The Influence of the Roman Law on the Religious Law

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Abstract. The process of collision between Roman law and religion made mankind almost go through the whole process of transformation from religion to secular state, from religious law to secular law, from the unity of religion and politics to the separation of church from state. Through the secularization of Roman law and the influence of Roman religious factors on the modern rule of law, this article draws the conclusion that during the legalization of Roman religious factors, law gives religion its sociality; and religion gives law the sanctity required for its spirit, direction and law to be respected, and this is the source of the modern legal system of religion. With the development of society, how to give full play to the positive spirit and direction of religion so that the law can obtain the sanctity required for the respect and finally make the law to be believed is the top priority of the religious legal system in China.

1. Introduction

Since humans began to think of death, dreams, and other physiological phenomena, they gradually put their faith on the totem worship, spirit worship and lead the appearance of original religious beliefs. When it finally comes to the authority products (such as the West of God), religion is destined to be secular. As Marx pointed out clearly, the root cause of religion is not in heaven, but in the living world [1]. Observing on religious secularization process, it mainly experienced from the theocracy to the secular state, from religious law to secular law, the transition from the unity of religion and politics to the separation of church and state. This process is completely indicated in the history of Roman law and its influence to the modern rule of law. Roman law is the general term for all legal norms of the ancient Roman slavery countries in the long history of more than two thousand years and is the most complete legal system in the ancient laws of the world. In a narrow sense, it refers to the code of the “Corpus Juris Civilis” of the Eastern Roman emperors. This article mainly discusses the process of religious secularization in Roman law and its impact on the modern rule of law. It adopts the Roman law in a broad sense.

2. The Secularization of Roman Law

As early as in Hebrew time, religion and law were integrated. The Hebrew word dat means both “law” and “religion” [2]. The Five Books of Moses recorded both the commandments of God and the laws of mankind [3]. During the royal administration of Rome (seven generations of King in total), religion and law are inseparable. At that time people mainly observe the customary law [4].

2.1 The struggle between the secular classes and the monks who started the Roman Republic opened the pace of the secular legalization of Roman law

During the Roman Republic, the law was monopolized by the monks and the monks were all aristocrats, so the law was monopolized by the aristocracy. Promulgation of laws, implementation of laws, interpretation of the law, and judges were all made by aristocrats, which led to the partiality and injustice of the same clan. This situation has been fiercely opposed by civilians. In 494 BCE, with civilians striking the Roman government as an indication of non-cooperation, the aristocrats made compromises, freeing debts as they were due, repatriated their slaves and setting civilian seats
in the Ombudsman. In 471 BC, the assembly of civilians was established to oppose the Hundred Regiment Assembly. In order to prevent the aristocracy from abuse of judicial power, the requirements of the statute law and the code were born consequently. The Law of Twelve Tables was the product under this background. The publication of Law of Twelve Tables laid the foundation for The Roman Civil Law. The law promulgated by its publication, publicity principle, to a certain extent, limits the aristocracy arrogant [5].

But the monks’ monopoly on the law kept the law shrouded in mystery, not only the teaching of legal knowledge was operated secretly, but also contained the ritual of religion. The secular class demanded full - time legal staff, and they also increasingly required to participate in legal affairs. In 304 BC, Nie Si Fu Laowei put the judicial calendar and the litigation Code which are compiled by the high priest Apical Claudius, who is the main drafter of The Law of Twelve Tables to the public, breaking the monopoly of monks and nuns over legal affairs. In 254 BC, the civilian monk Tibidon Coronacan turned his back on traditions, made legal documents publicly available, and enthusiastically answered questions and imparted legal knowledge on the issues in question, so that the secular class could get the opportunity to study law; and he also sowed seeds for the birth of ancient Roman secular jurists. This incident marked the phased victory of civilians over the monks and the secular strata in the struggle against the monastic class. Furthermore, it gave birth to jurists among the common people, opening up the pace at which the secular and religious laws of Rome started to separate.

2.2 The unity of the Roman Empire and the religion made further secularized religion

Since its birth, Christianity has proclaimed “the salvation of Christians is for the sacrifice of Christ.” This is extremely tempting for slaves who are in dire straits and can only comfort their relief from despair by pursuing their minds, and are naturally attractive to the consolidation of the empire of slavery appreciation and preference of the slave owners ruling class [6]. In AD 312, Emperor Constantine became a Christian. In 324 AD, Christianity was designated as a state religion of Rome and the mode of integration of religion and religion in the Roman Empire was established, it arouses many changes in the religious and legal traditions of the West. After Christianity became a state religion in Rome, the Roman Emperor, while fostering Christianity, was highly dominated by Christianity and forced to administer all aspects of spirituality and secularity. Christian priests, missionaries, monks are also granted special exemptions, exceptions and allowances. At this period, the church has a substantive impact on the secular legal system of the country and Christianity. At the same time, the upper class members tended to be secularized under the erosion of growing privileges and wealth, they are not only obeying the authority of Roman emperors but also disregarding the contradictions of religious doctrines, and advocating obedience to the Roman Empire as a political tactic of Christians, claiming that alleging Roman rule was the guidance of Jesus. Instilling in Christians the idea of “not treat evil with evil” and the idea of “loving the enemy,” declaring that the previous condemnation of the Roman Empire was incorrect and that the statement of state, law and social inequality in Rome into “God’s arrangement”, etc., so that the imperial rule can be safeguarded. It is in this historical context that the Christian Church can instill many of its ideas and concepts into Roman law so that it can be implemented in most parts of the Roman Empire.

2.3 Roman law accelerated the secularization process from the 11th century

With the collapse of the Rome Empire, not only the territory and prestige of the Empire were lost, but the sacred spirit of the Rome law had disappeared. In the 5th to the 10th century, the Roman law lost its past glory, and it almost swallowed up in the history and can only be turned into a traditional habit unconsciously followed by people. However, after all, history failed to cover up the influence which caused by Roman law. When it stood up again in the 11th century, the divinity of its content was washed away and rooted in secular soil from the very beginning. From the 12th century and on, the Roman law has been accompanied by a series of vigorous human liberation movements such as the Pope Revolution, the Renaissance, the Religious Reform, the Enlightenment, and the Scientific Revolution, all of which accelerated the process of secularization [7].
In Western history, the state and the church were respectively called two swords. In the Middle Ages, people believed that God granted the sword of eternity and spirit to church, and the state was considered as temporary sword and can only bring the temporary happiness. Therefore, the state should obey the church. In 1075 AD, with the participation of non-clergy in the appointment of priesthood, Pope Gregory VII declared the church become politically and legally independent, established the Roman Catholic Church have its own independent and autonomous law, and became an independent political group [2]. The Church received a large number of new jurisdiction rights, not only legislative and judicial functions, but also the administration function, formed a series of laws and regulations and many rules of procedure, thus the Canon Law was came up. The Catholic confrontation with secular power triggered the Protestant reform movement of Luther, Calvin and others. It not only broke the national rule of the Catholic Church and the Canon Law, but also caused the large-scale transfer of power, property and privileges from the church to the country [2]. In particular, the Calvinists insist that all local political organizations become open Christian communities and need to follow the basic principles of natural law while insisting on the fundamental separation of the church and the country. They should give full play to the legal role of the church and allow the direct involvement of leaders of local churches, so the implementation of laws can be enacted by the entire Christian community and all citizens [1]. Calvin brought God directly into the most humble practices of practice - secular life, daily work, and professional work, which sanctified real economic activity [1]. The protestant reformation advocated the theological separatism, which was a crucial resource for the separation of church and state and the protection of the citizens and religious freedom of minorities in the west [2]. It was described as Berman: at this stage during the late 11th century and the early 12th century, the legal rules and procedures used in the various legal restrictions in Western Europe are largely independent of social customs, political systems and religious systems ... There is no independent, complete, evolving legal principles and systems of legal process ... In the late 11th and early 12th centuries, there was an “unexpected and sudden” change in these conditions [8].

2.4 Separation of Religion and Politics Open the Course of Legalization of Religion

After Protestantism advocated the separation of church and state, the Italian poet Dante also believed that both the church and the state were directly entrusted by God to take care of the essence and the welfare of the world. The two are equal and separate powers and should not interfere with each other [9]. This has an important impact on the legalization of the world’s religions. Many countries have stipulated on religion. Taking the First Amendment of the Constitution passed by the United States in 1791 as a typical example, “the Congress cannot formulate a law that establishes or prohibit the practice of religion.” It established the separation of church and state, and the principle of religion freedom from the height of the constitutional system and laid the legal cornerstone for handling the relationship between state and church in the United States and exerted a significant influence on the legalization of the relationship between state and religion in other countries in the future [1]. Especially, since the mid-20th century, with the promulgation of the *Universal Declaration of Human Rights* and a series of conventions that guarantee the fundamental rights of citizens of all countries, the freedom of religious belief, religious activities and the separation of church and state have been increasingly recognized by religious groups and religious people; furthermore, more countries such as France, Japan, Germany, Spain, England, India and other countries have enacted laws and regulations on the management of religious affairs and have defined the freedom of religious belief and the relationship between the state and religion in the form of laws. The legalization of religion, especially the legalization of the relationship between the state and the religion, has ended the bloody relationship between the state and religion in Europe for hundreds of years and maintained the relative harmony between church and state, which has played a positive role in social stability and development [1].

In conclusion, Becker has pointed out: the development of western religions brings the seeds of secularization from the very beginning, that is, the development of the western religion is a process of secularization, in a sense, is also a legal process of secularization [1].
3. The Influence of Religious Factors in Roman Law on Religious Legal System

Roman law, from *The Law of Twelve Table* to *The Civil Law*, it has experiences the up and down for two thousand years, from the dark era of Europe to the present, the Roman law system influenced the world, the scholars and researchers spare no effort to spread its principles, it all because The Roman Law has made great accomplishment on both theory and practice, it pays attention to implementation rather than complicated theory. The Roman Low has brought great influence to the whole world for a long time [10]. In the book *The Spirit of Roman Law*, the author Jhering, who was from Germany, made this comment: “Rome conquered the world, initially by force, by religion, and by law.” It can be seen that the dispute between Roman law and religion is also a topic that cannot be evaded in the current legalization of religion in our country.

Opening the history of the Roman law, the constant process to against the Vatican and its Canon Law (religious law) is the process of religious secularization, which provides a blueprint for later study and establishment of civil law in mainland of China. It also lays the historical foundation for the enactment of the civil law. Since then, the formal law system of rationalism (continental law) started more than 2,000 years of legislative practice [7]. The transparency of law has become a basic requirement of the modern rule of law spirit [7]. Specifically, the effect on the religious and legal are indicated as follows:

3.1 Christian “fraternity” affects the concept of the rule of law

The influence of Roman law on western law is mainly form Christian “fraternity”. Firstly, it begins with the establishment of the concept of “all people are equal before the law”. After the Roman emperor converted to Christianity, he accepted the notion of “all people are equal before God” and markedly improved the legal status of family members and slaves and alleviated social conflicts to a certain degree. In the Protestant Reform, the Calvinists began to convert theological doctrines into democratic norms and forms, advocating equality before the law for all equality before the law. Since then, equality for all before the law has become one of the important principles that run through the ancient and modern rule of law. Secondly, in the 6-8 centuries AD, the vast amount of law were compiled and inspired by the “fraternity” of Christianity [3]. Christianity requires systematic legalization, which is the only way it embodies fraternity. In addition, the natural freedom of all people from god will be transformed into constitutional freedom, and political power should be subject to checks and balances among the executive, legislative and judicial branches. Furthermore, officials must be elected, and it requires a term of work duration, and laws must be written into the code, additionally, judges’ discretion is severely restricted. These doctrines are important resources for inspiration and enlightenment in the great era of democratic construction in North and South America in the 18th and 19th centuries [2]. Christianity transforms external rules of law into people’s inner self-awareness [9].

3.2 The Influence of Christianity on Human Law

After the conversion of the Roman emperor to Christianity, the Christian view of marriage influenced the Roman marriage system, the Roman law has made change on the family law, granted greater legal equality for the wife, prescribed the agreement of both spouses as an element of the validity of the marriage, and caused the Romans to suffer the change of marriage system from having the freedom of divorce to the prohibition of divorce [11]. Christianity also affected the Roman parenthood. Under the influence of Christians, the identity of the father evolved from an arbitrary civil status into a fatherhood in the sense of natural law, and the law abolished the power of father to kill his children. The legal status of the fetus changes from the natural human being with conditions to the substantive evolution, and it brings the partial change of the illegitimate child by the discriminatory status, and the obligation of the father to raise children. Christianity also has an impact on the legal status of slaves. It not only guarantees the personal interests of the slaves, but also possesses more rights to freedom. It can be said that Christianity fundamentally touched the main body of Roman law and maximized the status of slaves, women and family members [11].
3.3 Impact on debt law

The influence of Catholicism on debt law is mainly reflected in the principles of conscience and contract. The last will has always been a benevolent gift that people use to save their souls, but it evolved into a means of expressing their free will, governing social and economic relations. By expressing one’s own wills clearly, the testator can dispose of his after-death property. Entrepreneurs can arrange their commercial relationships in a contractual manner. As long as they do not contravene their conscience, such property rights and deeds of contract are regarded as sacrosanct. Protestantism denied the supremacy of the Pope and placed the individual at the center of faith, which became the core of the development of modern property law and contract law. Conscience became the will and intention. Protestantism insisted on the opinion that secular sovereignty should be limited, and it emphasizes that monarchs, in applying their will, must respect the conscience of their subjects and respect their property rights and contractual rights. There are also the principles of “non-cooperation”, the principle on rulers’ power is governed by law, the principle on legislatures is responsible for public opinion, and the legal consequences of social and economic actions [9]. Among all those principles, the “conscience principle” advocated by the church has the greatest impact. The church believes that law can not only be found in academic ratiocination, but also in the minds of legislators or judges. In order to make the judges realize the conscience, the Church Court created some tricks and procedures that were later adopted by the secular court. And other systems are designed to promote the “conscience principle,” including the right of professional lawyers to direct litigants and the process of interrogation by judges based on well-established rules, are also based on religion.

3.4 The impact on legal ritual

The rituals in legal activities, including the oath of witnesses, and the judge’s wear of certain costumes actually drew on various ceremonies in religious activities [9]. Berman also believes that any legal system shares same ritual elements of religious activities [3].

In short, the process of the mutual collision and mutual squeeze and mutual fusion of the Roman law and religion has made mankind almost go through the entire process of transformation from the religious law to the secular law, and the separation of church and the state. In this process, the law gives religion its sociality, while religion gives the sanctity required by law to respect its spirit, direction and legislation [3]. The legal system of modern religion has gradually been established. Despite the gradual dissolution of the political and religious model of the political system in modern social changes, the law of the church was gradually replaced by the secular law. However, as a spiritual aspect of human beings, religion still exists widely. With the development of society, how to give full play to the positive spirit and direction of religion so that the law can obtain the sanctity required for the respect and finally make the law be believed is the top priority of the religious legal system in our country.

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References


