

## On the Research Object of Chinese Jurisprudence

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**Abstract:** The legal system is very complex, but jurisprudence plays a very important role both in character and position in the legal system. There are two kinds of legal thinking: one is thinking according to law, the other is thinking related to law. As for the department law, generally, the academic form is annotation law, which belongs to the category of “thinking according to the law”; while jurisprudence as a whole belongs to “thinking about the law”, and “thinking according to the law” provides services for jurisprudence. This paper focuses on the analysis of the research objects of Chinese jurisprudence, mainly expounds the research objects of Chinese jurisprudence, and discusses and summarizes the research objects of Chinese jurisprudence. This paper holds that the research object of Chinese jurisprudence is the life style of human law and the general theoretical problems in legal phenomena.

### 1. Introduction

It is generally believed that jurisprudence refers to the theoretical jurisprudence which studies the general problems in legal phenomena. The continuous development of jurisprudence also reflects the continuous deepening of people's understanding of law, and the rise of jurisprudence effectively promotes the development of legal practice and law. Law appears and develops continuously for the purpose of studying legal phenomena and solving legal problems, but there is a neglected problem that if we can't make a theoretical explanation of some legal phenomena fundamentally, it is difficult for law to develop further. The development of law requires people to deepen their understanding of some legal phenomena and problems. Only by grasping the specific object as a whole and carrying out in-depth excavation and Research on the problems behind the phenomenon can the understanding be deepened.

### 2. Disputes between Chinese and Foreign Scholars on the Research Object of Jurisprudence

In the past 20 years, the research of jurisprudence in China has made remarkable achievements on many issues, but the research on the subjects of jurisprudence has not changed greatly. From the perspective of some textbooks on “the research object of jurisprudence”, we have basically reached a consensus, that is to say, jurisprudence is regarded as the law discipline that studies the common problems and the most general laws of legal phenomena.

#### 2.1 Western Scholars' Dispute on the Research Object of Jurisprudence

There are various disputes about the object of Jurisprudence at home and abroad. The root of jurisprudence is “Juris”, which means law or right. In addition to this root, there is another root, that is, “practice”, which means wisdom. So from the root of the word, we can regard jurisprudence as the pursuit of legal wisdom. But this is just from the root point of view, does not meet the academic requirements.

In terms of the research object of jurisprudence, the scholar Persian once put forward the view that “in my opinion, the research object of jurisprudence is the most basic, universal and theoretical analysis and Research on the social phenomenon of law”. In fact, general jurisprudence is a reasonable elaboration and comprehensive and detailed analysis of the common principles, concepts and characteristics of all mature legal systems.

In continental European countries, when studying jurisprudence, they tend to use the term

“philosophy of law”. Hegel once put forward his own point of view on the research object of philosophy of law. In his view, philosophy of law studies the concept of law and the realization path of law. Hegel's view was later approved by many scholars and was quoted by many scholars. In the view of German jurists, philosophy of law symbolizes a kind of “theory of justice”. The content of philosophy of law always focuses on the research and exploration of “what law should be” or “just law”.

In fact, the definition of “the research object of jurisprudence” is often connected with “the definition of jurisprudence”. However, from the actual situation, there are obvious differences in the definition of the research object of jurisprudence because of the different living environment, growing environment and personal experience of jurists. In addition, the individual epistemology, thinking mode, values, social outlook, cognitive level and other factors of jurists will have an impact on the definition of jurisprudential research objects, and some jurists will have obvious differences in the understanding of jurisprudential research objects due to the differences of actual research objects and tasks determined for themselves[1]. There is a certain truth in this view. Different schools of jurists, belonging to the same school of jurists, and even the same jurist's views on this issue will change significantly in different periods. Posner divides the problems that jurisprudence needs to focus on into two categories, one is the category of studying the whole problem, the other is the category of studying the fragmentary problem. He focuses on the objectivity in the trial process. In fact, in the process of thinking or writing, there are not a few Western scholars who take the problem as the center and continue to extend. For example, Hart's “The concept of law”, which is a classic work of jurisprudence continuously developed and deeply written around the issue of “what is law”. Similar to Hart's approach, Pound once discussed “what is jurisprudence” in his masterpiece *Jurisprudence* (five volumes). Pound mainly considered from the academic level, he defined jurisprudence in three ways. The first definition put forward by Pound is the “Anglo American model”, which generally believes that jurisprudence is to compare and analyze the legal system that has already prospered and developed; Pound calls the second definition “French model”, which holds the view that jurisprudence is actually a trial model of the court, which is the same as “theory” and “criterion”. The third definition holds that jurisprudence is actually Juris prudence, that is to say, the synonym of jurisprudence with law. In Pound's view, jurisprudence is equal to legal science[2]. In the first part of *Jurisprudence: Philosophy of law and legal methods*, BODENHEIMER combed the development of philosophy of law in detail and clearly. In the second two parts, he mainly analyzed and discussed his point of view, “that is, any professional works of jurisprudence should not avoid or ignore the important issues related to the realization of justice in interpersonal relations...”[3]

At present, for the study of jurisprudence, the main controversial issues are: what is law? What is the function of law? What is the origin of law? Is law a science? To what extent can law embody fairness? Why does law have effect? What law does the development of law show? Analyze and summarize the research conclusions of jurists on these issues. From the point of view, we can find three characteristics: the first one is that jurists' definition of jurisprudence and related issues is generally closely related to philosophy; the second one is that related issues around jurisprudence generally involve fundamental, fundamental and regular issues of law; the third one is the development and evolution of related issues of jurisprudence. It is closely related to the academic development and the era.

## **2.2 Chinese Scholars' Dispute on the Research Object of Jurisprudence**

From the perspective of domestic research on the subject of “the research object of jurisprudence”, some scholars know that jurisprudence is actually to explore the basic issues of law through the use of philosophical methods. From the point of view of this definition, jurisprudence must have a strong color of ideological exploration, and must also draw nutrition from a variety of ideological achievements. In addition, jurisprudence in the process of development also shows its obvious criticism and reflection. It needs to constantly verify the accuracy and rationality of knowledge in different time backgrounds, so as to ensure that its thoughts and theories can maintain

vitality forever[4]. Some scholars also put forward another view: “jurisprudence regards the general law, that is, the whole legal phenomenon, as the research object[5].” It can be seen that there is no final conclusion on the issue of “research object of jurisprudence” in China at present.

From the perspective of the research scope of jurisprudence in China, scholars also hold different views, and the debate on this issue is also very heated. Professor Ge Hongyi's point of view is that the research scope of jurisprudence covers the direction of philosophy of law, sociology of law and theory of law, that is, comprehensive research in three directions. Mr. Zhou Wangsheng thinks that the research scope of jurisprudence mainly includes four aspects: the first aspect is the research on the concept, essence, value, function, classification and development of law; the second aspect is the related research on the basic category of law. The “category of law” here refers to legal relations, legal obligations, legal rights, Functions and powers, sources, norms, systems, effects, responsibilities, legal consciousness and principles of the rule of law; the third aspect is related research on the relationship between law and other social phenomena, which refers to the relationship between law and economy, between law and politics, between law and culture, between law and religion, between law and social morality. The fourth aspect is about the relevant research on the formulation and implementation of law. The “formulation and implementation of law” mentioned here refers to the formulation of law, the interpretation of law, the specific implementation of law in real life, the application of law in the process of practice, the observance of law and the relevant guarantee for the implementation of law. According to Mr. Jiang Lishan, the research object of jurisprudence is the objective law existing in the process of law evolution, that is, the law with individuality presented in the process of law evolution of China in the universal law of the world, and the actual law that exerts influence on the operation of law in modern society. Although the research has passed, it still exerts influence and restriction on real life. A law that plays a historical role.

In conclusion, the views of domestic scholars on the research object of jurisprudence mainly include: the research object of jurisprudence is the general theory of law; the research object of jurisprudence is the general law; the research object of jurisprudence is the common problem of legal phenomena; the research object of jurisprudence is the common problem and common development law of law; the research object of jurisprudence is the most general law[6].

### **3. Research Object of Chinese Jurisprudence**

Jurisprudence regards all legal phenomena as a whole, studies general problems or general problems in legal phenomena with a global perspective, and takes this academic output as the basis for understanding specific legal phenomena, thus providing a strong “foundation” for the development of the whole law.

#### **3.1 Life Style of Human Law**

In fact, human social practice is very complex, and human production and life are also very complex. In the final analysis, the society itself is full of various complex and diverse phenomena. Man is a social animal. In a sense, man is a combination. People's existence contains all aspects of content, from multiple perspectives to think there will be thousands of answers. Jurisprudence studies the relationship between human beings and law from the perspective of law. Therefore, from the perspective of jurisprudence, the object of jurisprudence is actually the way of life of human beings' law, while other issues related to jurisprudence are derived and developed step by step based on the observation and thinking of human beings' life of law. . In fact, the law is also based on the life of human law as the object of study, but in contrast, the problems of jurisprudence thinking are more fundamental, basic and regular. It can be said that jurisprudence is a kind of legal methodology, including general theory, basic theory and methodology of law. The research and discussion of jurisprudence on these issues is also an important basis for guiding people to think specifically. Based on the above analysis, this paper holds that the object of jurisprudential research is the systematic thinking of the legal life style of human beings.

### 3.2 General Theoretical Issues in Legal Phenomena

The overall grasp of legal phenomena in social life of jurisprudence provides the foundation for the development of law and provides a constant source of power. For this reason, jurisprudence is called “meta theory” by scholars. The emergence of “meta theory” is gradually formed and developed on the basis of the emergence of “meta problems”. Often, the “meta” problems in Humanities and Social Sciences contain rich ideological color. The academic brilliance of Aristotle, Hegel and Leibniz is still brilliant today because their ideas not only have an important impact on history, but also have a very important guiding role in the current social life. Their interests are not only limited to solving some problems in the society at that time, and may come out in the future. The present question is equally interesting. To solve these problems, their thoughts are still very important guidance, even more important than a philosophy book in 1992[7]. In other words, jurisprudence has obvious differences compared with other law disciplines. Generally, jurisprudence takes the theoretical achievements that already exist and have an important impact on social life as its research object. It is precisely because of this that jurisprudence can accurately grasp some “real problems” in the field of jurisprudence. Therefore, the relevant research of jurisprudence should focus on the construction of the ideological system, summarize and further develop the ideological progress on the basis of the existing ideas of predecessors[8].

Jurisprudence must always be open-minded. Jurisprudence studies the general theoretical problems in legal phenomena. Therefore, if the research of jurisprudence wants to progress, it must rely on the strength of other humanities and Social Sciences, and even draw on the relevant knowledge of natural sciences. It is impossible for jurisprudence to exist independently from other disciplines. In fact, the openness of jurisprudence is determined by the connection of Humanities and social sciences. That is to say, when jurisprudence studies some ideological achievements, it should not limit the research content to the scope of jurisprudence. As long as it is the ideological achievements that can promote the research of jurisprudence, it should attract the attention of researchers, and these ideological achievements should also be included in the scope of jurisprudence.

The two concepts of “history” and “pure past” cannot be equated. The different manifestations of jurisprudence in different historical periods and different social backgrounds constitute the important problem areas and key knowledge sources of current jurisprudence research. Generally speaking, after the independence of natural law in the sense of analytical law, the specific research scope of jurisprudence has been in constant setting. In this process, there are three main tendencies: analytical law, social law and natural law. From the point of view of analytical jurisprudence, there is no intersection between law and value. Jurisprudence should study positive law. The existence of law and the quality of law should be studied separately. Jurisprudence can only explain the significance of empirical science, which is not evaluative in ethical sense or metaphysical in philosophical sense. Therefore, the research purpose of analytical law is to make a scientific and general explanation of the legal phenomenon and its operation through the logical representation of the structure in the real law. Social law holds that law and society are inseparable, and that the real law should be deeply rooted in social life, so it can be universally observed by people, or it can form social order. They objected to the limitation of law to national law by analytical law, and thought that the source of law is very rich and the law has complex structure. The focus of social law is to study, analyze and grasp the actual operation process of law, emphasizing the actual effect and operation efficiency of law. Natural law is the earliest and most influential in western law. Natural law adheres to the position of “legal dualism” on the issue of legal noumenon, and holds that law should be the advanced law above the real law. This kind of law is not only the important basis of the real law, but also the standard to evaluate the quality of the law. Law is the embodiment of rationality, and also an important tool to maintain social fairness and justice. Therefore, natural law emphasizes the internal relationship between development and morality, and generally starts from morality when evaluating the merits and demerits of real law. The above three schools of jurisprudence focus on the form of law, the fact of law and the value of law. They also embody three directions of jurisprudence research: Theory of law, sociology of law and philosophy of law.

Since the 1970s, the research field of jurisprudence has also shown a trend of diversified development, and the division of research direction is more relative. The research object of jurisprudence is not limited to one of the three directions, but based on the combination of the three directions, it is devoted to the study of general theoretical problems in legal phenomena[9].

#### **4. Conclusion**

To sum up, this paper holds that the research object of Chinese jurisprudence is the life style of human law and the general theoretical problems in legal phenomena. The discussion about the research object of jurisprudence is still going on. The contradiction movement of things promotes the development of things. The dispute and discussion about the research object of jurisprudence will also promote the vigorous development of Chinese jurisprudence academic research in the new era of rule of law society.

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#### **References**

- [1] Zhang Wenxian. Research on the ideological trend of western philosophy of law in the 20th century [J]. Law Press, 1996 (1): 9-10.
- [2] Posner. Jurisprudential Problems [N], China University of political science and Law Press, 1994 (1): 1-2.
- [3] Pound. Jurisprudence [N], China University of political science and Law Press, 2004 (26): 18-19.
- [4] BODENHEIMER. Jurisprudence: Philosophy and method of law [N]. China University of political science and Law Press, 1999: Xi.
- [5] Ge Hongyi. Definition and significance of jurisprudence [J]. Legal science, 2001 (3): 27-29.
- [6] Zhang Wenxian. Jurisprudence (Third Edition) [N]. Law Press, 2007 (4): 78-79.
- [7] Chen Jinzhao. Research object and scope of jurisprudence [J]. Law, 1999 (12): 12-13.
- [8] De Kaufman. Philosophy of law [N]. Law Press, 2004 (2): 5-6.
- [9] Ge Hongyi. Jurisprudence [N]. China Renmin University Press, 2003 (2): 15-16.