



The development of ancient Chinese contract spirit

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Abstract: This paper expounds the development of Chinese contract spirit by the thread of historical development. From the “people have private contract like law” in Han Dynasty to the “ People’s private agreements should be complied with by both parties “ in Gaochang, the following concepts of “ The government has its own political and legal laws, and the private economic exchanges are subject to the private contract “ in Tang Dynasty, all of these show that people always stick to the spirit of contract in ancient China, even deepened into our national spirit. This spirit of contract not only embodies in the existing large amount of historical relics, but also shows in literary works. Then, with the development of commodity economy in ancient Chinese society, the spirit of contract in China has also developed continuously, becoming the consciousness that everyone must follow.

Key words: Chinese contract spirit; Historical developments; Connotation

Introduction

Compared to the advanced development of contract spirit in western society, some scholars criticize that China is short of contract spirit, but this is some people’s dishonest negate the existence of China’s contract spirit. Our country’s contract system has long history; the earliest can be traced back to the slavery society. From the known literature we can know that the earliest should originate in the Shang and Zhou period, through the Qin, Han, Tang, Song, Ming and Qing dynasties in the development, enrichment and perfection of the feudal society. As the foundation of modern contract spirit, capitalism emerged in the middle of Ming Dynasty due to the improvement of social productivity and the strengthening of social division of labor. With the development of capitalist economy, the corresponding superstructure “contract spirit” will appear and develop in China. This paper will expound the development of Chinese contract spirit in the historical context.

1. Concept and Content of the Spirit of Contract

Contract, originally refers to the agreement between two or more parties on the relation of sale, mortgage, lease, etc. It can be understood as “keeping faith”. In 1932, the American Bar Association defined a contract in Restatement on contract law as “a promise or series of promises that the law provides relief for breaking it. In some cases, people consider it an obligation to fulfill”. The concept and content of contract spirit contain two important contents. The first is private contract spirit. In the commodity society, private contract spirit plays an important role in the development of commodity economy. The second is the spirit of social contract, which originated from the classical natural law school of the Western humanistic revolution. And it has a profound influence on the construction of the western society with democratic, liberal and rule-of-law. The spirit of contract consists of four parts: the spirit of contract freedom, the spirit of contract equality, the spirit of contract keeping and the spirit of contract relief.

China’s contract system has been developing from ancient times to now. According to the Han Dian Website, the contract is a document about the relation of sale, mortgage, lease and so on concluded by mutual agreement between

two or more parties. According to the Modern Chinese Dictionary, a contract refers to “a formal instrument of proof, sale, mortgage, lease, etc. concluded in accordance with law”. The meaning of contract is a document indicates that someone does something in certain conditions, and the spirit of the contract in China also appeared with the birth of the contract.

2. The Origin of Chinese Contract Spirit

According to the investigation, the establishment of contract system in our country was traced back to the Shang and Zhou dynasties and was appeared in the slavery society. Then, it entered the feudal society with the unification of the six kingdoms of Qin dynasty. According to the unearthed historical records, the original contract preserved to now is the middle of Western Han Dynasty. According to the unearthed contracts of Han Dynasty, the types of contracts were diversified, including the contracts of buying and selling clothes, cloth, fields, and salary vouchers. Although the number of these contracts is not much, they are the earliest contracts unearthed in our country. At the same time, some contract information also exists in bronze inscriptions and cliff, inscriptions. In addition, there are some land purchase vouchers. Although the total amount of these three kinds of data is not much, they are direct source from the original contract which can supplement the existing contract data. In conclusion, the unearthed contract data can show the contract system at that time and also show the spirit of China contract.

In addition to the above contract, there are many descriptions of the spirit of contract in Chinese folk stories. Sima Guang once wrote stories about honesty in the book *ZiZhiTongJian*. From this point of view, the spirit of contract also existed widely in the Spring and Autumn and Warring States Period when the contract system was not developed. As Sima Guang said, “Trust is the greatest treasure of the emperor.” In short, from emperor to common people, whether paper contract or oral commitment, the contract spirit of is embodied, and the demand of “keeping faith” is to be the foundation of life.

3. Development of Contract Spirit in Tang and Song Dynasties

3.1 The development of contract spirit in various aspects of society in Sui and Tang Dynasties

3.1.1 In the economic field

During the Sui and Tang dynasties, the feudal economy of ancient China developed continuously, and the economic relations in all fields were very active. Such as the development of cities along the river and the emergence of paper voucher called “Fei qian” are the reflection of the development of commodity trade relations. At the same time, the contract relations also developed, and the contract types were various. The contract types mainly included the contract of sale, loan, tenancy, concubine, bond and guarantee, etc. Although China’s ancient grade is strict with the distinction of monarch, official and citizen, good and lowly, the difference of social grade did not eliminate the equality of contract in economic life. When the two parties signed contract, it can prove that our country is a contract society. Contract has always been regarded as the text to determine rights and obligations, especially the debt contract which is the symbol of holding wealth at that time.

In the Tang Dynasty, there was also “The government has its political and legal laws, while the private economic exchanges are subject to the private contract. If the law does not clearly stipulate that private contracts can be used, the use of private contracts is prohibited, and the violators will be punished”. This shows the importance of the contract at that time. The economic communication of the people should be based on the contract which was made according to the law. People should not only follow the law, but also follow the contract relations. In other words, the contract can be seen as a part of the law. What’s more, in the Tang Dynasty, many events such as sales, tenancy, lending, interest, hiring, injury and compensation, these need to sign contract. In short, the spirit of contract revered the law showed the special status of contract in ancient China.

3.1.2 In the field of social life

Many proverbs in our country also explain the importance of good faith, such as “No man can stand without trust” and “A gentleman never goes back on his word”.

Many people love money and will get it by any means. The book *YuLiZi* tells the story of a merchant who lost his faith. The discredited person only can sit and wait for death after suffering. However, some people will not do that. For example, Cui Shu chose to restrain himself between self-restraint and money. Cui Shu thought that he should not be subjected to the money, which helped him avoid being in prison. In short, the spirit of contract was important in ancient people’s hearts.

3.1.3 In the field of national legal systems

In ancient China, the law was the representative of the formal system of the state. The contract signed privately by people gained the status of “quasi-law”. At the end of the contract in the period of Gaochang, it was often signed that “the people have private interests, and the two owners have their own names, and each party has to sign the treaty to be concluded by private people to show that it is in compliance with the credit.” The major achievements of contract system in the Tang Dynasty were reflected in the Tang Law. There were many kinds of contracts and some stipulations for signing contracts, no matter which contracts were signed. There are also includes the system of government intervention in contract, guarantee system and the legal liability that should be borne after the breach of contract. Therefore, in that time, our country’s contract system is relatively sound and the contract spirit has developed.

3.2 Economic Development in Song Dynasty Promoting the Development of Contract Spirit

In the Song Dynasty, the ancient economic development of ancient china reached peak point. It appeared groups representing the interests of the merchants, and even had the idea of common interests between governments and businessmen. That means the governing and the governed conducted voluntary cooperation on the basis of mutual benefit and win-win. This relation also embodies the equality between the two sides. For example, as Geng Yannian pointed out “It is feasible to do only the common good with the people for a long time. We should not only seek profits for the government and damage the interests of businesses.” That means only when both sides use their legitimate position in this relation reasonably and they can be equal and mutually beneficial. These kinds of opinions provide a certain ideological basis for the development of commodity economy in Song Dynasty. In addition, the commercialization of land, the high development of agriculture, handicrafts and the convenience of transportation, these all promoted the prosperity of the commodity economy. The prosperity of the commodity economy can also reflect the dynamic contract relation. The exchange of goods and money will increase. The number of money transfers will also increase. There will be more business relations and more contracts. This kind of contract relation is similar to legal agreement and passed down from the Tang Dynasty.

4 The Obstacles of Contract Spirit from Yuan to Qing Dynasty

4.1 The decline of commodity economy in Yuan Dynasty hindered the development of contract spirit

Mongolian entered the Central Plains and began the process of adopting former management and establishing new one, but still a large number of slavery factors remained. As the land gradually returned to the state ownership in Yuan Dynasty, the state had to devote more energy to the land management to maintain the state ownership. Therefore, the land relations began to decline and the highly developed commodity economy of the Song Dynasty also had decreased. At this time, for the same reason, the state power has been strengthened to interfere with the legal procedure of real estate transaction. What’s more, whether buying or pawning, people must abide by four legal conditions. That means the process of land sale become more complicate and the development of the commodity economy decline, with which the development of contract spirit has also been stalled.

4.2 Social contradictions in Ming and Qing Dynasties weaken the concept of contract

The Ming and Qing Dynasties as the end of feudal society, although various social contradictions gradually intensified, the development of commodity economy flourished. The contract system reflecting the development of commodity economy still exists, but people's will to abide by the contract is not strong for unfair agreements.

The number of contracts in Ming and Qing Dynasties is huge including property relation, family relation, and tax and so on. During this period our contract signing did not have too many concepts of equality, the parties to the contract were not necessarily equal. There are many contracts that reflect the complicated land relations such as the two or three masters of one field. Foreign churches and businessmen occupied land and houses by force. The contract may be forced to be signed, not involuntarily. This leads to the weaker not willing to take its own obligations, which leads to frequent disputes, and ultimately leads to the decline of people's contract concept.

5. Conclusion

From the above analysis, we can conclude that there are spirit contract in ancient China. Due to the development of commodity economy, there is a common agreement in society that contract is similar to law, and must abide by the concept of good faith and contract spirit. However, due to the influence of the feudal system and the supremacy of the monarchy, there are many unequal relations when making contracts which also led to the failure of the contract spirit to be systematized and stable.

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