FRONTIERS OF LAW IN CHINA
VOL. 13 MARCH 2018 NO. 1
DOI 10.3868/s050-007-018-0009-2

ARTICLE

TRAGIC CONSCIOUSNESS, NATURAL LANGUAGE AND MODERN SPIRIT OF THE RULE OF LAW

GAO Yangguang[*]

Abstract Tragic consciousness, which originated in childhood, is complex compassion based on strong self-consciousness. After being moralized, tragic consciousness presents the dichotomy of good and evil, which has not only profoundly affected the formation of natural language, but also cradled the theory of natural law and religious spirit. Modern jurisprudence attempts to get rid of the shackles of classics and Christian humanism, to shape the autonomous and self-consistent image of law with the *de lege lata* as center. However, it is difficult for modern jurisprudence to surpass the natural language which rooted in tragic consciousness, and impossible to neglect or deny the independent value of the human. The inherent conflict within the rule of law makes ironically a tragedy, especially in the context of contemporary China.

Keywords tragic consciousness, natural language, spirit of rule of law, modernity

INTRODUCTION ····· 137
I. WHAT IS TRAGIC CONSCIOUSNESS? ····· 139
A. Its Origin ····· 139
B. Its Moralization ····· 143
C. Its Relation with Public Nature ····· 144
II. THE FOUNDATION OF NATURAL LANGUAGE ····· 147
III. TRAGIC CONSCIOUSNESS AND THE RULE OF LAW ····· 149
CONCLUSION ····· 152

INTRODUCTION

In recent years, Chinese scholars have focused on how to examine the relationship between the norms and values. For the researchers of theoretical law, it deals with the relationship between legal dogmatic and value judgment, and it also concerns the redefinition of the core concept of justice and law; for legal practitioners, it means the

[*] (高仰光) Ph.D. in Legal History, School of Law, Renmin University of China, Beijing, China; Associate Professor, School of Law, Renmin University of China, Beijing 100872, China. Contact: gyg@ruc.edu.cn

This article is a staged research result of National Social Science Fund Project "Reflection on the Discourse of Jurisprudence under Totalitarianism" (Project No. 17BFX170).

inevitable balance and choices between the legal thinking in lawyer's mind and the common sense in people's daily life. It is not a fresh topic, but its significance is evident, because it plays the role of determining the outer boundary of the science of Law. It provides a reason why the science of Law is an independent subject from other disciplines: The science of Law lies primarily in its regard to the relationship between the norms and values.

Modern law, in the positivist dimension, refers to the "compliance to norms." That is to say, the responses to all the social problems should first consult the norms, and ultimately return to them. It does not mean that the norms are detached from values. On the contrary, values are always behind the norms. Translated into systematic norms by legal method, the values could be effective.[1] These two may be regarded as the foreground and background, or the two sides of a coin. The question is whether there exists a universal and general value (natural reason) behind the curtain of norms. Alternatively, is there only one certain value (the spirit of the epochs) that map to the particularity of an epoch?

This was once the obvious difference between the school of natural law and historical school of law, which in essence demonstrated the divergence of conception of history. If applying Fernand Braudel's theory, it can be deemed as the discrepancy between the medium-term and short-term conception of history.[2] The process of legal modernization goes exactly hand in hand with the process of historical nihilism. This might not be coincidence. With the deepening of modernity, especially in China, values will be further broken down into pieces and become personal likes and dislikes.[3] However, it is highly doubtful that the law is only working for the sake of temporary interests rather than for eternal justice. It is also of deep concern about the views of modern law as a non-eternalized utility. As Harold J. Berman said, "law will become the most exquisite evil if it lost homeland of values and justice." The common and definite values or spirits of law are expected not only by those natural jurists or historical jurists, but also by most of the positivists, because the health consensus of pluralistic values is the prerequisite of

[1] Max Weber classifies the law with this characteristic into rational law: law only judges things by its internal standards, refusing the influence of external factors such as politics, religion and ethics; the formation of internal standards is often through logical reasoning abiding by general rules or principles, which enables people to accurately comprehend the intricate relationship among internal standards with the help of logic tools. See Max Weber, *Rechtssozioligie: Die nichtlegitime Herrschaft*. Translated by KANG Le, JIAN Huimei, Guangxi Normal University Press (Guilin), at 220, 76–77 (2011).

[2] The conception of history is composed of long, medium and short terms was employed by Fernand Braudel, the representative of the second generation of the French Almanac, as the superimposed narrative method in his writings. See Fernand Braudel, *La Méditerranée et le monde méditerranéen à l'époque de Philippe II*. Translated by TANG Jialong, ZENG Peigeng, WU Moxin et al., Commercial Press (Beijing), at 8–9 (1996).

[3] See Harold J. Berman, *Law and Religion* (*Translated by LIANG Zhiping*), SDX Joint Publishing Company (Shanghai), at 45 (1991).

legal dogmatic and has always been adopted in the application of legal dogmatic.[4]

Therefore, it is necessary to return to the long-term perspective to search for values hidden behind norms, with the term, so-called "tragic consciousness," as the starting point. This article will first discuss the connotation of tragic consciousness and review its origin, then focus on its moralization and its social attribute as public goods. Next, the relationship between tragic consciousness and natural language will be discussed. Finally, the author will look for the spirit of the rule of law rooted in tragic consciousness and its situation in China.

I. WHAT IS TRAGIC CONSCIOUSNESS?

What is tragic consciousness? LIANG Zhiping puts the questions forward in this way: What is the meaning of life? Where are we human beings heading to?[5] The first and the last question which we have to face is the same one of existence, which is the basic context of tragic consciousness. The more straightforward expression is like this: "We are tragedies ourselves, which are the most shocking tragedies among everything either written or unwritten."[6] In other words, when I (we) realize the existence of "I (we)," the curtain of a tragedy has been pulled back. Therefore, tragic consciousness is human beings' facing up to their incomprehensible existence, and the resulting intense heart stirring. If there is no agitation of soul, how will people realize their own existence? If there is no self-consciousness, what are the differences between human and plants, as well as animals? This is not only the question confronted by human ancestors in evolution, but also the question every human individual is bounded to encounter during his growth.

A. Its Origin

The emergence of the self-consciousness is surely related to the substantial increase of brain function in evolution. It comes to our attention that, on one hand, human intelligence satisfies human's outward need of knowing and changing the surrounding environment. On the other hand, when human intelligence is used to understand an individual, it forms a strong inward demand to give a certain and understandable value and meaning to the existence of himself and the existence of others associated with him. When this inward demand is clearly raised, and cannot be met, people will become anxious. Tragic consciousness derives from this feeling, that is, the common experience of human being in the formation of self-worth identification.

In *Odyssey*, there is a paragraph by Ulysses, reflecting the typical psychological state in the process of self-value identification:

---

[4] See XU Defeng, 法教义学的应用 (*The Application of the Doctrines of Law*), 25(5) 中外法学 (Peking University Law Journal), 937 (2013).

[5] See Berman. at 2.

[6] Arthur and Barbara Gelb, *O'Neill*, Lowe & Brydone LTD. (London), at 487 (1962).

…

I think of him, and also myself;

For I see the real situation of us, the alive —

Shadows and insignificant ghosts.

And only so.

Ulysses' denial of the value of his own existence made him empty, depressed, helpless and sad, which was the source of real tragedy. However, if the meaning of tragedy is only expressing and exaggerating sorrow, it is nothing near great. In fact, though constantly suffering from frustrations in the process of self-value identification, human has never given up but, on the contrary, tried to experience the authenticity of the process. Therefore, the emotions accompanying tragic consciousness is not all negative, but with some positive factors simultaneously, which are embodied by the non-obedience to the domination of natural gods in ancient Greek tragedy, as well as the spirit to fight against fate, though the resistance is feeble, or even doomed to failure from the very beginning. Interestingly, this is not an exclusive cultural feature of the ancient Greek. Ancient Chinese mythology also has this spirit, such as the story "Jing Wei reclamation of the sea" recorded in *The Classic of Mountains and Seas*:

> *There were mulberries on the Mountain of Fajiu. A bird looking like the shape of a raven with patterns on its head, white beak and red claws lived there too. The bird was called Jing Wei, because she mourned herself sadly in the sound "Jing Wei, Jing Wei." She was Nvwa, the youngest daughter of Emperor Yan, the legendary ruler in ancient Chinese mythology. She was drowned in the Eastern Sea when she was visiting there and turned into the bird Jing Wei, always carrying a twig or a pebble from the Western Mountain and dropping it into the sea, so as to fill up the roaring sea.*[7]

This Chinese story gives readers similar feelings as the ancient Greek tragedy does, which suggests that tragic consciousness originates from a common life experience. In this regard, some scholars have pointed out, "This emerges from the split and confrontation between human and the whole universe, the whole nature, and the whole world, which are the environment in which human survive. But this environment is not in unity with human beings. It has its own independent will and power, which is often in contradiction with the will of mankind. Simultaneously, human existence is always independent; with self-determining will. This determines that people will always resist the will of the universe and the threat of nature. Though the resistance will never win and is hopeless and tragic, man cannot give it up. In this process, people demonstrate their independence, their own will and their subjective power."[8] In other words, human is clearly aware of their existence as a subject only when they are suffering from the pain of

---

[7] See 山海经 (北次三经) (*The Classic of Mountains and Seas (Bei Ci San Jing)*), Zhonghua Book Company (Beijing), at 98 (2011).

[8] WANG Furen, 悲剧意识与悲剧精神 (上篇) (*Tragic Consciousness and Tragic Spirit (First Half)*), Social Sciences, 115 (2001).

continuous but vain resistance. Though Jing Wei is weak, her will is independent and free. Though her fight against nature is futile, her confrontation, and only by confronting, shows that she is not a subsidiary to nature. Besides, "Kuafu run after the sun," another Chinese mythological story in *The Classic of Mountains and Seas*, also embodies similar tragic consciousness. Like the oriental version of Prometheus, Kuafu is bound to fail. In contrast, "The foolish old man who moves the mountain" *(Yu Gong Yi Shan)*, a story with a happy ending, not only greatly weakens the readers' tragic feelings, but also plays down the hero's aura.

The tragic consciousness in establishing the subjectivity via struggle generally appeared in the early literary works of mankind. But in ancient Greek tragedy, the forces fight against each other are separated from specific natural forces and become more abstract, and more profound. They might be at the mercy of gods, or the incomprehensible self. But ultimately, the object fight against by mankind was the eternality — death, which was bound to come. This led to the result that ancient Greek tragedy is often indulged in an atmosphere of mysticism, which is uncommon in the ancient Chinese myths and legends. In fact, human has been paying attention to death since long ago. As early as 2400 BC, a hero in the ancient Mesopotamia's epic "Gilgamesh" expressed human's irresistible fear toward death:

> …
> *I shall die, and shall I not then be as Enkidu?*
> *Sorrow has entered my heart!*
> *I am afraid of death, so I wander the wild,*
> *to find Uta-napishti, son of Ubar-Tutu.*[9]

In contrast, the ancient Greek tragedy attempts to transform people's fear in front of death into other emotions, which has resorted to certain mystic tradition. It is generally believed that the ancient Greek tragedy originates from the mysterious rituals associate with the worship of Dionysus. Among the gods of the Olympus, Dionysus is the god of wine, woods, agriculture and drama. According to legend, Dionysus was born from Zeus' thighs, a fact which makes Dionysus absurd from the very beginning. According to mythological scholars, Dionysus is not a local Greek god, but an exotic one coming in quite late from Thrace, the north region, because Dionysus does not have a position on the Mount Olympus even at the "Homer epic" era.[10] From the end of the 6th century BC to the 5th century BC, ancient Greek tragedy developed rapidly, and Dionysus appears in Greek Mythology during this period. He once said in *The Bacchantes*, one of the dramas by Euripides:

> …

---

[9] ZHAO Leshen, 吉尔伽美什史诗 (*The Epic of Gilgamesh*) , Yilin Press (Nanjing), at 59 (1999).

[10] See Jane Ellen Harrison, *Prolegomena to the Study of Greek Religion* (*Translated by XIE Shijian*), Guangxi Normal University Press (Guilin), at 334 (2006).

And now I come to Hellas — having taught
All the world else my dances and my rite
Of mysteries, to show me in men's sight
Manifest God
And first of Helene lands
I cry this Thebes to waken.[11]

The mystery and inspiration of relating Dionysian rituals with the harvest of the grapes come from the generous bestow of wine. The mad and grotesque Dionysus secretly brought wine and carnival to people, especially laborers in the lower level of the society. At the ceremony, the grape farmers would dress up as Satyrus, the half-man half-goat god, drinking wine and enjoying themselves. Some scholars have described this in detail, "Dionysian rituals contained ecstasy and mystery. By immersing into intoxication, the admirers, also called the Bacchants, could purify their souls and wash away the dirt in their life. The Bacchants danced in a circle, with people in the middle of the crowd playing the drum and the flute, and people around them shouting, making noise like animals and carrying male genital organs symbolizing fertility. 'Dionysus worship' released the passion in women. They held burning wood and sticks covered with ivy, passionately roaming in the forest in midnight and calling Dionysus with a variety of titles."[12] Thus, the premise of Dionysian rituals was drinking in group, and then overdrinking. When everyone was drunk, they were intoxicated the time stopped. Death was no longer terrible; the light of life was eternal. Therefore, this was a blatant confrontation of life against death.

In *The Birth of Tragedy*, Nietzsche points out that Dionysian condition is a state of intertwining pain and ecstasy, an experience of pursuing the unfettered individual life and restoring the original nature.[13] Therefore, Dionysian rituals themselves are actions denying death and affirming life, a struggle to extricate from the plight of surviving and an attempt to fight against pain and fear. The rituals express the value judgment of and ultimate care toward human culture as a whole.[14] Dionysian emotions are not average emotions, but a metaphysic tragic mood.[15] Thus, Nietzsche believes that the tragic consciousness comes from the indestructible will of humankind, which is psychologically and physiologically based on the inherent sexual instinct of human-being.

---

[11] See at *The Tragedies by Euripides* (*Complete Collection of Works by LUO Niansheng (Vol. IV)*), Shanghai People's Publishing House (Shanghai), at 359 (2004).

[12] Sofia N. Sfyroera, *The Essential Greek Mythology* (*Translated by ZHANG Yunjiang*), China International Culture Press (Beijing), at 132 (2007).

[13] See Friedrich Wilhelm Nietzsche, *The Birth of Tragedy* (*Translated by ZHOU Guoping*), SDX Joint Publishing Company (Shanghai), at 3 (1986) .

[14] See XIE Jinqiu, 论悲剧意识及其表现形式 (*On the Tragic Consciousness and its Manifestations*), Foreign Literature, at 23 (2005).

[15] See Nietzsche, at 2.

B. Its Moralization

Another important cultural source of Western tradition is the Hebrew *Bible*. But the Bible's teachings, which stress the absolute obedience to God and law, rather than struggle and fight, are very different from the tragic consciousness of the ancient Greeks. The Jewish people was tragic, due to their many unfortunate subjugation to foreign powers, while the tragedy of Jesus Christ, as well as His subjectivity as the Messiah, was established in hopeless but continuous protests. The Hebrew people, however, blamed the subjugations to the lack of devotion to their only God. The religion created by Jesus and his disciples not only continued the tradition of obeying God in the *Bible* (the Old Testament), but also made use of the power of church to "moralize" the monotheistic belief, which greatly strengthened and popularized the system centering "original sin." Since then, the new tragic consciousness has been established.

The concept of "original sin" is the core of the new tragic consciousness. *Genesis* tells the story of the first two humans in the world stealing the divine forbidden fruit from the tree of wisdom, and thus expelled from the Garden of Eden. Adam and Eve's resistance to the injunction of God, which is the root of all sins, is stupid and by no means worthy of affirmation. About this, Isidor of Sevilla state that, "because of the original sin of the first person, human was forced to live in slavery under the command of God." In other words, in their first revolt, ancient human got rid of the natural state which did not differentiate good and evil, and entered into the state of the "dichotomy of good and evil." And when entering the latter state, they were marked with impregnable "evil." Therefore, the sole purpose of life was to remove this innate mark, and the way to achieve this goal was inner reflection. The "original sin" in European tradition had great significance in the shaping of the concept of law. It formed a dividing line: natural law occurred before the fall of man, when human could govern themselves; whereas after the fall, natural law was no longer effective, and tragic consciousness centering "atonement" became the basis of legitimacy of positivist legal method.[16]

When the subjectivity of God was established, however, the subjectivity of the opposite of God, human, was completely smashed. Human became the object of domination. Tragic consciousness had undergone a fundamental change. Death was no longer the object of life struggle, but the natural destination. What people needed to fight against was no longer death itself, but the "evil" self before death. The new tragic consciousness attempted to make people abandon their subjectivity by constant confess. In the words of Peter Brown, "the new way of thinking appeared among Christians in the 2nd century shifted the focus of reflection on man's fragility from death to libido."[17] The

[16] In 1893, in a speech titled *Adam in the Study of Nations*, George Jelinek talked about how the "original sin" had a profound impact on the concept of early modern natural law and positivist law under the "natural state" which formed in the secular society.

[17] See Bernard Williams, *Shame and Necessity* (*Translated by WU Tianyue*), Peking University Press (Beijing), at 12, and fn. 20, (2014).

sense of shame (guilt) from "original sin" controlled people both internally and externally, and the intellectual enquiries toward death was replaced by asceticism.

This was a process of moralization: a clear idea of eternity emerged, which was embodied in goal-oriented (linear) concepts of time, moral and law. People began to consciously restraint themselves, obey the order of thinking and behave themselves. Simultaneously, sex was shameful, while human survival and reproduction depended on it. This dilemma led to constant self-denial and suppression upon individual vitality. The aimless and innocent eternality in the classical antiquity, which was even not perceived by man, ceased to exist. Tragedy was no longer pure, but always with the purpose of moral counseling, so as to keep people away from the will formed out of their instinct. Some scholars pointed out that "the absolute opposition of right and wrong, true and false, beauty and ugly was strengthened in this plane division. And in such a division, no tragic spirit implied by JingWei and Prometheus could survive."[18] Nietzsche believed that the real tragedy was trans-good and trans-evil. The degeneration was in fact the intention to prevent the fall of mankind. Since the ultimate proposition of "what is man" was replaced by "what should man be," the Christian theory of human nature was fictitious and hypocritical.

Ironically, both the ancient Greek traditions and the Hebrew ones have shrunk and withered in modern society. People nowadays are neither concerned about the death, which is bound to come, nor moral degradation. Development in science and commerce enables people to live in an extremely relaxing and pleasant atmosphere, where capital is both the principal part and the purpose, where entertainment has become the real theme, and where the "squaring up" to themselves has turned into contempt and disregard. For most modern people, the reflection on ultimate questions can easily cause bad mood, and thus the consensus of social education now is to cleverly guide people to avoid these questions, instead of making them hesitate between doubt and conviction toward a certain interpretation. They can turn to drugs to drive out haunting anxiety and depression. It seems that they have already lost the insistence on seriousness; by contrast, cynical life attitude is regarded as the one worthy of appreciation. As to this phenomenon, in Berman's opinion, the modern crisis faced by Westerners is derived from the confusion on this fundamental question.[19] Indeed, if perseverance has disappeared, the subject (be) and the purpose (should be) will no longer be important, then why law is law?

C. Its Relation with Public Nature

Ancient Greek drama was an important part of the city-state's public life. Theaters were the most important public buildings in the city-state, and the space for public discourse. This suggested that tragic consciousness in drama was not a monopoly of the

[18] See Furen, at 121.

[19] See Berman, at 2.

elite, but open to the public, as social products with public nature.

The three most famous tragedy writers of Athens lived in the period from mid-sixth century BC to the end of the fifth century BC, the historical period marked by rapid development of ancient Greek city-state civilization. This was not a mere coincidence. In fact, tragic consciousness, as the basis of "civic awareness," was indispensable to city-states as political communities. Most of the ancient Greek city-states were transformed from relatively loose tribal alliances. The creation and performance of drama served as intellectual and emotional ties for members of different tribes to break the closeness of blood ties and establish common identity of citizenship. It is worth noting that the three tragedy writers of Athens were extremely productive. Sophocles wrote more than 100 tragedies, which were performed repeatedly in theaters of Athens. What gave the tragedy writers so much inspiration? In addition to the playwright's talent, the more important factor was probably the huge demand for this public product in the city-state of Athens.

For the ancient Greek city-states in their early stages, the strength of both internal and external political control depends on citizens' loyalty to the city. In the process of seeking a political governance model, however, there were widespread perplexities in the city-states. If a city-state adopted a political system that violated and suppressed the will of people, people would converge passively under the coercion of external forces and lacked the recognition of their citizenship, then this system would undoubtedly break when external forces are weakened. On the contrary, if the city-state adopted the political system meeting and indulging the will of people, people would lose their sense of citizenship in the indulgence, then this system would also corrupt quickly until its collapse. Confronted by such contradictions, the city-states all sought for solutions in conformity with local customs: Athens uses theaters for the purpose of "civic education," and Sparta builds barracks for the same purpose. Athens cultivates citizens' sense of responsibility for themselves, their families and the city-state through the creation and performance of drama, which is not indoctrination, but a guide to the will of people and encouragement to active participation in the discussion of political topics. Therefore, the creation of Athens drama is not only a reflection of current issues, and also a way of involvement in political discussion.

Specifically, Athens drama chooses destiny as their theme. Some dramas are tragedy, which magnifies and abreacts tragic consciousness; others were comedy, which employed black humor to serve self-mockery. Between the two genres, tragedy was the main pillar to achieve the political goal of "civic education" — the playwrights, the actors who wore masks on the stage and the audience in the theater explored major issues closely related to the city and to individuals, such as what was happiness, and the source of it. If city-state politics was defined as the cause for the happiness of most people, the system must consider how to deal with human nature, and thus must first consider what human nature was. It can be argued that drama formed the public space in a cultural sense for Athens. It

is noteworthy that this policy also led to the flourish of rhetoric and speech and made Athens the most culturally prosperous city-state in ancient Greece.

How did the ancient Greek tragedy guide the will of people? From the playwrights' point of view, a guiding tragedy needs to include at least three factors: first, the call for facing up to human nature and respect to human needs; second, specification of contradictions in reality and demonstration of the efforts to improve the reality; third, the call for questioning the value of human being themselves. *Antigone*, a drama by Sophocles, is a good illustration of these three elements: first, Antigone respects the value of her brother as a person rather than regarding him as a criminal; second, her respect for her brother suffers from setbacks and she is unable to resist; third, she has died to confront the issue and deemed it a worthy death.

From the perspective of the audience, tragedy's doubts about the reality stimulates people's conscience and reflection upon the meaning of their own existence, especially when their minds resonated with the unfair fate of the characters and resented the injustice, but reluctantly found themselves caught in the "want to speak but silent" situation. This experience of "stimulus — reaction — reaction disability" within a short time greatly exacerbated the psychological pain of the viewers, while forcing them to bear this sense of powerlessness and frustration for a long time. Therefore, the resonance continued even after they left the theater, and thus they could not help but involuntarily bring the psychological pain into their real life. The psychological effects, however, were reversed, that is, becoming open-minded, cheerful and tolerant. In this regard, some scholars point out that the effect of watching tragedy is precisely the catharsis of this "common suffering," or "sympathy," so that our emotions become healthy and delighted. It is not for the purpose of torturing us and making us too sad and painful to sleep for days.[20] Besides, an important social effect also occurs within the theater. When unfamiliar citizens sit shoulder to shoulder watching drama and suffering the common psychological pain, they tend to trust each other and form a partnership. It is conceivable that watching drama for a long time gradually shape the common topics and common feelings among citizens, until the formation of a community of destiny. This is the value of considering watching drama as a necessity of political education in Athens. It was said that Pericles, the Archon of the golden age in Athens, even subsidized the poor to ensure the coverage of "civic education."

Although the tragic consciousness in Christian culture is "heterogeneous," it is undeniable that it is also a cultural product with public nature. Christians gather in the church to engage in various religious rituals, whose significance lies in the strengthening of the intrinsic identification of the teachings and the strong emotional impact among Christians. In contrast, the spiritual life of modern people is isolated from each other.

[20] See WU Zengding,《敌基督者》讲稿 (*Lectures on The Antichrist*), SDX Joint Publishing Company (Shanghai), at 27 (2012).

Therefore, the tragic consciousness exists only in individuals or private groups, no longer with a public nature. In modern society, the purpose of public education is no longer openly discuss the ultimate question, but to spread vocational skills which meet the demands of the market. Modern law has completed its "disenchantment" during secularization, and lost the spiritual support. Since the 19th century, nationalism, a public resource, has also been dismal. If the value behind norms has lost its public nature and become a private matter, how can modern law still be regarded as a "public device"?

II. THE FOUNDATION OF NATURAL LANGUAGE

There is no doubt that tragic consciousness has profoundly affected the natural language of mankind. Natural language is the national languages formed gradually in social history, which are convenient, flexible and subtle, and are capable of vividly and exquisitely expressing people's thoughts and emotions; they are not only powerful and expressive, but also easy to learn. Compared with artificial language, however, the drawback of natural language is also obvious, such as the prevalence of polysemant, the loose grammatical structure and the low degree of abstraction.[21] Different natural languages differ hugely in the accuracy and profoundness of expression, which is directly related to the demand and application of natural languages by people in different times and areas in their daily social life. However, the vast majority of natural languages formed with human tragic consciousness as the background.

Ancient Greeks are often deemed as children, because they are like children in early human enlightenment. Language is the product of thoughts, but it is also independent from thoughts. For children, it is not easy to separate language from thoughts. In other words, symbolic language is difficult to comprehend. Vygotsky points out that finding out the relationship between the word and the object does not immediately make children clearly aware of the relationship between the symbol and the object. For them, the specific word has long been a property or character of the object, not just a symbol; they first learn the external structure of "object — word," and then grasp the internal relations of "symbol — the object referred to."[22] This means that the history of language formation is the history of finding meaning from symbols, which is a slow process. It may take several years for a child, but for human-being as a whole, requires a huge amount of time too long to imagine. After all, children acquire languages under the guide of adults, while human are completely groping in the dark until comprehension one day. Thus, on the surface, people obtain language skills instantly, but in fact, human beings have experienced a series of complex temporal "molecular" changes before the critical

[21] See JIANG Chenglin, GUI Qiquan & Hua Yuhong, 人工语言发展的三个阶段 (*The Three Stages of the Development of Artificial Language*), 11 江汉论坛 (Jianghan Tribune), 38 (1986).

[22] See Lev Vygotsky, *Thought and Language* (*Translated by LI Wei*), Peking University Press (Beijing), at 7 (2010).

moment of language development.[23] And this critical moment is clearly the ancient Greece.

Piaget's study of children's psychology found that children's thinking pattern had strong self-centeredness, which was demonstrated by "self-centered speech" at the beginning of language acquisition. "Self-centered speech," or self-talk, did not serve any social communication purpose, but often satisfied the emotional needs of children in a fictional and imaginative way. Vygotsky also noticed the phenomenon of self-talk. But in his opinion, the "self-centered speech" was also social, and therefore not illogic raving. With the child's mental maturity, this self-talk would be gradually replaced by silence, that is, "internal speech," or, thinking.[24] In general, a normal adult did not "think loudly" like children.

The above arguments of the two scholars are very instructive for understanding tragic consciousness because it is, in essence, self-examination of people and a form of "self-centered speech." In ancient Greek tragedy, on one hand, characters in drama often revealed irreconcilable contradictions through self-interrogation; on the other hand, monologues and dialogues of characters were often contradictory, indicating the difficulties of internal (self) and external (social) identification. Was this not only a naive child would do? At the same time, their self-questioning is not completely incomprehensible, because, on the one hand, monologues are their "internal speech," or the "expression of their mind"; on the other hand, however, the monologues are meant for the audience to listen, thus, to a certain extent, also a "live dialogue" between the playwright and the audience via actors. Therefore, ancient Greek tragedy is not only a playwright-centered process, which "creates" symbols and "discovers" meaning, but also an audience-centered process in which they recognize and accept the symbols "created" and meaning "discovered." In other words, it is a process of turning the "internal language" of the playwright to the common "external language" of the audience, and a process of the formation of natural language.

Athenian philosopher Aristotle is the first one who studies natural language as a discipline of science. It is generally believed that Aristotle creates the logic pattern for exploring and solving some problems in debates. His logic indicates some knowledge of natural language. He also employs natural language in his expression and the syntax of his logic patter is even identical with the grammar of natural language.[25] The concept of rhetoric is also promoted by Aristotle. In order to distinguish rhetoric from sophistry, Aristotle points out that rhetoric is the ability to find possible ways of persuading on any

---

[23] Id. at 7

[24] Id. at 8–9.

[25] See The core sentence of Aristotle's logic pattern was "S is P," based on which he developed his logic, including the Four Predicate, Square of Opposition and Syllogism. WANG Lu, 逻辑与自然语言 (*Logic and Natural Language*), 35 求是学刊 (Seeking Truth), 34–35 (2008).

question.[26] In comparison, logic works not only for "external language" in social communication, but also for silent inner thinking, but the speaker and the thinker usually do not perceive their compliance with the logic rules; The rhetoric links to "dialektos" uses "external language" to persuade the interlocutors, and usually is not part of "internal speech" except for children. That is to say, logic is the inward and latent part of natural language, while rhetoric the outward demonstrated part. Interestingly, in ancient Greek tragedy, playwrights (through the same character or different ones) abided by logic rules in both their self-questionings and rebuttals. And for the audience, the two contradictory viewpoints were both persuasive in their own way, which would agitate their inner anxiety and disturbance: Because the limitations of thought and language, as well as the relativity of truth, were brutally revealed, which they had never been aware of — as a matter of fact, human themselves were not perfect. It must be frustrating for anyone who found out this fact for the first time! Therefore, the tragic consciousness was not only the starting point of natural language, but also had long been waiting at the destination, which was deep and profound. On the contrary, the "one-sided" moral advice of clearly distinguishing right and wrong, good and evil could not bring similar feelings to the audience, and of course, could not have such a profound impact on natural language.

III. TRAGIC CONSCIOUSNESS AND THE RULE OF LAW

So far, law is expressed in natural language, but it is not the product of formal language.[27] Natural language is subjective logic, and formal language predicate. Although Alexis tries to replace subjective logic with predicate logic in his legal argumentation, it is obviously a very special legal theory that is difficult to apply in legal practice. In addition, law is not an artificial language created for a clear purpose and meant to be used in small groups, like Esperanto or Interlingua, but the abstraction and fixation of daily thoughts based on natural language. This means that law cannot escape the influence of logic and rhetoric in natural language, and thus cannot escape the influence of tragic consciousness embedded in natural language.

It is generally believed that modern spirit of rule of law originated in the United Kingdom. In *British law and habits*, the 13th century English judge Brackon systematically expressed the concept of "King under the law," and evidently points out that although the King is above his subjects, he is under God and law; because king is

[26] See JU Yumei, 解析亚里士多德的"修辞术是辩证法的对应物" (*Analysis of Aristotle's "Rhetoric is the Counterpart of Dialectics"*), Contemporary Rhetoric, 24 (2014).

[27] In the 19th century, in order to explore and solve some problems in mathematics, German scholar Frege created modern logic. He found that Aristotelian logic could not express the reasoning in mathematics. So he abandoned natural language and established formal language. Thus, the syntax of his logic was different from that of natural language. The basic sentence of Frege's logic was "Fx," on the basis of which he created the predicate logic of first order. From then on, logic could express categorical propositions, such as "Fa," and it could also demonstrate relational proposition, such as "Fab." Since Frege's logic only adopted symbols such as F, x, a and b, and no natural language at all, it was called formal logic. See Lu at 35.

created by law. This is considered to be the historical source of the "rule of law" tradition.[28] Another famous 17th century English judge Edward Cork quoted the first half of the proverb, that is, the conclusion part, to rebut James I's interference in the judicial activities. People's understanding of this proverb is usually related to equality, which includes several layers of meaning. First, there is a huge difference between king and average people, that is, "the king is above average people." Second, if considered in a certain background, the difference in the reality can be ignored, and king and the people are equal; third, this background is God and law. The reason why this conclusion is reached is that God and law are transcendental existence with a position too high to be reached by the mortal. So the various gaps among people in their mortal life, be it power, status, wealth, or wisdom, do not matter at all. Under God and law, all the people, including the king, are equally humbled. It resembles the situation of looking at the surface of the earth from outer space, where you will not be able to observe the bump of surface.

Of course, endowing transcendences to law is not a patent of Christian civilization. Sophocles had denounced King Kryon through Antigone's words:

> ...
> *Nor did I think your proclamation so strong*
> *That you, a mortal, could overrule the laws*
> *Of the gods, that are unwritten and unfailing.*
> *For these laws live not now or yesterday*
> *But always, and no one knows how long ago*
> *They appeared.*

This paragraph can also be interpreted as a wonderful depiction of the spirit of rule of law: Antigone resists temporary inequality based on power with the ultimate equality (death), so that her short life obtained extra meaning. To the Hellenistic era, although the moralized monotheism had not yet come, tragedy with oriental factors had revealed in advance the meanings. First, nobody can adverse illness and aging, birth and death (inevitability), which was equality among people. Second, destiny (contingency) is neither foreseeable nor evitable, and thus people driven by it are equal. Third, people's effort trying to give value and significance to their existence was futile, and thus people were equal in terms of the meaninglessness of life. In ancient Greek tradition, these three reasons standing for equality were figured as the only God in Hebrew tradition, as the Jews believed: to be truly equal, law must not be pure Lex Personalis. This was the source of transcendental legal conception in Christianity. It could be concluded that it was not a certain god, or a religion, not even the religion itself, which made law paramount, but the tragic consciousness in religion.

---

[28] See CHENG Handa,《大宪章》与英国宪法的起源 (*The Charter and the Origin of British Constitution*), 18 南京大学法律评论 (Nanjing University Law Review), 16 (2002).

In the secularized legal tradition, equality is almost incomprehensible due to the lack of spiritual awe. For example, Article 33(2) of the Constitution of the People's Republic of China stipulates that all citizens of the People's Republic of China are equal before the law. Besides the state power, however, are there any other reasons supporting the value of equality in law? The insufficiency of explanation is the unbearable lightness of law.

As a natural language, however, Chinese is not short of tragic consciousness, which, in traditional Chinese culture, is even prominent in some eras. Some scholars point out that, until Tang dynasty, Chinese poetry was still rooted in the poet's tragic consciousness. "No ancients before me, or comers from behind. Reflecting on the infinite of universe, alone, in a sadness sublime, I shed tears." This poem by Chen Ziang could be regarded as the general theme of Tang poetry.[29] It is clear that the reverence of the universe and ancestors is the basis of the development of traditional Chinese tragic consciousness: Compared with the universe and ancestors, individual life is so short and seemed meaningless. It is better, however, to say that because life is short, it is meaningful and worthy of recognition.[30] Death is not just the end of life, but an aspect of life itself. Only in the process of "born to die" could the subjectivity of human being demonstrated. In other words, the meaning of life lies exactly on the conscious reflection of the "meaninglessness" of life.

It is worth mentioning that the questioning of life's meaning was often transformed into the "Confucius ethical philosophy of self-enhancement, family harmonization, state governance and nation stabilization" patriotism. From Qu Yuan (the road ahead will be long and our climb will be steep) to Sima Qian (studying the relationship between the unearthly and the mundane, comprehending the evolution of history, writing down the ideas which will only be the opinions of one school among many), and then to Fan Zhongyan (deep concerns about the country and the people before anything else) and Wang Yangming (to ordain conscience for Heaven and Earth, to secure life and fortune for the people, to continue lost teachings for past sages, to establish peace for all future generations), all of these quotes profoundly reflect the pursuit of the meaning of life by ancient Chinese intellectuals — between heaven and earth, a real man has the responsibility to pursue the truth and help his nation. In plain words, behaving decently like a *Junzi*,[31] showing filial piety and serving the country loyally are all for realizing that one does not live on in degradation, but to be worthy of his short life. In face of "righteousness," fame and fortune do not matter. Isn't this a justification for the value of equality in article 33 (2) of the PRC Constitution?

In short, the theoretical analysis of Chinese jurisprudence should take full account of the tragic consciousness in the Chinese language, for example, respecting the status of the

---

[29] See Furen, at 121.

[30] See Zengding, at 27.

[31] The word *Junzi*, which often appears in Chinese classics, describes Confucius's ideal personality, who any one of us, rich or poor, has the potential to become a *Junzi*.

universe and ancestors as “higher law” in the value system, and promoting the value based on Chinese tragic consciousness to reappear behind norms.

CONCLUSION

Human beings are experiencing a legal life across the borderline, which is not only the borderline of different countries, but also of different cultures. Under this discourse of globalization, introspection is necessary, for the law needs a deep reason, which might root in God's design for human emotions. Although scientists can understand the composition of human emotions through physiological or biochemical experiments, only humane scholars can finish the self-understanding of Human’s Soul from inside to outside by observing the innovation and application of natural language. Overall, tragic consciousness is an important thread, which runs through the living practice of ancient and modern human beings, and shared by the East and the West.

Modern jurists have usually focused their attention on the static system of the legal norms, or the dynamic effects of the application of the law, and seldom consider the emotional foundation of law. They regard natural law as platitudes that cannot reuse in new circumstance. Instead, it should be an abstract and mechanical system, which governs people’s mind and their lives. This is actually a kind of unrealistic approach. On the contrary, the ancients stress that the effect of law is not only maintaining social order, but also helps to maintaining the sense of shame or guilt of every social participant. As a modern man, just like an ancient man, every one of us is deeply aware of the complex emotional changes in our minds, including the state of happiness, sadness, fear, anger, shyness, and so on, and even the intermediate state between them. This is a strong reason why jurists have the necessity to use the flexible and rich natural language to understand the inner world of people rather than immerse themselves in the balance of economic benefits and visible effects of order.

If we can understand the rule of law as a more complex system of governance, not only the external governance, but also meet the internal satisfaction of each individual, the rule of law will get a more civilized foundation and a more universal space. There is no doubt that China has a long tradition and rich resources in this area. The ideal and pursuit of the perfect personality provided an important basis for social governance and interpersonal relations. Facing the crisis of modernity, China may be able to dig out some helpful wisdom from the two thousand years long tradition of governance to provide nourishment for the long live of the modern spirit of the rule of law.