat awkward, as the concept of rule by man, in a broad sense, may encompass human emotions to a certain extent. In addition to the fact that there is no dichotomy between "law" and "legal" in the Western sense in China, the ontological foundation of law is slightly thin, and it is important to seek metaphysical support for ancient Chinese law in order to explore the pure essence of ancient Chinese law. The application of law in China also echoes the poorly-ordered pattern of vernacular society and clan norms, so that the implementation of the law is often bound by human feelings, and only after jumping out of such constraints will the Chinese legal system be able to glow with the glory of "law". This search should not be based on contemporary perspectives but should be explored from the traditional Chinese philosophical thought that gave birth to ancient Chinese law.

## Keywords

Ancient Law; Confucianism; Humanism; Metaphysics

## 1. Rule of man and the human factor in ancient Chinese law

Ming Taizu called on the people to catch the evil officials' precedent. Such as "in the future where there are officials, if the criminal name, to be wrong for wrong, wrong for right, was wronged, the people and the four neighbors, next to the public door, will be the criminal room the official to the Beijing".

But this desire for once-and-for-all radicalism is just a vague fantasy, standing on the opposite side of Confucianism and the nature of feudal society, moral passions will not become the object of moral philosophy praised, irrational morality is just a cloak of morality of the emotions of the catharsis, the "Letters Patent" ultimately with the departure of Zhu Yuanzhang and the name of the real dead. It is evident that the inevitable fate of the ancient Chinese legal system was to be bound by the rule of man. The law itself was shifted by the will of the monarch, who was the ruler, and did not have its own independent social control attributes; the success or failure of the law depended on the monarch and other bureaucratic groups. The personal feelings of the monarch became the shackles of the rule of man that the ancient Chinese law could not get rid of. With the combination of the monarch's arbitrary authority and his high position in the temple, it was inevitable that his thoughts and decrees were out of touch with society. This disconnect is also the hard-to-erase deficiency of the ancient Chinese law reform and legal innovation. Ancient Chinese judicial practice was often trapped in the logic of the rule of man.

Fei Xiaotong once pointed out in "Native China" that the Chinese native society exists in the form of a differential order pattern, arguing that the Chinese society is native. From the soil, a glorious history is created, but ultimately, it is bound by the soil. This differential order pattern of vernacular society possesses the unique characteristics of

familism, the rule of elders, and the law of human kindness, with the family as the core, and both blood and geographic ties sustaining the society (Qin Pengfei, 2022). This kind of society will have a compatible and incompatible reaction when dealing with the law. While human society naturally produces interpersonal relationships, in a differential order pattern such interpersonal relationships are reinforced and oriented to a degree of humanism that is multi-sensual but lacking in objective rationality. In such a society, the application of law cannot but take the form of mediation. This is because mediation is the best option for humane considerations and to settle the matter honorably. But mediation itself is also inseparable from human feelings. In people's favorite "Dream of Red Chamber" Rose Dew case, the reason why Ping Er was able to properly resolve the case, indispensable Baoyu's help, although the case in time to crack, but also had to consider the face of the third lady Jia Tanchun. It is clear here that if there was no Baoyu, a good man with power who was willing to "sell" this favor, to what extent would the case have developed? (Deng Chunmei, 2019). In the face of the generally low level of social spirit and serious class oppression of feudal society, the arbitrary and capricious behavior of the strong and the weak, the regulation of the inevitable presentation of shirking and delaying the natural dissolution of the conflict, or the compromised treatment, so it is inevitable to cause the paradoxical logic of "no principle and mud", which is the same as "no principle and mud". Therefore, it is difficult to avoid causing "no principle and mud" of the paradoxical logic of the prevalence of the general. The human condition so profoundly affects the impartiality of judicial practice.

And in the reality of ancient China, people often have greater humane, considering the humane would inevitably fall into the trap of humane. When the subjective human will discourse power is higher than the objective law, a major obstacle to judicial practice is reflected in a kind of instability, that is, the rule of law has become the kernel of the rule of man.

## 2. A philosophical breakdown of the ancient Chinese rule of law factor

Under the modern system of jurisprudence, the "human being as an end in itself" is an important philosophical basis for law. From this philosophical concept, such jurisprudential categories as the law of crime and punishment and autonomy of meaning are derived. From this theory, we can see that the ancient Chinese legal system, which uses human beings as a means, is non-modernized. In order to eliminate the shortcomings of ancient Chinese law in terms of human feelings and the rule of man, it is necessary to establish the fundamental idea that man is the end in itself. In order for ancient Chinese law to enter into the logic of the discourse that man is an end in itself by renouncing itself, it is necessary to enter into the original philosophical discourse system of ancient Chinese law to think about it.

Every social system corresponds closely to social psychology, and behind these two is a philosophical root. For one thing, the Confucian principle of "no rites are inferior to those of the common people, and no punishments are inferior to those of the great masters" naturally delineates the social functions of human beings that are not equal to those of other human beings. Dong Zhongshu divided human nature into "the nature of the saints, the nature of the common people, the nature of the fighting night", that is, for the law cannot be equally applied to provide support for the theory. The Legalists advocated that the openness of the law was conducive to the popularization of the law, but the view that the law should be used as a teaching tool and the officials as teachers kidnapped the law with power. The legalist's idea of "the constitution is written in the government" makes the law become the existence for the king and for the rule of the people, the legislator, and the judiciary and the vested interests of the trinity of the combination of the objectivity of the law and the independence of the law has been greatly infringed upon. So helped the development of the ancient Chinese law of civil and criminal indistinguishable from the public law, the color of the development of this feature. Secondly, the ancient Chinese law was not regarded as the first choice because of the Confucian idea of emphasizing rituals over law. Dong Zhongshu argued that winter is a time for punishment, when the yin is prevalent and full of murderous air, which makes it difficult for the law itself to rise to a high and sacred status in ancient China. The existence of etiquette is the requirement of "the great virtue of heaven and earth", and the requirement of the rule of the sages, and the fact that people have benevolence within and etiquette outside is the reflection of the virtue of heaven and earth in people's hearts. In ancient China, law generally existed as a means of last resort for the so-called "people of the night and day" and as an aid to and subordinate to the existence of rites, and it did not have an independent, metaphysical status, but only belonged to the level of techniques and instruments in traditional Chinese thought (Zhang Xiujie & Liu Weihua, 2022). The legitimacy of its existence has always been challenged by the rule of sages and the culture of rites and music. In the case of conflict between moral reasoning and legal authority, it is unavoidable that human feelings outweigh legal reasoning, as Confucius said, "The father is hidden for the son,

and the son is hidden for the father, and the straightness of the situation is in it". Moreover, in the ancient Chinese vernacular society, on behalf of the ethical and moral clans, township sages and so on become one of the executors of human feelings, Qin Hui summarized that "the power of the state does not go down to the counties, under the counties only the clans, the clans are all self-governing, self-governance depends on the ethics, the ethics of the creation of the township gentry. "The words and deeds of the squires and sages and the rules of the clans often equaled or even exceeded the laws in the local area. This has in fact impacted the popularity of objective law in social governance. From this, we can see that the defects of ancient Chinese law were mainly due to the incomplete and unequal nature of the applicable class, which did not have its own metaphysical foundation, resulting in a low status and low effectiveness in the vernacular society. It is difficult for people to demand an idea that is free from the limitations of the time in which the idea itself was developed.

In ancient China, it was difficult to popularize the law to all classes, and even when it was popularized, it was difficult to equalize the application of penalties, a phenomenon that always appeared together with the fact that the power of interpreting Chinese law was entirely in the hands of the officials. This is inextricably linked to the traditional Chinese thinking centered on Confucianism, which emphasizes conclusions but lacks arguments, and which has its political roots in the system of the rule of man. Under the premise of the lack of argumentation, the interpretation of the law is undoubtedly in favor of the party with absolute authority. If we start with logical reasoning, we can see that many ancient Chinese convictions are not sufficient, such as the crime of private practice of astronomy. The reason for setting up such a crime was only the influence of the ideas of "induction of heaven and man" and "commanded by heaven" and prophecy theology. Dong Zhongshu said, "The country will have lost the road of defeat, and the sky is the first disaster to condemnation, do not know self-reflection, but also out of the strange to warn of fear, do not know the change, and the injury and defeat and even". Therefore, it can be seen, that astronomy in ancient China, especially after the Han Dynasty, and the emperor's moral integrity and the legitimacy of the royal family with the world and the establishment of the country are closely related. Therefore, the crime of private practice of astronomy was often associated with the crime of Zuzhu speech. However, the argument of this law "delusion of heaven, strange force confuses the gods" is contradictory to the establishment of the Christian Supervision and other departments. The ruling class was not unaware of these reasons but chose to ignore the inherent differences between the two provisions, which were both favorable to their own rule.

When thinking out of the ancient Chinese ruling class ideology, it may be able to realize the unfairness of the ancient Chinese judicial practice and legislative practice. Such as Huang Zongxi once said, "the king and the minister, a total of trailing wood people also; if the hand does not hold the rope, feet do not track the ground, trailing wood is only entertained by laughing at the trailing wood before the trailing wood from the trailing wood to think that good, and the trailing wood of the job is deserted. "Thus, Huang Zongxi logically established the "rule of the world" as the factual basis of the relationship between the ruler and the minister, and agreed to constrain "the world's great harm" of the monarch of the chaotic rule. Huang Zongxi reflected on social pathology and organized the system through logic, and then realized his idea through a series of logical checks and balances (Yang Qingqi, 2023). The logical refutation within the heart makes it easy for people to see the contradictions of the theory and cause reflection, so as to strip away the prejudice, it can be seen that logic is to prevent the rule of law from falling into the rule of mandarins, i.e., the right to enforce the law and the right to interpret the law by the powers that be abducted by the important gateway to the use of logic for the cultivation of law enforcement in the process of the judicial process of procedural awareness has a unique role to play, and the use of procedural consciousness of the power of caprice can achieve a certain degree of constraints. The use of logic has a unique role in cultivating procedural awareness among law enforcers in the judicial process.

In response to the ancient Chinese law was "kidnapped" by the "ritual" and difficult to have a sense of autonomy of this problem, at the same time, we should see that this and the ancient Chinese law attached to the ritual of this phenomenon exists at the same time, the ancient Chinese law lacks its own direct philosophy of law. That is, ancient Chinese philosophical thought is the foundation of the rite, and the rite is the foundation of the law. Such as Xunzi, although advocating rites and law, still emphasize "the rites, the law of the big points, the class of the program also". Although Dong Zhongshu did not abandon the law, in the "base of righteousness" chapter put forward "heaven's pro-yang and sparse yin, any virtue and not the punishment," and thus will be generous virtue simple punishment as "the intention of heaven". Ancient Chinese law did not in fact exist in an ancient Roman "law". In the Roman discourse, law existed as a transcendent, often called natural law, which was the formal basis of law. Antigone's revolt against the king's injunctions and his rebuke of Creon was based on his rebuke of the king's violation of the unwritten Greek

practice of "divinely directed" law. It is clear that the development of a transcendental conception of "law" was a powerful disincentive to the power-worshipping societies of antiquity. However, the ontological foundation of the transcendental dimension was already in place in ancient China, only that this meaning was obscured by other concepts such as "virtue" and "rites". The ancient Chinese concept of transcendental law is not the same as the ancient Western concept of "law". While Western concepts are mostly derived from the "divine" tradition and objective definitions of virtue, such as "justice" and "righteousness", such ideas in ancient China were mostly formulated on a secular level. Meanwhile, it is mentioned that "the unleashed nature of joy, anger, sadness, and happiness is called the middle; and when it is unleashed, it is called harmony. "Such normative requirements for human thought and behavior can be found everywhere in traditional Chinese thought, but they are rarely associated with law. The principle of "protection of legal interests" adopted in modern Chinese criminal law also protects the legal interests of citizens from being infringed upon by others, and, on the other hand, educates citizens not to engage in behaviors that are contrary to the laws stipulated by the will of the people. Although the requirements of the Meanwhile are on a higher moral level, the logic of the discourse is very similar to that of the protection of legal interests. It is actually asking people not to commit acts that are contrary to the requirements of human nature as stipulated by the will of goodness, and this kind of binding thought can be directly transplanted to the legal level without seeking the intermediary of "rites" and morality.

In the opening chapter of the Meanwhile, it is stated that "The nature of the Divine Order is called nature, and the nature of the mind is called the Way". The word "nature" separates the Dao from the Mandate of Heaven, and the act of acting according to the law, as an existence with practical significance, undoubtedly belongs to the level of "Dao". In other words, the legal behavior in the original "providence" communication also needs to use "sex" as a bridge. "Sex is the first level of existence connected with the transcendent concept of the Mandate of Heaven, while the legal act is only the second level of existence". But into the era of Song and Ming philosophy, Hu Hongfa sex sound, advocating "the prevalence of gas, sex for the main". At this time, "sex" itself has become a transcendent concept, and the law also has the conditions to leap to the first level of existence. Sex is the manifestation of physical nature at the same time also manifested as human nature, and human behavior, including legal behavior and human nature is a two-body, behavior issued in the sex. As Wang Shouren said, "a thought is launched at the line", which is for the legal behavior to find a metaphysical basis. In Hu Hong, sex is not only contained in the human heart but also exists as the essence and basis of the universe. Hu Hong that things have qualitative, and the nature of the universe that is embodied in the essence of a specific thing has the certainty of the provisions of the nature of the universe. At this moment, the law and the universe can be directly echoed by ontology. Hu Hong's "sex good and sex evil not to" and "heavenly reason and human desire of the same body and different use" of the idea of the legitimacy of the law also has a very important significance. In traditional Confucianism, the law is not given high importance because of its attribute of the lowest moral limit. However, Hu Hong inherited his predecessor's claim of recognizing human desires to a reasonable extent, and made it an existence alongside the Divine Principle, and Hu Hong did not admit that moral goodness could fully encompass the understanding of the cosmic ontology of "nature". This undoubtedly has the significance of recognizing the rational necessity of law.

### 3. Possibility and necessity of modernizing and applying the human condition

Confucius said, "I am like a human being who listens to lawsuits, and I will make sure that there are no lawsuits! The idea of no litigation has a deep historical, cultural, and philosophical tradition in China. Since the Zhou Dynasty, the idea of virtue with heaven gradually became the main line of political thought, especially in the traditional Confucian concept of benevolence, righteousness, propriety, wisdom, and faith is the specific embodiment of virtue, the gentleman and sage is the ultimate pursuit of the Chinese tradition of life, so the human nature of the consideration of the Chinese traditional thinkers from the moral level of most of the disputes between people to consider the settlement of human beings. In China, although the feudal lords, but the social environment of the same family with the same origin and relied on agriculture to survive, the formation of geography, and blood closely combined with the townships, and clans of the region of the combination of a small range of this complex social environment, it is difficult to form a relationship between people similar to the ancient Roman society in the relationship of pure commodity trading. Humanity in ancient Chinese society had a pivotal position in the beginning of the birth of human feelings is not linked with the kind of humane, the latter is with the deep development of authoritarian centralized power in feudal society and the solidification of the formation of the class, to favoritism, not reporting the existence of the embodiment of the knowledge. The former is a kind of people and another kind of people naturally formed differently from other people's intimate relationships, this kind of human feelings, although with the development of feudal

society will become subordinate to the rule of man and the legal system of the obstacles, but in the traditional ancient Chinese society complex and diverse environment and Confucianism as the representative of the maintenance of feudal stability and order of the ideological guidance, human feelings is indeed a factor that cannot be ignored, and accompanied by the mediation is the concomitant mediation was a means that could not be discarded, but the distortion and utilization of human feelings was an inevitable part of the development of feudal society rather than the original sin of human feelings itself. Moreover, it can be seen that in the midst of the turmoil of the breakdown of rites and music, the Confucian way of benevolence, righteousness, and gentlemanhood, and the idea of cosmopolitanism, etc., are still the splendor of Chinese thought, for these ideas are said from the level of contingency. Similarly, if we also look at the concept of human kindness, which is linked to the Confucian concept of contingency, from the contingency level, then this "contingency human kindness" can also bring a value that transcends the limitations of the times. This "contingent human feeling" can be taken to mean the existence of friendship, harmony, and mutual help, which is the true nature of human life and human emotions. Based on the consideration of such human feelings, Confucianism puts forward the idealized idea of no lawsuit.

In Xunzi, Confucius detained a father and son in a lawsuit without handing down a verdict, and in the end, the father withdrew the case and the grudge dissipated. The deeper thinking behind this practice is based on the consideration of human nature. Firstly, it is hoped that the knot can be resolved through inner self-realization, rather than violent intervention by power. The second is that the maintenance of good social customs cannot rely on severe punishment and law, but on moral indoctrination, and the former is ultimately only a momentary achievement (Li Dejie, 2022). It can be said that Confucius thought throughout the history of Confucian philosophy, and political science. The death of Qin in the second century is an example of the inability of harsh laws to resist the surging public opinion. Confucianism's consideration of the goodness of human nature and today's demand for respect for human rights have achieved the same effect, that is, both can promote the realization of the degree of punishment from heavy to light, a progressive manifestation of historical development and inevitable result, lightening of punishment is the inevitable trend of historical development. The Confucian theory of the absence of lawsuits is also similar to today's jurisprudence, which advocates the prudent application of penalties and the application of alternative measures as far as possible. Mencius advocated that "compassion is the end of benevolence; shame is the end of righteousness; resignation is the end of propriety; right and wrong is the end of wisdom". The heart of the four ends can only be cultivated through kung fu theories such as seeking peace of mind and cultivating the vitality of the spirit, but it cannot be activated through the intervention of external forces. As the core of Mencius' theory of the goodness of nature, the heart of the Four Ends provides support for the possibility of realizing Confucian lawlessness. At this level, the four cardinal points of the heart can serve as a formal argument for the absence of litigation in ancient Chinese philosophy. Harmony is the basic value of the traditional Chinese mediation system and the ultimate cultural ideal, and its profound ideological root lies in the concept of "unity of heaven and mankind", which is the pursuit of "inward transcendence" in traditional Chinese culture. Ancient Chinese law is the product of a specific historical period, to remove the rule of man and a specific period of overriding the law of human feelings is the first step to examine its reasonable core. Human feelings that belong to legitimate emotions and are not abducted by power are an important feature of human civilization.

## References

- Deng Chunmei. (2019). The Problem of "Harmonization" in Chinese Traditional Mediation—The Case of "Rose Dew" in Dream of Red Mansions. *Journal of Xiangtan University (Philosophy and Social Science Edition)*, 43(05), 153-157.
- Li Dejie. (2022). Judicial Wisdom of Confucianism from the Truth of Confucius' "No Lawsuit". *Literature and History World*, 07, 20-23.
- Qin Pengfei. (2022). The analytical path of the concept of "differential pattern": taking Fei Xiaotong's analysis of the public-private issue as an example. *Journal of China Agricultural University (Social Science Edition)*, 39(06), 146-161.
- Yang Qingqi. (2023). On the misinterpretation of "Nothing escapes between heaven and earth" by Xiaoru in "The original ruler"—And the breakthrough of Huang Zongxi on "the righteousness of ruler and subject" from "Zhuangzi—Let the king". *Journal of Yulin Normal College*, 44(06), 9-14.
- Zhang Xujie & Liu Weihua. (2022). On the Philosophical Significance of Dong Zhongshu's Thought on Law. *Journal of Hebei University of Economics and Trade (General Edition)*, 22(01), 34-38.