

The Criminal Legal Culture of A State Ruled by Law

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At the turn of the century, the study of Chinese criminal jurisprudence faces an important issue—how China should establish a criminal legal culture found in a state ruled by law. It is an issue closely related to the changing values of Chinese criminal law and China's evolving social structure, a step that the study of criminal jurisprudence should take as China enters the 21st century.

Criminal law is a means of social control and governance. Therefore, it emerges according to the developing phenomenon of criminal behaviours and has a long-standing history, performing important functions throughout the history of mankind. These functions may differ according to social makeup, but they are essentially determined by social structure and nature.

The concept of a criminal rule of law has put forward to us the historical mission of establishing a criminal legal culture of a state ruled by law. Criminal jurisprudence uses particular criminal laws as study objects. Therefore, changes in the values of criminal law must first be reflected in criminal legal theory. As criminal law academics, we have to be sensitive to the changes in such values, and respond to them accordingly on theoretical grounds. Only then can we live up to the duty of our profession.

The history of legal systems has the following system of reference: police states, states ruled by law and cultural states. It is of common opinion that a police state, characterized by autocracy and rule by man, pre-dates enlightenment. A state ruled by law, characterized by democracy and the rule of law, comes with enlightenment. A cultural state, characterized by science and solid evidence, succeeds enlightenment. So, to which phase does China belong, and what kind of criminal legal culture does it require? Is it the culture of a police state,

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a state ruled by law or cultural state? I opine that China presently needs the criminal legal culture of a state ruled by law. That of a police state should be dismissed and denied, whereas that of a cultural state is unattainable. It is only the criminal legal culture of a state ruled by law that we should build.

Traditional Chinese criminal legal culture contained a very rich flavor of nationalism. As a natural product of a highly developed notion of state power in traditional Chinese society, it deemed national interest and social order as most valuable, hence giving rise to the criminal law ideology of severe sanctions. As Han Fei once pointed out:

“The laws of the Shang dynasty prescribed penal sanctions against people who threw ashes onto public roads. A student of Confucius felt that the sanction was too heavy and approached Confucius for his advice. Confucius replied, ‘This policy reflects the statesmen’s profound wisdom in governing a country. The ashes that have been disposed onto the roads will disperse and pollute the air, and consequently obstruct the vision of the pedestrians. If their vision is obstructed, the pedestrians will be agitated and angered. Such agitation and anger will lead to fights and eventually these fights can result in the massacre of many families. Since the disposing of ashes is the cause of the massacre, it is proper to invoke harsh punishment against the former conduct. People often detest stiff penal sanctions, but they can easily refrain from disposing ashes onto public roads. Hence, the principle of state governance is to enable people to engage in conducts that can be easily performed and at the same time avoid harsh punishments.’ [. . .] People do not easily commit serious crimes. On the other hand, people can easily get rid of minor misconduct. It is again a principle of state governance to rid the people of such minor misconducts and at the same time avoid the commission of more serious crimes that are usually more difficult to commit.”³

Here, Han Fei was discussing the various methods of social governance. In his opinion, criminal law, especially harsh penal sanctions, is *the* method of governance. Although the passage above alluded to Confucius’ arguments, it seems to express Han Fei’s personal ideology. Let us start with the issue of whether the sanction against the disposing of ashes onto public roads under the Shang dynasty law is harsh or light. Han Fei quoted the words of Confucius and derived the serious conclusion of a massacre from the mere act of disposing ashes onto public roads.

3 From Han Fei’s “The Second Story and Discussion” in *Cardinal Principle*, vol. 29.

In my opinion, this is akin to a chicken-and-egg situation. Its logic is absurd and preposterous. This Shang dynasty law shows that under such a legal system a person not only shouldered direct responsibility for his own personal behaviour, but he also had to relate such behaviours to the notions of social stability and national security, and bear full responsibility for them, including that of legal sanctions, especially criminal ones. His burden is heavy, yet he is himself insignificant. Hence, with the individual so juxtaposed against society, imposing uniform and unitary punishment in these circumstances appeared reasonable: Although the misconduct of disposing ashes onto public roads is minor, because it would lead to the serious consequence of a massacre, the reasons for punishing the act, thus, appeared adequate.

In addition, Han Fei also deduced the following conclusion regarding the ideology of severe penal sanctions. To him, it is easy to correct minor misconducts but extremely difficult to alter serious ones. As such, imposing harsh penal sanctions against minor misconducts would deter people from both minor and serious misconduct. Han Fei pointed out, "Offences that can be successfully suppressed by severe sanctions may not necessarily be suppressed by light punishments. On the other hand, offences that can be curbed by light punishments can definitely be suppressed by harsh sanctions." This is Han Fei's principle of the use of penal sanctions, and it is blatantly obvious that he purports the imposing of stiff and harsh punishments. At a certain level, the ideology of imposing harsh and unitary penal sanctions was central to China's traditional legal culture. It undeniably still exists to some extent today. Consequently, we should continue the important task of criticizing China's feudalistic and autocratic criminal legal culture.

The criminal legal culture of a state ruled by law and that of a feudalistic autocracy are entirely different. The former bases its values on individual freedom and rights, and restricts the state's power to sanction criminal behaviour as a course of its duty. In such circumstances, its concepts of crime and punishment are entirely different from the criminal legal culture of a feudalistic autocracy. In other words, the concepts of crime and punishment face major changes. Criminal behaviour exists in any society. Hence, differences in the understanding of criminal behaviour reflect a society's prevalence of the rule of law and its degree of civilization. Hegel pointed out that the view of criminal behaviour has relaxed due to cultural progress. Penal sanctions nowadays are no longer as severe and harsh as they were a century ago. But crime and punishment have not changed. It is the

relationship between them that has changed.⁴ Obviously, the change in the relationship between crime and punishment is determined by changes in the understanding of these two concepts. In a feudalistic autocratic society, criminal behaviour was regarded as an antagonistic behaviour that seriously undermined the dictatorial power. As this demarcation of criminal behaviour was drawn from the state's perspective, penal sanctions were exceptionally severe. With civilization, a society in a state ruled by law regards criminal behaviour as a type of dispute and conflict between the state and the individual. It is necessary to protect the offender's legal rights and interests, because he is also a member of society. Similarly, there is a restriction on the severity of penal sanctions, which are limited to deterring criminal behaviours and preserving social order. Any sanction exceeding the restriction would amount to being autocratic. In these circumstances, the criminal legal culture must possess the characteristics of rationality, which is also an important symbol of the rule of law.

The criminal legal culture of a state ruled by law is also influenced by its post-modernistic counterpart found in a cultural state. Based on the principle of legality, the criminal legal culture of a state ruled by law objects to autocratically imposed criminal law and forbids tyrannical arbitrariness. A cultural state, on the other hand, is the most advanced form of state. It adopts a positive attitude towards curbing criminal behaviour, mainly by creating culture and resolving the problem at its roots. It is arguable that a cultural state is developed upon the foundation of a state ruled by law, but yet possesses different characteristics from the latter. One of these different characteristics is that its criminal legal culture has evolved from formal rationalism into substantive rationalism. Formal rationalism found in the principle of legality weakens to give way to substantive values. As a result, some academics pointed out that the importance of the principle of legality—the rule of law's darling—gradually diminishes in a so-called cultural state. For instance, the principle of legality rejects the application of reasoning by analogy in criminal law.

However, many countries allow for reasoning by analogy or the conditional usage of it. The principle of legality also objects to a system of security measures, in which disciplinary actions are taken in the name of national security. Nonetheless, many states not only allow for such measures but also have also in fact codified and consolidated such measures. Further, even though the principle of legality opposes indeterminate sentences, some states impose them absolutely. From

4 G.W.F. Hegel, *Philosophy of Law* (Hong Kong: Commercial Press, 1961) at 99.

the above, it is sufficiently clear that the ground held fast by the principle of legality is gradually being taken over by the theory of penal sanctions as a form of educational means found in a cultural state.⁵ It is on this basis that some Chinese academics disagree that Chinese criminal law should adopt the principle of legality. Instead, they are of the view that the heyday of the principle of legality has passed since the end of the 19th century and the beginning of the 20th century. The notion of “what the law does not forbid is not criminal” no longer exists; and, in reality, the principle of legality is already in decline.⁶

In my opinion, the issue of transformation from a state ruled by law to a cultural state does exist in Western nations where the rule of law is well developed. Therefore, some principles based on formal rationalism in a state ruled by law have been amended to some degree by the substantive rationalism of a cultural state. For example, the principle of legality has been softened to allow for reasoning by analogy that is advantageous to the accused, thereby safeguarding his legal rights and interests. This softened approach is consistent with the basic spirit of human rights protection found in the principle of legality. Therefore, it is not a complete denial of the principle but a further development of it. Moreover, as China strives to become a state ruled by law, what it needs is the enlightenment of the rule of law as well as the criminal legal culture of a state ruled by law. Hence, the principle of legality should be strictly implemented. China’s history of the development of the rule of law and its current social reality demands it be so. It would only spell disaster for China’s efforts in establishing the rule of law if the arguments for the criminal legal culture of a cultural state is used to deny that of a state ruled by law. Certainly, we should not simply indiscriminately apply or follow the criminal legal culture of Western states ruled by law. While aspects of it that do not conform to China’s conditions should be rejected, its basic values should be affirmed and used as points of references.

It should be pointed out that a conflation of the legal culture of a western cultural state with that of ancient China’s feudalistic autocracy should be prevented. In other words, the legal concepts of a cultural state should not be used to expound on and prove the rationale of traditional Chinese legal culture. This would pose as a cultural barrier against the formation of China as a state ruled by law. There are aspects of ancient Chinese legal culture, including its criminal legal culture, from which we can inherit and learn. However, because it

5 Y.P. Gan & P. He, *Foreign Criminal Law Studies*, vol. 1 (Beijing: Beijing University, 1984) at 233.

6 G.H. Hou, “The Value of the Principle of Legality and Reasoning of Analogy in Criminal Law in the Market Economy” [1995] 3 *Fa Xue Yan Jiu* (Legal Research).

was a feudalistic and autocratic form of legal culture, its fundamental values and perspectives ought to be rejected. China's feudalistic and autocratic criminal legal culture naturally conflicts with the criminal legal culture of a state ruled by law, which centers on the principle of legality. It may, consequently, seem to coincide with the criminal legal culture of a cultural state. Nevertheless, in reality, regardless of their similarity in form, the two differ in spirit.

It is precisely this similarity in form that has caused much misunderstanding and led to the misinterpretation of China's feudalistic and autocratic criminal legal culture. For example, praise for the system of reasoning by analogy that had long existed in ancient criminal law has been used to oppose the principle of legality. In fact, some academics have even argued that the ancient Chinese Legalism's school of thought in favour of severe penal sanctions is obviously rational. Han Fei said, "Harsh punishment means that offences are infrequently committed, and the ruler has imposed harsh sanctions; light punishment, on the other hand, means that the offender has reaped much benefit from the crime, and that the ruler has imposed only light sanctions." Hence, Legalists' so-called severe penal sanctions were actually not severe. On the contrary, they reflect the severity of the criminal conduct, and hence were very much scientific in nature.⁷ Based on Han Fei's approach toward demarcating of severe and light sanctions, severe sanctions did not seem severe at all. But, to quote Han Fei again, "The purpose of inflicting heavy punishment on a thief is not really to punish the criminal. If this should be the purpose, it would only amount to punishing a normal criminal. Therefore, imposing heavy penal sanctions on criminals helps to deter crime and evil acts in the town. This is the objective of punishment. The one who is subjected to the heavy punishment is the thief, but law-abiding citizens are at the same time deterred. To be able to govern one's country well, one should never think twice about imposing heavy sanctions."

It seems that the severe punishment mentioned above can no longer be explained as complementing the relevant crime. Rather, they appear to act as threats meant to instill fear in law-abiding citizens. Such severe punishments are not established for the sake of criminals but for the purpose of deterrence. As such, determination of the severity of the sanction is decided not based on the severity of the criminal conduct but on the need to deter citizens. If the deterrent purpose is achieved, then the idea that "punishment will rid of punishment" would be realized. Shang Yang even publicly declared,

7 Y.M. Ai, "The Legalist Concept of Severe Criminal Sanctions Makes For Valuable Reference" (1996) 11 *Fa Xue* (Legal Studies) at 10.

“If heavy punishment is meted out to minor crimes, then not only will minor crimes cease to exist but so will serious crimes.” He opposed proportionate punishment, which would entail imposing light sanctions on minor crimes and harsh sanctions on serious crimes. In this respect, Han Fei further elaborates, “Offences that can be successfully suppressed by severe sanctions may not necessarily be suppressed by light punishments. On the other hand, offences that can be curbed by light punishments can definitely be suppressed by harsh sanctions” The severe punishment that is being mentioned here can no longer be complementary to the severity of criminal behaviour. As a result, we should be extremely wary of the resurrection of Chinese feudalistic and autocratic legal culture, even insofar as resurrecting it on the pretext of introducing the criminal legal culture of a cultural state.

Although current Chinese criminal legal theory is still influenced by traditional Chinese criminal legal culture, it remains primarily a Western import, from its principles to its concepts, and from its contents to its systems. Amidst the interaction between the criminal legal culture of ancient China and that of the West, we should ground ourselves in the reality of China’s efforts in establishing the rule of law. Only then can criminal legal theory play a role in establishing a criminal rule of law in China. At a critical point in its evolution into a state ruled by law, China should be enlightened about and fervently advocate the criminal legal culture of a state ruled by law. This is a historical mission and responsibility from which no criminal law scholar should shy away.

The criminal legal culture of a state ruled by law is not a theoretical fiction but an inevitable demand of social reality. What are the characteristics of the criminal legal culture in a state ruled by law? In my opinion, it has the following characteristics:

I. CONCERN FOR HUMANITY

Law readjusts social relations to which humans are central. Therefore, law must be founded on humanity and emphasize the protection of human rights. This is the real essence of law’s concern for humanity. Although the content of criminal law is the punishment of crimes, criminal behaviour is a human conduct, so perhaps one could say that criminal law targets the readjustment of a particular type of people—criminals. Further, the fact that criminal law can involve the life and death of a human being makes its concern for humanity even more crucial. Criminal law is a branch of public law; public law mainly concerns the relationship between the state and private individuals, which, practically speaking, is the relationship between state rights

and individual rights. The treatment of the relationship between the state and the individual is always an important issue in determining the nature of the law within a criminal legal system. In an autocracy, because the state and society, as basic entities, are fortified, they form the foundation of the criminal law and its culture within such a regime; human rights are delegated to an insignificant status, creating a lack of concern for humanity.

On the other hand, in a state ruled by law, the individual should be the basic entity of the criminal legal culture in which the rights and freedoms of the individual are emphasized. Consequently, criminal law is a branch of public law that restricts state rights to a greater extent. The state regards the citizen as an individual, its equal before the law. Safeguarding human rights is the ultimate aim of its criminal law. A state built on the rule of law is itself no Leviathan; rather, it is a political entity that functions within a strictly defined scope. Its spirit is the embodiment of human rights, because it exists primarily to enable citizens to enjoy their rights and freedoms to the greatest degree. Hence, the rule of law is essential to the realization of human rights,⁸ which bears similar significance in the rule of criminal law. The safeguard of human rights is possibly the fundamental worth of criminal law. The criminal legal culture of a state ruled by law is one that centers upon humanity, one that cares for humanity. In a feudalistic autocracy, torture, humiliation and inhuman treatment are characteristic to its criminal legal culture. The criminal enjoys no right and becomes a completely passive object of legal administration. Conversely, the criminal legal culture of a state ruled by law regards human rationality and dignity with the utmost importance. Humane punishment is its important characteristic. Regardless of the debate between utilitarianism and retributivism in the recent history of criminal law, the classical school of thought has always emphasized the human worth and regarded it as the ultimate aim of criminal law theories. For example, Beccaria, who furiously attacked the cruelty of feudalistic criminal law, believed that penal sanctions would be effective only if its evil outweighed the benefit of crime. All else were unnecessary and, therefore, barbaric.⁹

Although Beccaria's theory of utilitarianism advocates the use of coercion by penal sanctions, this form of coercion is constrained by the concept of humanitarianism. As this concept sets up rational limits for penal sanctions, Beccarian utilitarianism fundamentally differs from ancient China's legalism, which advocates eradicating crime by severe

⁸ L.Y. Cheng, *From A System of Law to A Rule of Law* (Beijing: Law Press, 1999) at 202.

⁹ C. Beccaria, *On Crimes and Punishment*, (Beijing: Encyclopedia of China Publishing House, 1993) at 42-43 [hereinafter Beccaria].

punishment. Similarly, Kant's moral retributivism is also founded upon humanity. Kant saw humans as the ultimate end of creation. Because its starting point is that of respect for humanity, the reaction toward human behaviour could only be based on the nature of the act. It cannot be based on any other basis or demand without denying the worth of humans as an end in themselves. Therefore, Kant pointed out that punishment under any circumstances must be directed only at a person's criminal behaviour, because we must not treat humans as an end to other means nor confuse them with the objects of property rights. A human being has an inherent personal right that protects himself from and retaliates against such treatment, even when faced with the possibility of losing his personal citizen rights.¹⁰ Beccaria's and Kant's views about the aims of penal sanctions may oppose each other, but they both lead toward humanizing and rationalizing criminal law. On this point, we may say that concern for humanity comprises the basic content of the criminal legal culture of a state ruled by law.

II. FORMAL RATIONALISM

The difference between rule of man and rule of law does not lie with the existence or the lack of law. A society ruled by man may also have comprehensive laws. For example, the fact that ancient Chinese laws did not lack comprehensiveness does not lead to the conclusion that the rule of law existed in ancient Chinese society. I think that the only difference between the rules of man and law emerges from the choices they make between substantive rationalism and formal rationalism when these two come into conflict. Formal rationalism is the channel for the rule of law. The rule of criminal law requires the legal determination of crime and punishment, which is inevitably confined within the scope of a system. Rule of law means governance by law. The supremacy of law should, therefore, be its tenet.

Although criminal law did exist in a feudalistic autocracy, its power and authority were often subjugated to the supremacy of the ruler. Practically, the criminal law could not be strictly followed. It was a paper tiger, trampled upon by the ruler at his whims and fancy. In ancient Chinese society, under the dominating influence of Confucianism, "li"¹¹ was law's starting point and preceded penal sanctions. The relationship between "li" and law was akin to that of skin and flesh. The judge's duty was not to realize the value of law. In other

10 I. Kant, *The Science of Right*, (Hong Kong: Commercial Press, 1991) at 164.

11 "li" can be roughly understood as society's standards of morality, customs and traditions.

words, law did not have its own independent value. The judge pursued only ethical values found in “li,” for which he often sacrificed legal formalism. The German scholar Weber, expounding on China’s ancient legal system, described its ancient laws as a type of hereditary structure, related to the outlook of a hereditary state system, which lacks rationality in lawmaking and adjudication. Tyranny brings about the destruction of a state’s laws. The judge would never think twice about severely punishing any act that changed the way of life as treason and heresy, regardless of the law’s authority. Even more important is the inherent quality of the application of law: a hereditary system inclined toward ethics does not strive for formal rationalism but for substantive justice.¹² It is a type of justice that Weber would call “kadi justiz.” (“kadi” is the judge of an Islamic state). The judge of this type of “kadi justiz” does not uphold the law as his duty; that duty lies with the heavy burden of ethics. When deciding on a case, he disregards the meaning of the law and directly follows ethical and moral concepts, especially the teachings of Confucianism. Under such a legal system, formal rationalism of the law fails to command abidance, while substantive rationalism based on ethics is emphasized. Arguably, formal rationalism never existed in ancient China.

The rule of criminal law is built upon formal rationalism, through which substantive rationalism is pursued and realized by protecting the rights and freedoms of private citizens and restraining the judiciary from acting arbitrarily in disregard of authority. Formal rationalism forms the basis for the principle of legality, and its recognition the precondition. This type of formal rationalism is relative and forward-looking. When formal rationalism and substantive rationalism conflict, formal rationalism prevails, an outcome that suggests that steadfastness to formal rationalism requires the sacrifice of substantive rationalism to a certain degree. For example, to prevent the judiciary from acting arbitrarily, Beccaria even advocated the abolishment of judicial interpretation power. He believed that the problems suppressed by strict adherence to the text of criminal legislation is incomparable to those created by judicial interpretation. The temporary hassle will prompt legislators to make necessary amendments to dubious phrases and strive to be more accurate, thus, preventing people from embarking freely on fatal interpretations, the source of unauthorized actions and self-profiteering.¹³

Although Beccaria’s view is biased, its strict adherence to the spirit of law’s formal rationalism does leave behind a deep impression.

12 M. Weber, *Confucianism and Taoism* (Hong Kong: Commercial Press, 1997) at 154–155.

13 Beccaria, *supra* note 9, at 13.

Ancient China allowed judges to apply the law according to their understanding of Confucianist teachings, one reason being that law was limited whereas the permutation of situations could be infinite. Hence, the judge worked toward a situational norm (ie. the criminal situation). Where the law was inapplicable, the judge interpreted the law by way of analogy to the extent of comparing apples with oranges in order to achieve the intended moral purpose. He would severely punish minor crimes with the belief that if minor crimes could be eradicated by severe punishment, it would follow that more serious crimes would accordingly be eradicated as well. Law lost its power and authority, and judges acted arbitrarily in disregard of authority. The influence of ancient China's criminal legal culture that prefers substantive rationalism to formal rationalism arguably runs deep to this day. The only difference is that the so-called social dangerousness has now replaced Confucianist ethics as the contents of substantive rationalism.

The notion of social dangerousness has been so deeply impressed by substantive rationalism that it stands off against formal rationalism found in the rule of criminal law and forms the theoretical basis of destroying the rule of criminal law. Chinese scholar Li Hai pointed out: despite the approval of and praise for social dangerousness, which has been applied to the understanding of criminal behaviour, it is devoid of any basic normative quality, much less normativity. It merely assesses the political or socio-moral condemnation of criminal behaviour. Of course, this assessment is not wrong. The problem lies with its lack of concrete meaning in criminal law. It may be true that nobody would declare all socially dangerous conduct criminal and punishable by law. However, if a conduct is to be punished, social dangerousness can provide the basis for exceeding legal norms at anytime, because it is the nature of criminal behaviour. When necessary, it can determine the normative form. Using "the nature of the crime" as its façade, social dangerousness not only overcame the obstacle created by the principle of legality, providing a theoretical foundation that appears to have the flavor of criminal law, but also adversely affected the realization of a state ruled by law.¹⁴ This is a penetrating assessment against the social dangerousness theory. After the establishment of the principle of legality in China, the fundamental contradiction between the value of formalism represented by the principle of legality and that of substance arising from the notion of social dangerousness has become even more obvious. In these circumstances, we should rationally assess the social dangerousness theory and critically self-examine it. The

14 H.D. Li, *The Basics of Criminal Legal Theories* (Beijing: Law Press, 1998) at 8.

rule of criminal law should hold on to formal rationalism. Such is the essence of the criminal legal culture of a state ruled by law.

III. SUBSTANTIVE JUSTICE

The law's prerogative is to maintain a certain order of justice, the process of which can be regarded as substantive justice. Because criminal law plays an important role in protecting social order, substantive justice is part and parcel of the criminal legal culture of a state ruled by law, manifesting itself in the legislative and judicial processes. Legislative substantive justice is about the propriety of allocating blame and punishment. The legislative body may have the power to create crimes and determine the punishment, but the exercise of this power must be limited and cannot exceed what is necessary to protect a normal social order. Its aim should be to protect the rights and freedoms of private citizens. In an autocracy, criminal legislative power is unrestrained and uncertain, determined by the ruler's personal likes and dislikes. Private citizens lack a needed sense of security; terror lurks in their hearts. On the contrary, in a society ruled by law, criminal legislation is not based on unchecked impulse. Rather, based on the principle of legality, it is a complicated relationship between restricting and being restricted.

According to French scholar Léon Duguit, there are two logical reasonings as to why a state ruled by law can be restricted, or in other words, should adhere to its own laws. The theory of inalienable rights holds that law has legal force not because it is promulgated by the state but because its aim as state law is to protect individual rights. Hence, both the individual and the state must respect these individual rights. A state should abide by the law because, as a state, it should respect individual rights. All violations of the law should be regarded as violations of individual rights, actions that should be explicitly prohibited. The legislator has the duty to structure state organs in a manner that minimizes the danger of such violations and strictly prohibit the organs from violating the law. As long as the law exists, no state organ—including the legislative body—is allowed to violate the law. The theory of social interdependence holds that the legal force of the law does not originate from the will of the ruler but from the interdependency between society and the law. Hence, the law treats the ruler and ordinary citizens equally. Both are constrained by the force of law that is founded on its interdependence with society. When a state organ or, more aptly, when a person wielding political power—such as the ruler or his servants—violates the law, he is considered as having violated the objective law based on this interdependence,

because the law has binding force only when expressed in the spirit of objectivity.¹⁵ Although the theories of inalienable rights and social interdependency differ in their logical reasoning, they are similar on the point of limiting the legislature, which includes the limitation by the laws it made. This is also the foundation of the rule of law. Therefore, the meaning of substantive justice within the principle of legality includes the limitation of legislative power.

Judicial substantive justice is about the realization of criminal justice through judicial activities and the propriety of determining guilt and punishment. This mainly concerns judicial discretion. In an autocratic society, judicial power is even more unlimited than legislative power. Arbitrary decisions on criminal cases are unavoidable. Contrastingly, in a society ruled by law, the implementation of the principle of legality strictly limits judicial power. Blame and punishment are determined according to law. The principle of legality draws a clear line between the state's power to condemn and punish and individual rights, thereby restricting judicial power; substantive justice is achieved by protecting the rights and freedoms of private citizens from being violated. As an important tenet of the criminal legal culture of a state ruled by law, substantive justice not only renders criminal law a valuable tool, but also has value as an end in itself. Of course, substantive justice can only be realized through procedural justice, of which the operation of law requires. These two procedures appropriately arrange and adjust the balance between state judicial power and private citizens' right to legal action, as well as realize substantive justice by working in tandem. Therefore, procedural justice is the precondition to realizing substantive justice, which is unattainable without the former. In spite of this, as an independent characteristic of the criminal legal culture of a state ruled by law, the status of substantive justice is undeniable. It should be expounded upon and proven by theory.

15 L. Duguít, *Manual of Constitutional Law* (Shenyang: Liao Hai Press & Chun Feng Literature Press, 1999) at 29–30.