

Study on the Legal Mechanism of Grassroots Governance in the Song Dynasty

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Abstract: The organic combination of clans, townships and scholars constituted the grassroots social governance order in the Song Dynasty. The development of the commodity economy and the change of land policy in the Northern Song Dynasty promoted the class differentiation and the change of values in the rural society. In the face of numerous civil lawsuits, the limited governance resources of the government could not adequately respond to the needs of grassroots governance, and the local elites often took the initiative to assume the responsibility of grassroots governance in order to seek social status, thus forming the governance structure of “the imperial power to rule the country, and the gentry to build the society”. In addition, the state policy of ruling the country by literature and the development of the imperial examination system in the Song Dynasty promoted the rise of the scholarly class, who attempted to reshape the grass-roots social order by Confucian rituals and rule, and invested in the practice of governance of the vernacular society together with the gentry, whose grass-roots governance practices, such as clan autonomy and township covenant, mediated disputes with the family law and the Confucian scriptures and doctrines, which embodied the Confucian ideals of indoctrination and education to transform people into a customary society.

Keywords: Song Dynasty Grassroots Governance; National Law; Civil Law

1. Research background

The proposition of grassroots governance is rich in traditional legal culture, and at the same time has great theoretical explanatory power and contemporary value. The grassroots governance of traditional society has been changing for thousands of years, forming a set of logical and self-consistent legal mechanism. In modern times, the eastward trend of western learning has started the journey of reforming and updating the Chinese legal system. In the process of legal transplantation, “Western law” inevitably collides with the logic of legal practice in traditional society. With the transformation of society and the enhancement of people’s subjective consciousness, modern society is characterised by individualisation, state administrative forces face challenges such as complicated tasks and manpower shortage in grassroots governance. (Luo Guannan, 2021) In this context, exploring the traditional grassroots governance model and collecting the experience of flexible dispute resolution can help improve the grassroots governance capacity in China, practice the “Fengqiao Experience” in the new era, and then realise the dream of a strong country of “China under the rule of law”.

2. Grassroots governance in the perspective of national law

2.1 Governance concepts of grassroots officials

Traditional justice takes real-life people as its logical starting point, and by identifying conflicts of interest between parties to determine points of contention, punish evil and promote goodness, the social structure of the “differential order pattern” makes judicial practice closely linked to “reason”. Incorporating emotional reasoning into justice can make up for the inadequacy of the enactment of law and achieve justice in individual cases. With the development of Confucianism in law since the Han Dynasty, the ancient tradition of judging prisons on the basis of emotion gradually became an important basis for officials to judge cases. Under the influence of Cheng Zhu’s theory, the grassroots officials paid attention to the consideration of emotions and reasoning in the judicial practice to achieve the social effect of justice.

2.2 Governance Practices of Grassroots Officials

In the Song Dynasty, the grassroots justice system was mainly concerned with civil disputes, and the state enacted laws based on laws, decrees, rules, and styles. In the case of “Wu Su Wu Rong Wu Hui mutual disputes over property”, the trial officials questioned the authen-

ticity of the deed provided by the parties, and explicitly pointed out that their demands for property were contrary to the provisions of the law, so it can be seen that the state enactment of the law is an important basis for grass-roots officials to adjudicate the judiciary. In addition, grass-roots officials also paid attention to moral education in the justice system, educating the family about internal disputes and settling lawsuits according to the law as appropriate. Some scholars believe that in the Song Dynasty, grass-roots officials relied too much on reasoning to adjudicate and ignored mandatory binding rules such as the enactment of laws, and their decisions were often based on personal intuitive judgement. (Wang Zhiqiang, 1998) However, according to the record of “Ming Gong Shuji Qingming ji”, the application of law is still common in the judgement of grass-roots trial officials, and the judicial tradition of this period was transformed from “humanistic rationality” to “intellectual rationality”.

3. Grassroots Governance in the Context of Folk Law

3.1 Clan Autonomy

3.1.1 Historical origin of clan autonomy

Unlike the origin of the Western state, the clan did not disintegrate when the “state” arose in traditional China, and the clan bonded by blood ties directly transitioned into a political state. Max Weber referred to traditional Chinese society as a “family-structured society”. (Li Xiaoyan, 2020) The family is the basic unit of Chinese society. (Fei Zhengqing, 1987) Since the Three Dynasties, the social structure at the grassroots level has shown the characteristics of compatibility between blood and geographic organisations, and this social structure is legally realised in the homology between family law and state law. The Qin dynasty put an end to the patriarchal feudal system of the Western Zhou period and replaced it with the “household system”, but the lesson of its second death made the Han rulers realise that the state law should be appropriately modest, and then ceded part of the social governance functions to civil organisations such as clans. From the Eastern Han Dynasty to the Wei and Jin Dynasties, the powerful members of the Shih clan gradually became the backbone of grassroots governance. Since the Middle Tang Dynasty, wars were frequent, and the traditional clans lost their glory, and there was even a situation in which “the insurgents killed all the members of the Tang clan in Chang’an”. In the Song Dynasty, the development of the commodity economy and peasant revolts had an impact on the social order, while the gentry and clans played the role of grassroots governance with the support of the official government. In the field of clan autonomy, Cheng Yi of the Northern Song Dynasty pointed out the importance of “preventing idleness and lawfulness” in ruling the family, while Zhu Xi further elaborated the family system on the basis of his ideas and compiled the “Zhu Zi Family Rituals” as a code of conduct for family members.

3.1.2 The Basis of Clan Autonomy: Family Laws and Rules

In traditional China, a tower-like power structure was formed from the central institutions to the grassroots self-governing organisations, while the family existed as a basic element of state rule. Family law and clan rules were the behavioural norms of feudal clans that regulated the internal relations of the clan. In the long practice of managing the internal affairs of their own clans, the big feudal clans formed the clan customary law. During the Wei and Jin Dynasties, the big families emerged to write family rules for their own families, such as “Wang’s family training”, “Yan’s family training” and so on, which are all examples of family rules in this period. In the Song Dynasty, the development of family rules was divergent: some of the family rules, represented by the Yuan Shi Fan, inherited the tradition and mainly played the role of edification; while the family rules, represented by the Jiu Jia Miscellaneous Rituals, were mandatory and punitive. As a supplement to the state law, the family law of the Song Dynasty took the state law, Confucian ethics and morals and folk customs as the main source, backed by the government, and became a management tool to stabilise the social order at the grassroots level. Family law and state law complemented each other, reflecting the characteristic of the traditional state-state co-constitution.

3.2 Countryside Agreements

3.2.1 The Birth of the Township Covenant System

The township covenant is a social organisation and behavioural norms formulated by the grassroots society based on geographic and blood relations, with the main purpose of educating the people. (Dong Jianhui, 2006) The birth of the Song dynasty township treaty system

and the rise of grass-roots local elites are inseparable, the local elites are mainly by the resignation of officials to return to their hometowns of the scholars, clan elders, squires, who are the core force of grass-roots governance in the Song dynasty. The founding of the Northern Song Dynasty established the policy of ruling the country by literature, and a large team of civil officials was created through the imperial examination, and these officials formed a large and influential class of scholar-officials. Mr Chen Yin Ke said, "The culture of the Chinese nation has evolved over thousands of years, and was created in the era of Zhao and Song." The Song Dynasty scholars can be regarded as a model of ancient Chinese scholars, who had the responsibility of "taking the world as their own", still cared about the gods of the earth and grain even after they left the country and returned to their hometowns, and placed the realisation of their political ideals in the practice of grass-roots governance, which became the backbone of grass-roots governance. In the Northern Song Dynasty, Wang Anshi implemented the Baojia Law with the goal of direct control of the grassroots by the state power, and the original civil self-governing organisations along the borders, the "Bow and Arrow Society", were abolished, which was opposed by the rural self-governing power groups. Sima Guang and Su Shi strongly opposed the Baojia Law, arguing that it neglected moral education and could not achieve effective governance of the grassroots. The creation of the Lü Clan's Township Covenant by the Lü Dajun brothers was a direct response to the problems of village autonomy brought about by the Baojia Law.

Against the backdrop of social change in the Tang and Song dynasties, the centralisation of power in the Northern Song dynasty led to a lack of effective control in the village society, and the shift of political power and the revival of Confucianism became the occasion for the birth of the township covenant.

3.2.2 *The Pioneer of Villagers' Self-Governance - Lv's Villagers' Agreement*

During the Xining period of the Northern Song Dynasty, Lv Dajun and his brothers drew up and implemented the "Lv's Township Covenant" in their hometown of Lantian, which also created a precedent for the autonomy of the townspeople in the traditional society, and was later adapted into the "Increase and Decrease of Lv's Township Covenant" by Zhu Xi. Lv's Township Covenant" to "Zhou Li" the meaning of the township education, including the content of the township covenant, township rituals two parts, the beginning of the outline, pointing out that "virtue and industry advise each other, the faults of the same rules, etiquette and customs of the same fellowship, in times of trouble and sympathy for each other" of the townspeople's basic code of conduct, to create a good social culture through social indoctrination. It transforms abstract Confucian doctrine into concrete social responsibility, guiding the grassroots with ethical order and seeking the third domain of the idea of "good governance" between "internal life" and "external kingship". The germ of the idea of "good governance" in the third domain was sought between "internal birth" and "external king". According to Liang Zhiping, civil law was born in the civil society and was so closely connected with the lives of the common people that regime change and rewriting of national laws could not eliminate its dominance over the hearts of the people. Since the Northern Song Dynasty, the system of township covenant has profoundly influenced the spirit and values of the rural society, which is also of great significance to the revitalisation of the countryside in contemporary China.

3.3 Township Service

According to the "History of the Song Dynasty - food and goods system", the Northern Song Dynasty inherited the system of the five dynasties at the beginning of the founding of the country, and the poor soldiers were usually dispatched by the court without compensation and performed the functions of grass-roots level governance on behalf of the government, and their position was to "serve in the government with their duties" of the common people. As the "nerve endings" of the imperial power, the Song dynasty rural service in filling the county government and rural governance "power gap" to play an important pivotal role. However, in terms of their own social status, the Zhao-Song dynasty positioned them as "commoners in the government", and Ma Duanlin's "Documentation of the General Kao" regarded them as "the poorest and the cheapest" corvée labourers, whose status was disdained by the scholarly class, and whose assignments were not directly appointed by the court, but by the county government. Their status was not respected by the scholarly class, and their dispatch was not directly appointed by the imperial court, but was the responsibility of the county government.

4. Conclusion

The goal of social governance lies in good governance, and the stability of grassroots order is the foundation of good governance. The

interaction between state law and civil law constitutes the core of grassroots governance, and its essence is the boundary between state power and civil power. As the link between state power and grassroots self-governance power, the special consideration given by the Song dynasty grassroots officials and local gentry to heavenly justice and human kindness when dealing with grassroots disputes was the social integration of the Confucian order represented by the School of Reason.

For the Chinese society in transition, rural social governance is still facing the practical dilemma of faulty governance rules and lack of governance subjects. To solve this dilemma, it is advisable to draw useful experience from the grass-roots governance practices of traditional societies and realise the diversification of grass-roots governance subjects.

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