

On Shen Jiaben's View of Law: An Investigation of Human Rights

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Abstract

During the late Qing Dynasty, the switch from conventional legislation to contemporary legislation was exemplified by Shen Jiaben's human rights-focused legal perspective. Under the background of comprehensively governing the country according to law, learning from excellent traditional legal thoughts and culture is a critical way to construct a creative rule of law. Shen Jiaben oversaw the ten years of legislation modification towards the conclusion of the Qing Dynasty, which lasted the entirety of modern China. He transformed traditional Chinese law into a Western-compatible contemporary legal framework, closely related to his excellent legal thoughts. Specifically, Shen Jiaben pushed for preserving human rights in the research and creation of the legal system in contemporary China. His reasoning was based on the actual situations of modern countries, which is quite pioneering. Focusing on the social reality at that time, Shen Jiaben's legal thought of human rights doctrine criticized and inherited the traditional Chinese legal thought of "benevolent government" while fully absorbing the essence of foreign legal culture of human rights doctrine and promoting the gradual reform of the modern legal system. Learning from Shen Jiaben's legal view of the rights of individuals doctrine is helpful to deepen further our understanding of human rights and the rule of law in the new era and help promote the integrated construction of a country, a government, and a society under the rule of law.

Keywords: Shen Jiaben, human rights, traditional legal thought, jurisprudence, the rule of law

1. Introduction

At the end of the 19th century, Chinese society faced unprecedented changes. In this context, there are fierce collisions and conflicts between Chinese and occidental cultures. Modern Western legal thought is based on commodity economy and democracy and freedom, emphasizing individual standards. Chinese traditional legal thought is based on the natural economy and emphasizes family standards (Gao, 2011). With the rise of industrial civilization, western legal thought and culture with advanced solid nature constantly impinged on the traditional Chinese judicial system and cultural norms based on agricultural civilization. In the meantime, intellectuals such as Shen Jiaben, who had been influenced by thousands of years of traditional Chinese culture, had their legal ideas and thoughts in line with the need for reform and national salvation (Zeng & Huang, 2003). In modern Chinese legal history, the revision of the law during the late Qing Dynasty is a significant reform. As a representative of the legal theory school during that period, Shen Jiaben oversaw the modification and reform of laws, which significantly influenced the modernization of Chinese laws.

Shen Jiaben is one of the essential figures who promote the updating of China's legal system. Compared with the traditional feudal hierarchy concept of the ritualistic school, the Legalist school did not deny moral ethics but put forward new propositions and views on feudal law (Chen, 2011). Shen Jiaben's legal thoughts focused on human rights, reflecting the transition and connection between the old and new laws in the late Qing Dynasty when laws were being revised. An in-depth understanding of Shen Jiaben's juridical perspective on rights for individuals doctrine is not only helpful to the study of traditional Chinese law's historical transformation to modern law but also helps to understand the development of modern Chinese human rights doctrine at the legal level. Although the form has changed, traditional legal culture still follows the fundamental value and intrinsic mission of legal development, has strong vitality, and is closely related to the evolution of modern Chinese statutes (Zhang, 2015). The construction of China's rule of law should be rooted in the fertile soil of China's excellent traditional culture. At the same time, with the development of international globalization, the idea of human rights has been widely spread in various countries. As an outstanding jurist, Shen Jiaben made a significant impact on modern Chinese jurisprudence. His legal thoughts reflected in the view of human rights are worth our study, thinking, and reference.

This article consists of five parts. The first part is the introduction, which mainly probes the background and significance of Shen Jiaben's legal thought of human rights doctrine. The second and third part analyzes the formation and development of Shen Jiaben's human rights doctrine legal thought, starting from Chinese traditional legal thought and modern Western legal thought, focusing on the specific connotation of Shen Jiaben's human rights doctrine legal thought, and then points out the characteristics and main principles of Shen Jiaben's human rights doctrine legal thought. The fourth part is about the study of Shen Jiaben's practical problems, analyzes his legislative values from the perspective of human rights, and focuses on Shen Jiaben's practice in revising the law. Finally, this article comments on Shen Jiaben's legal thought of human rights doctrine and the prospect of its contemporary value. It summarizes Shen Jiaben's contribution to China's modern human rights legal cause.

2. The Origin of Shen Jiaben's Legal Thought of Human Rights Doctrine

2.1 Ancient Confucian Legal Thought

The legal thought of the Confucian De Bene Doctrine has an essential influence on the formation of Shen Jiaben's legal view of human rights doctrine. "Bright virtue and prudent punishment" was the principal legal idea in feudal China. As the ruling thought of the state, Confucian thought of "virtue" was the basis of governing the state. Shen Jiaben believed that the country's leadership must prioritize the implementation of a benevolent government, pay heed to the calm and happiness of the people, and prioritize moral education (Zhao, 2016). Severe punishment and harsh laws could not guarantee the long-term stability of the dynasty, so Shen Jiaben continued the feelings of benevolence in traditional justice and advocated humanitarianism in justice (Duan, 2017). In addition, throughout his adolescence, Shen committed himself to studying Confucian classics, particularly the Rites of Zhou, which served as a significant inspiration for his subsequent work in the field of legal reform. The concept of "benevolent governance first" permeated the entirety of Shen Jiaben's law revision reform initiative (Huang, 2021). Shen Jiaben was, thus, in essence, a senior scholar in the feudal landlord class as a typical representative of the legalist school in the late Qing Dynasty. He had been influenced by thousands of years of Chinese Confucian culture, and the Confucian thought of "virtue and punishment" was deeply embedded in his blood.

It is a typical characteristic of Shen Jiaben's legal thought to summarize and apply the traditional legal system of China. The development of Confucian law was relentless throughout the Chinese dynasties, and it reached its pinnacle in the Tang Dynasty. When the law was revised at the conclusion of the Qing Dynasty, Shen Jiaben combined the Confucian ideal personality theory and put forward the requirements and prospects for modern legal talents (Jin, 2014). Shen Jiaben used to work in the Ministry of Criminal Justice. While accumulating rich experience in judicial practice, he also put much energy into legal research (Shen, 2009). Shen Jiaben looked through principles of law established by previous dynasties' outstanding traditional legal thoughts and cultures based on the core Confucian thoughts of "benevolence" and "virtue" and systematically sorted and studied traditional legal materials. His work Examination on Criminal Law in the Past Dynasties is Shen's groundbreaking analysis of the legal system that has been practiced traditionally in China in different periods (Jin, 2014). Shen Jiaben lubricated the system of law in China historically, maintained the continuity of the Chinese traditional legal culture by undergoing a procedure of law revision, and fully reflected his respect and confidence in the Chinese traditional legal culture.

2.2 Modern Western Legal Thought

The further development of Shen Jiaben's jurisprudence of human rights doctrine benefited from the trend of thought of westward learning in modern times. As China's closed-door state was broken in the late Qing Dynasty, modern Western legal theories, and legal systems were introduced into China, which produced fierce conflicts with traditional Chinese legal theories, and it was widespread for the new learning to clash with the old learning (Li, 2015). In this context, Shen Jiaben has learned Chinese and Western and constantly understands and studies foreign legal theories and systems. Not limited to the purpose of "recovering consular adjudication power" during the latter years of the Qing Dynasty, but addressing the concerns with the outdated law, Shen Jiaben endeavored to reconcile the recently passed legislation with Chinese reality and to incorporate the modern Western legal system with its emphasis on humanism. With the Chinese reality and integration of the Western legal system that emphasized humanism in modern times, Shen Jiaben encouraged the combination of the Chinese traditional legal system and Western legal ideas during the ten years of law cultivation under the influence of the Eastward trend of Western learning (Song, 2018).

Modern Western human rights thought had a more significant influence on the formation and development of Shen Jiaben's legal view, attaching importance to human rights as the core value of the contemporary judicial system. Law revision reform is an essential tool for advancing the modernization of the legal structure in contemporary society since it promotes democracy, fraternity, and other fundamental human rights ideals (Duan, 2017). From the ideological level, modern Western and modern human rights thoughts such as equality and freedom have had a severe impact on the traditional legal system (Zhang, 2022). Based on the political purpose of recovering consular adjudication power, the

legislative values of law revision need to be combined with the mainstream values emphasizing human rights, and under the influence of the trend of Western learning to the East, Modern Western human rights ideology also inevitably affected the value concept of Chinese society at that time, so the legalist school represented by Shen Jiaben advocated adopting the progressive idea of western legal theory for reference. From the perspective of law, Shen Jiaben agreed with the Western humanitarian view of punishment, advocated the abolition of severe punishment and strict law, and emphasized the humanitarian concern in the revision of the law. Shen Jiaben was deeply influenced by the Confucian culture and advocated “learning as the body, Western learning as the use.” Although Shen Jiaben advocated reform to eradicate abuses, his human rights legal ideas remained constrained.

3. The Connotation of Shen Jiaben’s Legal Thought from the Perspective of Human Rights

3.1 Shen Jiaben’s Legal View of Human Rights Doctrine

3.1.1 Advocate the Humanitarianism of Punishment

Advocating for punishment and humanitarianism is a typical embodiment of Shen Jiaben’s blending of Chinese and Western concepts of law thoughts. In essence, the concept of leniency is one of the critical embodiments of Confucian law. Throughout the legal system and judicial practice of the Chinese dynasties, the thought of forgiving punishment is reflected in it, such as in the Western Zhou Dynasty within the context of “Mingde prudent punishment” guided by the system of “three excuses,” “three pardons”; in Wenjing Period of Han Dynasty, corporal punishment was abolished, and punishment system was reformed (Burgon, 2014); the Tang Dynasty advocated “equal punishment,” stipulating that the elderly, the young, the married and the sick should be exempted from punishment. The thought of lenient punishment is an essential content of Shen’s legal view of human rights doctrine. Shen’s law not only researches the legal system of lenient punishment in ancient China but also sincerely implements the traditional Chinese concept of “benevolent government” and extends and inherits the Confucian culture of “respecting the old and caring for the young” (Ji, 2022). Secondly, Shen Jiaben also advocated the abolition of harsh laws. Traditional laws have a distinct color of heavy punishment. Shen Jiaben believes that “penalty and education are mutual gains and losses,” the heavy rule of law cannot restrain crimes but will lead to public resistance. In order to accomplish the goal of crime prevention, he advocates the discretionary reduction of capital crimes and free punishment in place of a portion of the death penalty (Zhang, 2015). Confucian legal theory enormously affected the development of the contemporary legal system. Shen Jiaben’s law revision ministers during the late Qing Dynasty were particularly inspired by the idea of “lenient punishment” at the time.

In the early 20th century, domestic problems and foreign invasions plagued the nation. Shen Jiaben had a good understanding of both China and the West, deeply understood and drew lessons from the prevailing humanitarian thought in the West, and gave a positive evaluation of modern Western laws. In modern times, Western countries began to implement the system of probation education, which further spread the concept of the humanitarian rule of law to protect vulnerable groups, which also had a significant impact on Shen Jiaben’s promotion of the construction of modern Chinese judicial system (Duan, 2017). For example, Shen Jiaben attributed significant value to the probation education of juvenile delinquents. In the Draft of the Criminal Law of the Qing Dynasty, which he presided over, he proposed that a probation education institute should be established following the example of the West to prevent and educate juvenile delinquents in advance (Ji, 2022). Therefore, different from the traditional legal thought based on punishment, Shen Jiaben combined the ancient Chinese concept of “punishment” with Western humanitarian thought, forming the human rights legal thought focusing on crime prevention and punishment education, which can be described as a relatively progressive legal thought in the early 20th century. “everyone is equal before the law,”

3.1.2 Advocate the Concept of Legal Equality

One of the most essential components of contemporary law is the concept of equality. Under the influence of human rights thought, Shen Jiaben’s understanding of legal equality is quite representative and unique. Shen Jiaben grasped the Western notion of equality, “everyone is equal before the law.” However, he could not advocate for the leapfrog legal reform since it would have gone against the late Qing Dynasty’s continued goal of maintaining the monarchy. Regarding personality equality, Shen Jiaben mostly adopted a euphemistic and tortuous way to promote legal reform (Li & Yu, 2003). For example, in presiding over the revision of the law, Shen Jiaben carried out a drastic reform of the system that stipulated the same crime and different punishment for crimes committed by the Manchu and Han Dynasties in the Great Qing Dynasty Statute. For example, all the provisions in the old law, such as “Manchu crimes shall be punished by the number of whipping sticks, and soldiers, discharges, and slaves shall be exempted from dispatch, and the cangue shall punish them,” were deleted (Peng, 2012). Law is related to the regulation of the social interests of all classes. In order to achieve equality before the law, it is necessary not only to grasp the legitimacy of the law accurately but also to grasp its era and applicability (Hu, 2017).

Shen Jiaben completely embodied the idea of equality before the law when he insisted on national equality and ensured

the uniform application and authority of the law during the late Qing Dynasty's legal reform. Human subjective cognition and inner emotion are always complicated to grasp, so this paper holds that it is more practical significance to formulate equal procedures to adjust this contradiction from the form.

3.1.3 Advocate Both “Jurisprudence” and “Common Sense”

Shen Jiaben accurately realized that it is the basis of integrating Chinese and Western jurisprudence to advocate “jurisprudence” and “common sense” in law reform. Specifically, “jurisprudence” is the weapon of law in Shen’s criticism, while “common sense” is the weapon of his criticism of Western law. Although Shen refuted the moral system of human rights abuse maintained by the moral school, it did not completely deny the traditional Chinese legal culture (Chen, 2021). Given the Western “new thought” and the traditional Chinese “old thought,” Shen Jiaben pointed out: “New learning is often derived from the old learning, the more things happen, the more dense the jurisprudence, but the most important word is always common sense.” Regardless of old learning and new learning, we should not give up common sense and be different from the law so that we can integrate (Shen, 2017).

Restricted by the class limitations of the feudal officials themselves, Shen Jiaben could not directly advocate the “separation of powers,” “abandon the three main principles and the five permanent,” and other ideas. Shen Jiaben’s view of “jurisprudence” actually draws on the essence of both Chinese and Western, ancient and modern, and lays particular stress on the Confucian traditional concept of “common sense” (Peng, 2021). Facing the challenge of feudal concepts and legal system reform, Shen Jiaben advocated the value of jurisprudence, took “using Western learning” as a weapon, and carefully poured his human rights legal thoughts into various reform movements and new law drafts. Traditional Chinese law advocates the principles of heaven and human. In the late Qing Dynasty, Shen Jiaben supported legal reform with “legal principles” and strengthened the law with “common sense.” Through “common sense,” he analyzed Western legal thought and culture and sought an explanation for the legal reform (Huo, 2018). This paper holds that, characterized by a traditional legal culture that Confucianism inspires, Shen Jiaben advocated benevolence and morality, and his legal thought contained the legal factor of attaching importance to human rights. After learning from the humanitarian thought introduced by modern Western countries, he already realized the essence of modern legal thought “rule of law.”

3.2 *The Main Characteristics of Shen Jiaben’s Legal Thought of Human Rights Doctrine*

In modern China, Shen Jiaben was one of the forerunners and outstanding ones in discussing human rights issues from the legal level, and his human rights doctrine legal thought was quite innovative and inclusive. After studying the “respect and protection of personality” in European and American countries, Shen Jiaben’s understanding of the importance of human rights has reached a new height (Xue, 2015). In the face of the resistance to reform, Shen Jiaben compared the ancient and modern Chinese and foreign general law by seeking progressive ideas to reduce the resistance from the tradition and called to adapt to the situation. Shen Jiaben did not deviate from the traditional Chinese thought of benevolent government. On this basis, he advocated modern Western concepts such as innate human rights, equality, and freedom. He tried to implement the concept of attaching importance to human rights in his revised laws. Shen Jiaben previously observed that “Life should be heavy; personality is especially respected” (Shen, 1912). One may say that Shen Jiaben’s concepts of law are human rights legal thoughts with respect for personality and the protection of life as the core, which is a typical embodiment of human rights doctrine in modern Chinese laws (Shen, 2017). On the one hand, his legal thought was influenced by the ancient Chinese thought of “bright virtue and prudent punishment”; on the other hand, it was also influenced by the Western legal thought that attaches great importance to human rights. Therefore, his legal thought has a distinct color of human rights.

In addition, Shen Jiaben’s legal thought also fully reflects the characteristics of education. As mentioned above, Shen Jiaben combined the ancient Chinese concept of “leniency” with Western humanitarian thought to form the human rights legal thought focusing on crime prevention and punishment education. From the law revision in the late Qing Dynasty, Shen Jiaben advocated a series of criminal justice reform measures, such as banning torture and improving prisons and execution places; Shen Jiaben tried to transform the late Qing law from severe punishment to reformatory education (Yin, 2012). Shen Jiaben also attributed significant value to legal education and the development of expertise in legal matters. While reforming the law, he attempted to translate and learn Western legal documents and set up law schools, which contributed to legal education in modern China (Shen, 2009).

3.3 *Shen Jiaben Human Rights Doctrine Legal Thought Adheres to the Principle*

3.3.1 Respect the Principles of the Chinese Traditional Legal System

Respecting Chinese traditional legal thought and culture has always been the primary point of Shen Jiaben's human rights legal thought. The School of Rites maintains the feudal ethical system with the three Principles and the Five

Chang as the core and adheres to the patriarchal hierarchy. Shen Jiaben criticizes and reflects on the traditional law from the standpoint of the bourgeoisie. However, it does not imply that Shen Jiaben rejects the conventional legal order and fully adopts a Western culture of law (Song, 2018). Despite the advent of the westward learning movement, the Confucian culture in China for millennia remained firmly established. Shen Jiaben was only one of many ordinary people and feudal officials significantly impacted by the ancient Confucian beliefs (Zhao, 2010). Shen Jiaben, in the bourgeois legalist position and taking into account common sense, advocated the use of Western learning, essentially speaking, to follow the supremacy of imperial power and did not break away from the bondage of the feudal system.

To be specific, traditional Chinese culture advocates “equalizing the world with benevolence and morality,” which coincides with Shen Jiaben’s human rights law thought. Admittedly, there was a big gap between the ancient thoughts of “benevolent governance” and “people-oriented” and the modern idea of democracy. Nonetheless, when China was opened to the rest of the world for the first time, the theoretical basis of human rights doctrine was dug out from the traditional Chinese thought of “equalizing the world with benevolence,” which laid the initial solid foundation for Shen Jiaben’s legal view of human rights doctrine (Xue, 2012). For example, Shen Jiaben criticized the disadvantages of the five feudal Punishments in his book *Examination of Criminal Law in the Past Dynasties* based on the Confucian people-oriented thought and deepened the Chinese society’s understanding of the humanism of punishment at that time (Zeng & Huang, 2003). Traditional culture is the foundation of a nation’s self-reliance and self-improvement. Shen Jiaben fully respects the traditional Chinese legal system and incorporates and learns from Western humanitarian legal ideas, establishing the groundwork for the modernization of Chinese law.

3.3.2 Attach Importance to the Principle of Protection of Rights

Focusing on the preservation of fundamental principles of humanity is also the guiding principle of Shen Jiaben's human rights doctrine. In a modern sense, human rights refer to the rights that people should enjoy as human beings. The "humanity," which is led by people, is the essential characteristic of Chinese traditional legal morality. Applying the death sentence repeatedly, reviewing the court in autumn, abolishing disease for the elderly and the young, and punishing punishment are typical manifestations of Chinese traditional law's emphasis on morality and humanity (Zhang, 2015). Influenced by this, the legal perspective of Shen Jiaben on the preservation of human rights, which is a ground-breaking idea based on Confucian prudence and leniency, gives particular emphasis to the protection of people's rights and condemns torture and interrogation by torture. Although feudal rulers of all dynasties advocated “benevolent governance” and “prudent punishment,” the punishment was the main feature under the imperial power, the obligation standard was still the mainstream of the feudal society, and inadequate measures were taken to preserve human rights (Huang, 2019). Therefore, Shen Jiaben often expressed the protection of people’s rights and the importance of human rights in the process of law revision. As an illustration, within the realm of civil and commercial law, Shen Jiaben actively advocated ethnic equality, gender equality, freedom of property and freedom of employment, and other modern human rights concepts of law (Wang, 2010). Shen Jiaben led the reform efforts for legislation amendment while being inspired by the idea of human rights, which is not only progressive but also representative of The Times.

Influenced by the Western humanitarian spirit and drawing on the legal systems of European, American, and Japanese countries, The legal theory of Shen Jiaben places a focus on the preservation of fundamental human rights, particularly the rights and interests of minors, women, and additional disadvantaged citizens of society, which is a progressive thought produced in line with the trend of The Times (Zhao, 2016). Western powers in the late Qing Dynasty were particularly critical of the harshness of traditional Chinese regulations., which was also the superficial excuse for Western powers to seize China’s consular jurisdiction (Jia, 2013). Based on this, When laws were being revised in the late Qing Dynasty, Shen Jiaben strongly supported humanism of punishment in order to encourage contemporary Chinese law's legislative spirit to catch up with the pace of the rest of the world.

4. Shen Jiaben’s Practice of Human Rights Law Thought

4.1 *The Methodology of Shen Jiaben’s Legal Thought of Human Rights Doctrine*

From the perspective of value, Shen Jiaben is committed to transforming “jurisprudence” into the standard of value of the law. Compared to Western legal traditions, contemporary Chinese judicial philosophy and culture are fundamentally different, for which Shen Jiaben keenly takes “jurisprudence” as the common point of reform of the law and strives to explain modern advanced legal ideas with the “benevolence” of traditional legal culture (Gao, 2011). In Shen Jiaben’s legal thought, “jurisprudence” is an analytical and practical concept. This “jurisprudence” comprises four elements: justice, order, propriety, and affection. Specifically, it is justice, fairness, ethics, and humanity (Chen, 2021). Shen Jiaben’s reform measures contradicted the “three Principles” of traditional Chinese legal thought to varying degrees. He emphasized the importance of legal theory in the legal system he was in charge of revising, which promoted the development of modern human rights thought to a certain extent (Hu, 2020). It can be said that Shen Jiaben focuses on

the law itself through the study of the legal practice of the Chinese dynasties to prove the value of jurisprudence. For example, Shen Jiaben, through his research on the conviction and sentencing of killing adulterers since the Tang Dynasty, demonstrated that the universal law of “killing adulterers without guilt” during that period was against the legal principle and thus advocated that the crime should be abolished in the reform of law (Wen, 2022). Shen Jiaben advocated “statutory crime” in the process of law reform, which also broke the traditional Chinese legal structure of convicting people according to the monarch and minister, father and son, spouses (Gao, 2007), reflected the core value concept of fairness and justice of the law, and demonstrated respect for human rights at the legal level. Considering Chinese legal and cultural norms, Shen Jiaben creatively endowed “legal theory” with modern meaning connotation and provided correct value guidance for modification and reform of the legislation.

From the perspective of practice, Shen Jiaben rewrote and amended the legislation by first getting rid of the most punitive provisions. Beccaria, one of the founders of the classical criminal school, pointed out the tyranny and brutality of the law in feudal society in his book *Crime and Punishment*, advocated the legality of crimes, and advocated the legal concept of humanitarian punishment (Ma, 2002). To some extent, he is credited with fostering the growth of contemporary Qing-era human rights philosophy by emphasizing the importance of legal theory in the process of law modification. (Hu, 2020). In the Ming and Qing dynasties of China, the doctrine of heavy punishment had obvious characteristics. It advocated the abolition of torture and the change of heavy punishment to light punishment, which was the main measure of Shen Jiaben’s law revision reform in the late Qing Dynasty. Shen Jiaben advocated that three severe laws should be abolished: the first is the torture of Ling Chi and Jao, the second is the system of sitting on the edge, and the third is the punishment of tattooing characters (Zhao, 2009). The reason, this paper believes, is mainly because Shen Jiaben, through the comparison of Eastern and Western laws, found that under the influence of modern Western humanitarian thought, the laws and regulations of numerous nations have gradually developed in the direction of light punishment and many countries have abolished the death penalty, so under the influence of Western learning, Shen Jiaben made corresponding reform measures. In that period of transition from a traditional feudal society to a modern society, the legal system developed from heavy punishment to human rights. Mr. Shen Jiaben made outstanding contributions to it.

4.2 The Practice of Shen Jiaben’s Human Rights Doctrine Law Thought in Law Revision in Late Qing Dynasty

Under the direction of Shen Jiaben in the late Qing Dynasty, law revision was a pervasive legislative initiative to update the country’s established legal framework. By learning from modern laws and regulations, the traditional Chinese legal form of a “combination of various laws” changed, and the Chinese legal system began to disintegrate (Jia, 2013). Any reform throughout history will encounter opposition from the established forces. In the process of law revision and reform, Shen Jiaben sought commonalities between Chinese and Western laws in an effort to lessen opposition to law modification. Shen Jiaben and other legalist schools advocate bourgeois legal thoughts under the banner of “human rights,” while Zhang Zhidong and other moral schools advocate traditional Chinese feudal legal thoughts (Zhang, 2022). In order to ensure the smooth implementation of law revision in the late Qing Dynasty, Shen Jiaben advocated finding a “new theory” in the conventional system of law, the gist of the school of jurisprudence should be included in the traditional legal science, and the kernel of “common sense” is the common core value of the two schools. Thus, serving the realistic feasibility of law revision at the end of the Qing Dynasty, Shen Jia has an eclecticism of Chinese and Western, ancient and modern excellent legal theories, learning from all.

Shen Jiaben had always insisted on “open and open records,” as opposed to complete Westernization and copying. Shen Jiaben believed that criminal law reform should be the first step in any legal reform in China because it embodies the traits of the country’s traditional legal system, which “combines all laws and focuses on punishment” (Yin, 2012). It was also unrealistic for China to fully adopt the European and American legal systems, what with the massive resistance from the old school and the fact that the Statutes of the Qing Dynasty had numerous flaws. Therefore, Shen Jiaben proposed the transitional nature of “two steps”: The Great Fresh Criminal legislation was created as a new legislation of reform after the Current Criminal Law of the Qing Dynasty was initially created as a transitional law (Zhang & Song, 2011). It conforms to the actual national conditions at that time, has the rationality of practice, and smoothly promotes the contemporaryization of Chinese legal culture.

5. Thoughts and Comments on Shen Jiaben’s Legal View from the Perspective of Human Rights

5.1 The Progressiveness of Shen Jiaben’s Legal Thought of Human Rights Doctrine

In terms of historical dimension, Shen Jiaben’s legal thoughts skillfully integrated the Western humanitarian legal spirit and the traditional Chinese concept of benevolent government and leniency, which promoted the dissemination of Chinese human rights thoughts and the modernization process of Chinese laws in a particular sense. Specifically, his legal thought on human rights advocates abolishing severe punishment and strict laws, which fully demonstrates the value of human beings. Shen’s human rights doctrine’s legal thought was put into practice starting from the late Qing

Dynasty revision of the legislation, but it persisted and expanded even during the reign of the Beiyang Government, the Nanjing National Government, and even the establishment of the New China Government (Zhang & Song, 2011). The clash between Eastern and Western approaches to law during the late Qing Dynasty led to the modification of the legal system during that time. While contrasting the Chinese and Western legal systems, Shen's integrated human rights doctrine legal concept emerged as a preferred alternative (Gao, 2011). His forward-thinking and pedagogical approach to the law, particularly in human rights, was essential in propagating contemporary legal ideas in modern China.

In terms of the legal aspect of the reform, Shen Jiaben sought the foundation of reform from the ancient Chinese legal views, and he was the precursor to the present Chinese human rights legal system. Based on adhering to the principle of human rights protection, Shen Jiaben applied his legal thoughts of integrating China and the West into practice, advocated the legality of crime and punishment, opposed comparison, actively promoted judicial independence and other measures to curb judicial judgment, and presided over the reform of law revision and legal education (Li, 2016). The Chinese traditional legal framework was recently modernized, and the country's great traditional legal culture has been inherited and carried forward under the direction of Shen Jiaben's human rights concept of "combining Chinese and Western elements."

5.2 The limitation of Shen Jiaben's Legal Thought of Human Rights Doctrine

Shen Jiaben's legal thought is not mature enough to implement the specific system, and the implementation has many obstacles. During that period of Shen's life, legislation precedes judicature. However, if the judiciary does not follow laws, the result of the legislation is often reduced to a piece of paper (Gao, 2007). Advocating judicial independence is an important part of Shen Jiaben's legal thought. In the aspect of theoretical research, Shen Jiaben demonstrated the importance of judicial independence, attempting to encourage the modernization of Chinese legislation, believing that judicial independence is the final guarantee of citizens' rights (Li, 2017). Nevertheless, in terms of how the reform was actually carried out, Shen Jiaben's advocacy for judicial autonomy in the reform had little impact.

On the one hand, as mentioned above, the Confucian traditional thought of three Principles and five Constants is still deeply rooted in modern Chinese society, especially in the middle and lower classes. On the other hand, because local authorities in ancient China were frequently in charge of administration and justice, they were granted a significant amount of leeway in the cases they oversaw and frequently made decisions about legal matters. Moreover, most people were not enlightened, and the legal concept of "no litigation is to seek" led to a weak awareness of legal rights protection.

Therefore, although Shen Jiaben's legal thought of human rights doctrine is of great progressive significance in The Times, and he advocates judicial independence in the process of law revision, he is unable to make fundamental changes in the above two aspects, which also leads to the problematic implementation of the reform of the law and the distress situation that it cannot be put into practice.

5.3 The Enlightenment of Shen Jiaben's Human Rights Theory on the Construction of the Rule of Law in China

The perspective on law held by Shen Jiaben reflects his unwavering faith in the legitimacy of legal culture. His legal ideas are brilliant because he respects traditional Chinese legal culture and fully exploits its human rights component to modernize Chinese laws in a way consistent with the core of traditional Chinese legal culture rather than taking the path of complete Westernisation (Song, 2018). The original value of legal advancement has always been present in China's legal system. For instance, it can be seen that the Chinese civilization had already started to explore the humanitarian value at the legal level before the enlightenment of modern times with the abolishment of corporal punishment during the reign of Emperor Wen and Emperor Jing in the Han Dynasty to the abolishment of hanging and the death penalty during the reign of Emperor Xuanzong in the Tang Dynasty (Burgon, 2014). Shen Jiaben's legal thoughts on human rights doctrine, formed in the special historical period when Chinese and Western legal thoughts intersect, are excellent legal thoughts integrated according to the principles of conventional legal systems (Wen, 2015). The historic Chinese legal framework of "common sense and accommodation of the law" has a unique modernity, increases the legal culture's confidence, and serves as a beneficial benchmark for the current creation of the authority of law in China (Yang, 2016). The rule of virtue and the rule of law are not opposed but rather complementary. China's development of the rule of law can be aided by the nation's exemplary traditional morality (Sun, 2017). Specifically, we can draw the essence from Shen Jiaben's "jurisprudence" and "common sense," promoting the combination of the rule of law and the rule of virtue in China and effectively promoting the modernization process of the rule of law in China.

Shen Jiaben contributed significantly to modern Chinese jurisprudence, and his emphasis on human rights is historically significant. First of all, although Shen has never studied abroad, he has a very open international vision. Shen Jiaben served as the Minister of Law Reform. During his time in that role, he committed himself to fostering the culmination of the modernization of the Chinese legal framework with world norms (Deng, 2015). Shen Jiaben has an extensive knowledge of the customs and norms associated with traditional Chinese law. During the tumultuous time of significant

societal change, he is neither conservative, exclusive nor blindly Westernized. He keeps a modest and prudent learning attitude towards foreign legal thoughts and culture, especially the legal thoughts of human rights doctrine, which is undoubtedly correct. Second, Shen Jiaben places a high value on the development of legal abilities and offers several ideas on the subject of legal education, such as “promoting the study of bright law” and “reserving talents” (Huang, 2021). The team of outstanding legal talents loyal to the country is our first vital resource to advocate the rule of law. Shen Jiaben’s advocacy of legal education is also worthy of our study.

6. Conclusion

At present, when international human rights doctrine is spreading widely, it is of great practical significance to study Shen Jiaben’s legal view of human rights doctrine for China to promote the rule of law comprehensively. Shen Jiaben’s legal view, which collects the essence of modern Eastern and Western legal thoughts, is a typical embodiment of the late Qing Dynasty’s legal modernization. Among these, Shen Jiaben’s legal philosophy prioritizes the idea of human rights law. Shen Jiaben’s rational absorption of traditional Chinese benevolent governance thought, and Western modern humanitarian concept formed a very inclusive human rights doctrine legal view, effectively promoted the combination of traditional Chinese human rights doctrine and legal system modernization, and elevated the process of building the contemporary Chinese system of law. Under the background of the new era, it has a profound enlightenment value for the progression towards the contemporization of the legal system as the primacy of legal norms to evaluate Shen Jiaben’s legal view of human rights. Under the background of the comprehensive rule of law, to promote the innovative transformation and development of traditional legal culture, we must uphold the attitude of openness and learning, comprehensively evaluate Shen Jiaben’s human rights jurisprudence and its concrete practice in the transition period of modern China, in order to continually offer a historical explanation and theoretical basis in creating the modern concept of the norm of law.

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